

Date: September 24, 1993.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93-260; DA 93-1156]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Marion T.V., Inc. to amend the Commission's Rules to change the designation of the Indianapolis-Bloomington, Indiana television market to include the community of Marion, Indiana. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before November 4, 1993, and reply comments are due on or before November 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-260, adopted September 21, 1993, and released October 7, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 357-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Marion T.V., Inc., licensee of WMCC-TV, Channel 23, Marion, Indiana, proposed to amend § 76.51 of the Rules to change the designation of the Indianapolis-Bloomington, Indiana television market to include the community of Marion, Indiana.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination:

(1) The distance between the existing designated communities and the community proposed to be added to the designation;

(2) Whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area;

(3) The presence of a clear showing of a particularized need by the station requesting the change of market designation; and

(4) An indication of benefit to the public from the proposed change.

Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Station WMCC-TV and stations licensed to communities in the Indianapolis-Bloomington television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354,

94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 4, 1993, and reply comments on or before November 19, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Ray J. Stewart,

Chief, Mass Media Bureau.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC01

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Cherokee Darter and Proposed Endangered Status for the Etowah Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list two fish, the Cherokee Darter (*Etheostoma (Ulocentra) sp.*) and Etowah darter (*Etheostoma etowae*), as threatened and endangered, respectively, under the Endangered Species Act (Act) of 1973, as amended. The Cherokee and Etowah darters are recently discovered species of fish that are endemic to the Etowah River system in north Georgia. The Cherokee darter is now known from approximately 20 small tributary systems of the Etowah River, but healthy populations are known from only a few sites. The Etowah darter is known from the upper Etowah River mainstem and two tributary systems. Impoundments and deteriorating water and benthic habitat quality resulting from siltation, agricultural runoff, other pollutants, poor land use practices, increased urbanization, and waste discharges have resulted in the restriction and fragmentation of these species' current ranges. These factors continue to impact the species and their habitat. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by December 17, 1993. Public hearing requests must be received by December 2, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Butler at the above address (904/232-2580).

SUPPLEMENTARY INFORMATION:**Background**

The Etowah River is one of three major upper Coosa River system tributaries, the others being the Conasauga and Oostanaula rivers. The Etowah joins the Oostanaula River in Rome, Georgia, to form the Coosa River. The Coosa River itself is the major eastern tributary of the Mobile Basin that empties into the Gulf of Mexico in southwest Alabama. The Etowah River system drains portions of the Blue Ridge, Piedmont, and Valley and Ridge physiographic provinces. All streams in the drainage are upland in nature and characterized by high gradients and rocky substrates. Land use patterns of

the Etowah system are largely of a rural agrarian economy, with scattered municipalities, including the encroaching Atlanta metropolitan area.

The diversity of the aquatic fauna is commensurate with the diversity of physiographic provinces comprising the basin. Many of the aquatic organisms reported from the Etowah system are rare. Records of federally protected species are known for an endangered fish (amber darter, *Percina antesella*), four endangered mussels (upland combshell, *Epioblasma metastrata*; southern clubshell, *Pleurobema decisum*; ovate clubshell, *P. perovatum*; and triangular kidneyshell, *Ptychobranthus greeni*), and a threatened mussel (Alabama moccasinshell, *Medionidus acutissimus*). In addition, several Category 2 candidate species from the Service's animal notice of review published in the Federal Register of November 21, 1991 (56 FR 58804) are also known from the Etowah River system. These include a mussel (Tennessee heelsplitter, *Lasmigona holstonia*), five fishes (rock darter, *Etheostoma rupestre*; freckled darter, *Percina lenticula*; bronze darter, *P. palmaris*; lined chub, *Hybopsis lineapunctata*; and frecklebelly madtom, *Noturus munitus*), and at least two aquatic snails (coldwater elimia, *Elimia gerhardtii*; and rough hornsnail, *Pleurocera foremani*). It is estimated that 35 of the potentially 50 freshwater mussel species that once inhabited the Etowah River system have been extirpated (Burkhead *et al.* 1992). The Etowah River system at one time contained a significant portion of the aquatic biodiversity of the upper Mobile Basin.

A small percid fish, the Cherokee darter is subcylindrical in shape, and has a relatively blunt snout with a subterminal mouth. The body shade is white to pale yellow. The side of adults is pigmented with usually eight small dark olive-black blotches which develop into vertically elongate, slightly oblique bars in breeding adults, especially in males. The back usually has eight small dark saddles and intervening pale areas. The Cherokee darter has proven to be distinct from the Coosa darter, *E. coosae*, a species with which it was previously confused, by peak nuptial males never having five discrete color bands in the spinous dorsal fin.

Cherokee darters inhabit small-sized to medium-sized warm-water creeks with moderate gradient and predominately rocky bottoms. It is usually found in shallow water in sections of reduced current, typically in runs above and below riffles and at the

ecotones of riffles and backwaters. The Cherokee darter is associated with large gravel, cobble, and small boulder substrates, and is uncommonly or rarely found over bedrock, fine gravel, or sand. It is most abundant in stream sections with relatively clear water and clean substrates (little silt deposition). The Cherokee darter is intolerant of heavy to moderate silt deposition. The Cherokee darter, like other members of the subgenus *Ulocentra*, is intolerant of impoundment.

The Cherokee darter is endemic to the Etowah River system in north Georgia, where it is primarily restricted to streams draining the Piedmont physiographic province, and to a lesser extent, the Blue Ridge physiographic province. The Cherokee darter occurs in about 20 small to moderately large tributary systems of the middle and upper Etowah River system. However, only a few sites contain healthy populations of this species. The largest populations occur in northern tributaries upstream of Allatoona Reservoir. Populations are smaller in tributaries draining the southern portion of the system. The southern tributary systems tend to drain areas exhibiting less relief and are generally much more degraded. Cherokee darter populations are found primarily above Allatoona Dam, populations are restricted to two tributary systems.

The Cherokee darter exhibits a disjunct and discontinuous distributional pattern, indicating fragmentation and isolation of populations. The placement of Allatoona Reservoir in the middle Etowah River system has caused much of the fragmentation of this species' populations. One major tributary system in the upper Etowah system, Amicalola Creek, apparently naturally lacks populations of Cherokee darters, but contains a relatively close relative and also a narrow endemic, the holiday darter, *E. brevirostrum*. The Cherokee darter is allopatric (i.e., the ranges of the species do not overlap) with the other two *Ulocentra* species in the watershed, the holiday darter and Coosa darter. A formal description of the Cherokee darter is being prepared by Bauer *et al.* (in prep.).

The Etowah darter is a small-sized percid fish that is moderately compressed laterally, and has a moderately pointed snout with a terminal, obliquely angled mouth. The body ground shade is brown or grayish-olive. The side is usually pigmented with 13 or 14 small dark blotches just below the lateral line. The breast in nuptial males is dark greenish-blue. The

Etowah darter has proven distinct from the greenbreast darter, *E. jordani*, a species with which it has previously been confused, by the absence of red marks on the sides and anal fins of male specimens.

The Etowah darter inhabits warm and cool, medium and large creeks or small rivers that have moderate or high gradient and rocky bottoms. It is found in relatively shallow riffles, with large gravel, cobble, and small boulder substrates. The Etowah darter is typically associated with the swiftest portions of shallow riffles, but occasionally adults are taken at the tails of riffles. Sites having the greatest abundance of Etowah darters have clearer water and relatively little silt in the riffles. The Etowah darter, like other members of the subgenus *Nothonotus*, shuns pool habitats and is intolerant of stream impoundment.

The Etowah darter is endemic to the upper Etowah River system in north Georgia, where it is restricted to the upper Etowah River mainstem, and two tributaries, Long Swamp and Amicalola Creeks. These streams drain both the Blue Ridge and Piedmont physiographic provinces. This distribution suggests habitat specialization: all streams inhabited by this species are geographically adjacent in the most upland portion of the river system. For a fish of moderate to large creeks or small rivers, the Etowah darter has one of the most restricted distributions in the southeast (Lee *et al.* 1980). The Etowah darter has been formally described by Wood and Mayden (1993).

The Cherokee darter appeared as a category 2 species in the Service's notice of review for animal candidates published in the *Federal Register* of January 6, 1989 (54 FR 554) and November 21, 1991 (56 FR 58804). Category 2 species are taxa under review for listing, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support proposed rules.

The Service funded a status survey in fiscal year 1990 to better determine the status of the recently discovered Cherokee darter. After field work had commenced, another undescribed fish was discovered in the Etowah River system, the Etowah darter. The survey was modified to address the population status of both these undescribed darters. A final report was received on March 30, 1993 (Burkhead 1993), providing sufficient information on biological vulnerability and threats to support classification of these fishes as category 1 candidates and to support a proposed rule to classify the Cherokee darter as

threatened and the Etowah darter as endangered.

On April 6, 1993, the Service notified potentially affected Federal and State agencies by mail that a status review was being conducted for the Cherokee darter and Etowah darter. Two comments were received concerning this notification. The U.S. Forest Service stated that it was unlikely Forest Service lands harbored suitable habitat for the two darter species. They also noted that future Forest Service activities in the Etowah River watershed were expected to decrease, and that it was unlikely these activities would produce any noticeable siltation effects on downstream populations of the Cherokee darter and Etowah darter. The Environmental Protection Agency commented on locating specific watersheds having high cumulative non-point source stream impacts for potential restoration work. This information would be useful in the recovery of the Cherokee darter and Etowah darter. Neither agency had objections to the potential listing of these species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cherokee darter (*Etheostoma (Ulocentrala) sp.*) and the Etowah darter (*Etheostoma etowae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Cherokee darter and Etowah darter are both endemic to the Etowah River system in north Georgia (Burkhead 1993). These species have been rendered vulnerable to extinction by significant loss of habitat within their restricted range in the Etowah River system. The primary causes of habitat loss in the Etowah River system result from impoundments, siltation, point source and nonpoint source pollution which includes, but is not limited to, municipal and industrial waste discharges, agricultural runoff from crop monoculture and poultry farms, poultry processing plants, and silvicultural activities. Much non-agricultural and non-silvicultural habitat degradation in the watershed can be attributed to increased urbanization in the Atlanta

metropolitan area. All such forms of habitat degradation and pollution disrupt the aquatic ecosystem, particularly impacting benthic (bottom) habitat. Certain pollutants may be particularly harmful in cumulative concentrations or if synergistic interactions with other pollutants or chemicals occur.

Impoundments have destroyed a significant portion of the free-flowing stream habitat in which the Cherokee darter and Etowah darter live. Preimpoundment records from areas now flooded by the 4,800 hectare (11,856 acre) Allatoona Reservoir exist in museum collections. Based on museum records, at least five populations of the Cherokee darter were extirpated by the inundation of Allatoona Reservoir, which was completed in 1955. Other undocumented Cherokee darter populations were likely destroyed by the filling of Allatoona Reservoir as well. It is possible that some mainstem Etowah River populations of the Etowah darter were also destroyed by Allatoona Reservoir. The lower portions of some of the tributary systems that harbor populations of the Cherokee darter are inundated by Allatoona Reservoir, isolating these populations from other populations in adjacent tributaries. These tributaries include Butler, Shoal, and Stamp Creeks.

Besides Allatoona Reservoir, numerous small impoundments and ponds are scattered throughout the range of the Cherokee darter and Etowah darter. Impoundments directly destroy stream habitat by converting free-flowing streams to artificial lakes and ponds and by causing population isolation. Furthermore, small impoundments are numerous enough in the Etowah system to have a negative effect on both these species by causing population fragmentation and isolation, thereby blocking genetic interchange. Impoundments also alter the thermal regimen of the stream sections immediately below the dam and can cause community shifts favoring centrarchid fishes (Brim 1991), potential predators on both Cherokee darters and Etowah darters. The Yellow Creek population of the Cherokee darter is directly threatened by a proposed water supply impoundment planned by the Cherokee County government.

Erosion from poor land use practices cause extensive topsoil erosion and subsequent siltation of stream bottoms. Siltation sources include timber clearcutting, clearing of riparian vegetation, and those construction, mining, and agricultural practices that allow exposed earth to enter streams.

Light to moderate levels of siltation are ubiquitous in many streams of the Etowah River system that have populations of the Cherokee darter and Etowah darter. Siltation problems are severe in many tributaries that have or probably had populations of the Cherokee darter, including Allatoona Creek, the Little River system, Settingdown Creek, Pumpkinvine Creek, and in portions of Shoal Creek (Cherokee County), Sharp Mountain Creek, Long Swamp Creek, and Raccoon Creek. Siltation and dust from marble quarries in Pickens County are also major problems in Long Swamp Creek, the only known site where the Cherokee darter and Etowah Darter are found together. A rock quarry has been proposed for Stamp Creek in Bartow County. If permitted, this quarry may have an adverse effect on the Stamp Creek Cherokee darter population.

The extreme isolation or absence of populations of the Cherokee darter in Settingdown, Allatoona, and Raccoon Creeks and the Little River also strongly suggests localized extirpation of populations. These intermediate streams probably once supported populations of the fish. Much of the Little River system is heavily affected by large silt and bed loads; the remaining fish fauna is depauperate and at many sites dominated by species tolerant of degraded habitats.

The Cherokee darter and Etowah darter are obligate benthic species living, foraging, and spawning on the stream bottom. Hence, their well-being is directly tied to benthic habitat quality. Negative effects of silt on benthic fishes were summarized by Burkhead and Jenkins (1991). Silt reduces or destroys habitat heterogeneity and primary productivity, increases fish egg and larval mortality, abrades organisms, and alters, degrades, and entombs macrobenthic communities. The geological strata drained by the Etowah River, particularly in the middle and upper portion of the system, contain micaceous schist. The erosion of this substrata adds an extremely abrasive mica component to the silt which renders this silt even more noxious to benthic organisms. Current state and Federal regulations preventing silt from entering streams are lacking, inadequate, or not rigorously enforced.

The current rate of development in the counties surrounding Atlanta is very high. The most rapid development appears to be in Cobb and Fulton counties, but it is also high in Cherokee County. These areas are in the heart of the Cherokee darter's current range. The effects of urbanization may be seen as

far away as Dawson County, where the majority of Etowah darter populations, as well as some Cherokee darter populations, are known. One of the principal concerns to the continued existence of the Cherokee darter and Etowah darter is the trend of converting farmland into localized subdivisions in areas relatively remote from Atlanta. Associated with increased development and land clearing is increased siltation from erosion, accelerated runoff, and transport of pollutants into the Etowah River system.

The tributaries harboring the Cherokee darter and Etowah darter are crossed by numerous road and railroad bridges. These stream crossings are potential sites for accidents which could spill toxic material into streams. Spills of toxic chemicals at such crossings could cause catastrophic fish kills and local extirpation of these species. The high number of bridge crossings over Cherokee darter and Etowah darter streams increases the probability that such an accident will occur in the future.

Attending the urbanization associated with the growth of the Atlanta metropolitan area is a proposed bypass which would circumnavigate Atlanta to the northwest, connecting Interstate 75 with Georgia State Route 371. The bypass would cross several Cherokee darter streams in portions of Forsyth, Cherokee, and Bartow Counties. Bridge construction sites would be potential sources of sedimentation to Cherokee darter habitat.

It has been reported that 75 percent of Georgia's landfills will reach capacity in five years (*The Atlanta Journal/The Atlanta Constitution*, February 23, 1992). Several landfill sites have been proposed within the range of the Cherokee darter, and one proposed site occurs between two Cherokee darter streams: Riggins and Edward Creeks, Cherokee County. While modern landfills are designed to contain runoff, some landfills may not retain complete barrier integrity over time.

B. Overutilization for commercial, recreational, scientific, or educational purposes. In general, small species of fish, such as the Cherokee darter and Etowah darter, which are not utilized for either sport or bait purposes, are unknown to the general public. Therefore, take of these species by the general public has not been a problem. However, vandalism could pose a problem, especially if the specific inhabited reaches were to be revealed, such as through the designation of critical habitat. Most of the stream reaches inhabited by these fish are extremely short and could easily be lost

through the act of vandals using readily available toxic chemicals. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat, if left unregulated. Federal protection of these species would help to minimize illegal or inappropriate take.

C. Disease or predation. Predation upon the Cherokee darter and Etowah darter undoubtedly occurs. However, there is no evidence to suggest that predation threatens these species, except possibly in altered stream reaches immediately below dams.

D. The inadequacy of existing regulatory mechanisms. The Official Code of Georgia Annotated 27-2-12 prohibits the taking of these fish without a state collecting permit. Federal listing would provide protection under Section 9 of the Act by requiring Federal permits for taking the Cherokee darter and Etowah darter. Additional protection could be gained under Section 7 of the Act by requiring Federal agencies to consult with the Service when projects they fund, authorize, or conduct may affect these species.

E. Other natural or manmade factors affecting its continued existence. The range of the Cherokee darter has been fragmented, and a significant portion of the middle Etowah River system has been permanently altered by Allatoona Reservoir. Many of the streams inhabited by the Cherokee darter and Etowah darter exhibit moderate to heavy degradation from poor land use practices and small impoundments. These strong negative forces have caused local extirpation of both Cherokee darter and Etowah darter populations and have induced range fragmentation and subsequent isolation of the Cherokee darter into small populations. Genetic diversity has subsequently been lost due to these population losses. The genetic diversity of all populations may be needed to provide the species enough genetic variability to adapt to environmental change and thus assure long-term viability. The restricted distribution of both the Cherokee darter and Etowah darter also makes populations vulnerable to extirpation from catastrophic events, such as an accidental toxic chemical spill. Range fragmentation and loss of genetic diversity, independently and in concert, clearly threaten the continued existence of these species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both darters in determining to propose these

rules. Based on these evaluations, the preferred action is to propose the Cherokee darter and Etowah darter as threatened and endangered species, respectively. The Cherokee darter is now known from approximately 20 tributary systems of the Etowah River, but healthy populations are known from just a few sites. The Etowah darter is known from only the upper Etowah River mainstem and two tributary systems. Both species are restricted to the Etowah River system in north Georgia. These fish and their benthic habitat have been, and continue to be, impacted by range reduction, isolation by impoundment, and general habitat destruction. Despite its wider distribution and greater number of known populations, the Cherokee darter appears to have more of its habitat threatened by these factors, which have already resulted in a higher level of population fragmentation and isolation relative to the Etowah darter. The restricted distribution of these two species also makes localized populations susceptible to catastrophic events. Because of these factors, endangered appears the most appropriate status for the Etowah darter and threatened appears most appropriate for the Cherokee darter.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further threaten them.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is

likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the fishes' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species.

Should any future projects be proposed in areas inhabited by these fish, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; and if needed more specific distributional information would be provided.

Regulations promulgated for implementing section 7, referenced above, provide for both a jeopardy standard, based on listing alone, and for a destruction or adverse modification standard, in cases where critical habitat has been designated. The Cherokee and Etowah darters occupy very restricted stream reaches. Any significant adverse modification or destruction of their habitat would likely jeopardize their continued existence. Under these conditions the two standards are essentially equivalent. Therefore, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing these species. Once listed, the Service believes that protection of their habitat can be accomplished through the section 7 jeopardy standard, and through section 9 prohibitions against take.

These two fish are very rare. Therefore, taking for scientific purposes and private collections could pose a threat to their continued existence if site-specific information were released to the general public. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and also increase the potential for vandalism during the often controversial critical habitat designation process. The potential for future habitat disruption within one or both these species' ranges resulting from the rapidly expanding Atlanta metropolitan area makes designation of critical habitat potentially more contentious and controversial, increasing the possibility for vandalism to occur. The locations of these species' populations have consequently been described only in general terms in this proposed rule. Any existing precise locality data would

be available to appropriate Federal, State, and local governmental agencies from the Service office described in the **ADDRESSES** section; from the Service's Brunswick Field Office, Federal Building, room 334, 801 Gloucester Street, Brunswick, Georgia 31520; and from the Georgia Department of Natural Resources, and Georgia Natural Heritage Program.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include the Environmental Protection Agency through the Clean Water Act's provisions for pesticide registration and waste management actions. The Corps of Engineers will consider these species in project planning and operation, and during the permit review process. The Federal Highway Administration will consider impacts of federally funded bridge and road construction projects when known habitat may be impacted.

Continuing urban development within the Etowah River system may involve the Farmers Home Administration and their loan programs. The Soil Conservation Service will consider the species during project planning and under their farmer's assistance programs. The Forest Service will consider downstream impacts to habitat of the Etowah darter when planning or implementing silvicultural, recreational, or other programs in the headwaters of Amicalola Creek and the extreme upper portion of the Etowah River mainstem occurring in the Chattahoochee National Forest.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Since these species are not in trade, such permit requests are not expected.

Public Comments Solicited

The Service intends that any final action resulting from these proposals will be as accurate and as effective as

possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communication may lead to final regulations that differ from these proposals.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of these proposals. Such requests must be made in writing and should be addressed to the Field Supervisor (see ADDRESSES section of this rule).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

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impoundments. Unpublished masters thesis, Dept. Biol., Univ. South Carolina, Columbia.

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Author

The primary author of this proposed rule is Robert S. Butler, U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216 (904/232-2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. § 17.11(h) is amended by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Darter, Cherokee	<i>Etheostoma (Ulocentra) sp.</i>	U.S.A. (GA)	Entire	T	NA
Darter, Etowah	<i>Etheostoma etowae</i> ...	U.S.A. (GA)	Entire	E	NA

Dated: September 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Extension of Comment Period on Proposed Endangered Status and Critical Habitat Designation for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that six public hearings will be held, and the comment period extended, regarding the proposed rule to list the southwestern willow flycatcher (*Empidonax traillii extimus*) as an endangered species, with critical habitat. These hearings and extension of the comment period will allow all interested parties to submit oral or written comments on the proposal.

DATES: Six public hearings have been scheduled, from 6 p.m. to 9 p.m. for the following dates and locations:

- (1) Monday, November 1, 1993, in Albuquerque, New Mexico.
- (2) Tuesday, November 2, 1993, in Las Cruces, New Mexico.
- (3) Monday, November 8, 1993, in Tucson, Arizona.
- (4) Tuesday, November 9, 1993, in Flagstaff, Arizona.
- (5) Monday, November 15, 1993, in Lake Isabella, California.
- (6) Tuesday, November 16, 1993, in San Diego, California.

The comment period for this proposal, which was scheduled to close on October 21, 1993, is extended and now closes on November 30, 1993.

ADDRESSES: The addresses for the public hearings are:

(1) November 1, 1993, at the Indian Pueblo Cultural Center, 2410 12th Street NW, Albuquerque, New Mexico.

(2) November 2, 1993, at the Corbett Auditorium on the New Mexico State University campus, Las Cruces, New Mexico.

(3) November 8, 1993, at the Social Sciences Auditorium on the University of Arizona campus, Tucson, Arizona.

(4) November 9, 1993, at the Flagstaff High School Auditorium, 400 West Elm, Flagstaff, Arizona.

(5) November 15, 1993, at the Kern River Valley Senior Citizen's Center, 6104 Lake Isabella Road, Lake Isabella, California.

(6) November 16, 1993, at the San Diego Concourse, Convention and Performing Arts Center, 202 C Street MS #57, San Diego, California.

Written comments and material should be sent to the State Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz or Timothy Tibbitts, at the above address, telephone (602) 379-4720.

SUPPLEMENTARY INFORMATION:

Background

The southwestern willow flycatcher (*Empidonax traillii extimus*) is a small passerine bird which nests in riparian habitats along rivers, streams, or other wetlands, where dense growths of willow, cottonwood, arrowweed, buttonbush, tamarisk, or other shrubs and trees are present. Its breeding range includes southern California, Arizona, New Mexico, extreme southern portions of Nevada and Utah, and western Texas. It may also breed in southwestern Colorado and extreme northwestern Mexico. The southwestern willow

flycatcher has experienced extensive loss and modification of its habitat, and is also endangered by other factors, including brood parasitism by cowbirds (*Molothrus* sp.). A proposed rule to list this species as endangered with critical habitat was published in the **Federal Register** on July 23, 1993 (58 FR 39495).

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. The Service has determined that good cause exists, in that allowing the full participation of the affected public in the species listing process will allow the Service to consider the best scientific and commercial data available in making a final determination on the proposed action.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if requested within 45 days of the publication of a proposed rule. Anticipating such requests, the Service announced in the proposed rule that three public hearings would be held, one each in the States of California, Arizona and New Mexico. In response to additional requests, the Service is holding three additional hearings. The six public hearings will be held on the dates and at the addresses described above.

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at each hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearings or mailed to the Service. To facilitate the uninhibited exchange of information, cameras and videotape recorders will not be allowed within the public hearing rooms. The comment period on the proposed rule originally closed October 21, 1993. To accommodate the public hearings, and to provide