

McNary NWR encompasses approximately 15,894 acres located 30 miles upstream of Umatilla NWR, near Burbank, Washington. It was established in 1953 as mitigation for wildlife habitat losses that occurred when the Columbia River corridor was flooded after completion of the McNary Dam which created Lake Wallula. Seven areas were identified in a General Plan, completed in 1953, and signed by the Secretaries of Army and Interior, and the Directors of Fish and Game for both Oregon and Washington. Each of these areas were to be managed "for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon." For most of the intervening years, the FWS managed two of these seven areas as McNary NWR, though most of the underlying ownership was still held by the USACE. The State of Washington, and later the USACE, managed the other areas identified in the General Plan known as Habitat Management Units. In 1999, legislation was passed transferring ownership of the existing 3,636-acre McNary NWR from the USACE to FWS in fee title. The legislation also authorized the USACE, FWS, and Port of Walla Walla to negotiate an exchange of NWR lands with the Port. As a result, the FWS was granted management responsibility for four USACE Habitat Management Units adjacent to McNary NWR under terms of a cooperative agreement signed in January 2000. The USACE continues to own the lands while both agencies work toward permanent transfer in fee title.

Habitat types found on both refuges include shrub-steppe uplands, croplands, woody riparian areas, basalt cliffs, emergent marshes, and large open water marshes due to inundation of Lake Umatilla and Lake Wallula. Several islands were also created when these reservoirs were flooded. Both refuges provide important migratory and wintering habitat for numerous bird species especially waterfowl.

#### **Preliminary Issues, Concerns, and Opportunities**

The FWS has identified the following preliminary issues, concerns, and opportunities:

*Habitat Management and Restoration:* What actions shall the NWRs take to sustain and restore priority species and habitats over the next 15 years?

*Public Use and Access:* What kinds of recreation opportunities should be provided? Are existing access points and NWR uses adequate and appropriate?

*Invasive Species Control:* How do invasive species affect functioning

native systems and what actions should be taken to reduce the incidence and spread of invasive species?

Dated: May 14, 2004.

**David J. Wesley,**

*Acting Regional Director, Region 1, Portland, Oregon.*

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **Availability of the Recovery Plan for Five Freshwater Mussels—Cumberland Elktoe (*Alasmidonta atropurpurea*), Oyster Mussel (*Epioblasma capsaeformis*), Cumberlandian Combshell (*Epioblasma brevidens*), Purple Bean *Villosa perpurpurea*), and Rough Rabbitsfoot (*Quadrula cylindrica strigillata*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the final recovery plan for five freshwater mussels—Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*). These species are endemic to the Cumberland and Tennessee River systems in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Recent research has greatly increased our understanding of the ecology of these species. The recovery plan includes specific recovery objectives and criteria to be met in order to delist these mussels to threatened status or delist them under the Endangered Species Act of 1973, as amended.

**ADDRESSES:** Copies of this recovery plan are available by request from Bob Butler, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 828/258-3939, Ext. 235). Recovery plans that have been approved by the Fish and Wildlife Service are also available on the Internet at <http://endangered.fws.gov/recovery>.

**FOR FURTHER INFORMATION CONTACT:** Bob Butler at the address and telephone number given above.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Restoring endangered or threatened animals or plants to the point where

they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that we provide public notice and an opportunity for public review and comment during recovery plan development. A notice of availability of the agency draft recovery plan for these five mussel species was published in the **Federal Register** on April 22, 2003 (68 FR 19844). A 60-day comment period was opened with the notice, closing on Monday, June 23, 2003. We received comments from 16 interested parties and from six mussel experts who served as official peer reviewers of the recovery plan. All persons who submitted comments supported the recovery plan and the Service's efforts to recover these species. Comments and information submitted by peer reviewers and other interested parties have been considered in the preparation of this final plan and, where appropriate, incorporated.

These five mussels were listed as endangered species under the Act on January 10, 1997 (62 FR 1647). These species are restricted to the Cumberland River system (Cumberland elktoe), the Tennessee River system (purple bean and rough rabbitsfoot), or to both river systems (oyster mussel and Cumberlandian combshell). They once existed in thousands of stream miles and now survive in only a few relatively small, isolated populations many of questionable long-term viability. These populations are found in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Currently they occur in the Clinch River (Tennessee and Virginia), Duck River (Tennessee), Nolichucky River (Tennessee), Powell River (Tennessee and Virginia), Bear Creek (Alabama and Mississippi), Beech Creek (Tennessee), Buck Creek (Kentucky), Cooper Creek (Virginia), Indian Creek (Virginia), Marsh Creek (Kentucky), Sinking Creek (Kentucky), Laurel Fork (Kentucky), Big South Fork (Kentucky)

and Tennessee), and several tributaries in the Big South Fork drainage (Rock Creek, Kentucky; New River, Bone Camp Creek, Crooked Creek, North White Oak Creek, and White Oak Creek, all Tennessee). Habitat alternation continues to be the major threat to the continued existence of these species. The species and their habitats are currently being impacted by excessive sediment bed loads of smaller sediment particles, changes in turbidity, increased suspended solids (primarily resulting from nonpoint-source loading from poor land-use practices and lack of, or maintenance of, best management practices (BMPs)), and pesticides. Other primarily localized impacts include coal mining, gravel mining, reduced water quality below dams, developmental activities, water withdrawal, impoundments, and alien species (e.g., the zebra mussel, *Dreissena polymorpha*). Their restricted ranges and low population levels also increase their vulnerability to toxic chemical spills and the deleterious effects of genetic isolation.

The objective of this recovery plan is to provide a framework for the recovery of these five species so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the five species will be reviewed, and they will be considered for reclassification to threatened status or for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 5, 2003.

**Noreen Walsh,**

*Acting Regional Director, Southeast Region,  
U.S. Fish and Wildlife Service.*

**Editorial Note:** This document was received in the Office of the Federal Register on May 19, 2004.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Notice of Availability of the Draft Restoration Plan and Environmental Assessment for the Certus, Inc. Chemical Spill Natural Resource Damage Assessment in Lee County, VA**

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI) and the Commonwealth of Virginia, announces the release for public review of the Draft Restoration Plan and Environmental Assessment (RP/EA) for the Certus, Inc. Chemical Spill Natural Resource Damage Assessment in Tazewell County, Virginia. The draft RP/EA describes the trustees' proposal to restore natural resources injured as a result of a release of hazardous substances.

**DATES:** Written comments must be submitted within 30 days from the date of publication of this notice.

**ADDRESSES:** Requests for copies of the draft RP/EA may be made to: U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061. Written comments or materials regarding the draft RP/EA should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804-693-6694, extension 107, for further information.

**SUPPLEMENTARY INFORMATION:** On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,350 gallons of Octocure 554-revised, a rubber accelerant, into an unnamed tributary about 530 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and caused a significant fish kill. The spill also killed most aquatic benthic invertebrates for about 7 miles downstream and destroyed one of the last two known remaining reproducing populations of the endangered tan riffleshell mussel. A consent decree was entered with the U.S. District Court for the Western District of Virginia, Abingdon Division, by the United States and Certus, Inc. on April 7, 2003, to address natural resource damages resulting from the 1998 release. The consent decree stipulates that settlement funds are to be “\* \* \* managed by the DOI for the joint benefit and use of the Federal and State Trustees to plan, perform, monitor and oversee native, freshwater mussel restoration projects within the Clinch River watershed \* \* \*.”

Under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9601 *et seq.*, “natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance

\* \* \* and may seek to recover those damages.” Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The natural resource damage assessment process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace, and/or acquire equivalent resources for those resources that were injured or lost.

This draft RP/EA has been developed by the Service in order to address and evaluate restoration alternatives related to natural resource injuries within the Clinch River watershed. The purpose of this RP/EA is to design and evaluate possible alternatives that will restore, rehabilitate, replace, or acquire natural resources, and the services provided by those resources, that approximate those injured as a result of the spill using funds collected as natural resource damages for injuries, pursuant to the CERCLA. This draft RP/EA describes the affected environment, identifies potential restoration alternatives and their plausible environmental consequences, and describes the proposed preferred alternative.

Section 111(i) of the CERCLA requires natural resource trustees to develop a restoration plan prior to allocating recoveries to implement restoration actions, and to obtain public comment on that plan. Under the National Environmental Policy Act (NEPA), Federal agencies must identify and evaluate environmental impacts that may result from Federal actions. This draft RP/EA integrates CERCLA and NEPA requirements by summarizing the affected environment, describing the purpose and need for action, and describing the restoration activities considered, including the alternative preferred by the Trustees.

This draft RP/EA will be available for review and comment by interested members of the public, natural resource Trustees, and other affected Federal or State agencies or Native American tribes, for a period of 30 days from the date of publication of this notice. Comments must be submitted in writing to: John Schmerfeld, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.