

longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

**FOR FURTHER INFORMATION CONTACT:**

Wireline Competition Bureau, Competition Policy Division, Chris Laughlin, at (202) 418-1580, [Openinternet2023@fcc.gov](mailto:Openinternet2023@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document (*Public Notice*) in WC Docket Nos. 17-108, 17-287, 11-42, DA 23-996, issued and released on October 19, 2023. The full text of this document is available on the Commission's website at <https://docs.fcc.gov/public/attachments/DA-23-996A1.pdf>. To request materials in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format, etc.), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

**Ex Parte Rules.** This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying

the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Jodie May,**

*Division Chief, Competition Policy Division, Wireline Competition Bureau.*

[FR Doc. 2023-23932 Filed 10-30-23; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2023-0171; FF09E21000 FXES1111090FEDR 234]

**RIN 1018-BE88**

#### Endangered and Threatened Wildlife and Plants; Endangered Species Status for Oblong Rocksnail (*Leptoxis compacta*)

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the oblong rocksnail (*Leptoxis compacta*), a freshwater snail native to the Cahaba River in Alabama, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the oblong rocksnail. After a review of the best available scientific and commercial information, we find that listing the species is warranted. If we finalize this rule as proposed, it will add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species.

**DATES:** We will accept comments received or postmarked on or before January 2, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 15, 2023.

**ADDRESSES:** *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2023-0171, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2023-0171, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Availability of supporting materials:* Supporting materials, such as the species status assessment report, are available at <https://www.fws.gov/office/alabama-ecological-services>, at <https://ecos.fws.gov/ecp/species/2809>, and at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2023-0171.

**FOR FURTHER INFORMATION CONTACT:** Bill Pearson, Field Supervisor, Alabama Ecological Services Field Office, 1208 Main Street, Daphne, AL 36526; telephone 251-441-5870. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, please see Docket No. FWS-R4-ES-2023-0171 on <https://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov) for a document that summarizes this proposed rule.

#### SUPPLEMENTARY INFORMATION:

##### Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

- (a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;
- (b) Genetics and taxonomy;
- (c) Historical and current range, including distribution patterns, and the locations of any additional populations of this species; and
- (d) Historical and current population levels, and current and projected trends.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.

(c) Existing regulations or conservation actions that may be addressing threats to the species.

(d) Past and ongoing conservation measures for the species, its habitat, or both.

(3) Additional information concerning the historical and current status of this species.

(4) Specific information on:

(a) The amount and distribution of oblong rocksnail habitat;

(b) Any areas occurring within the range of the species in the Cahaba River watershed that should be included in a critical habitat designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species.

Please include sufficient information with your submission (such as scientific

journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act (16 U.S.C. 1533(b)(1)(A)) directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act (16 U.S.C. 1533(b)(2)) directs that the Secretary shall designate critical habitat on the basis of the best scientific information available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any new information that may become available after this proposal publishes. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

##### Public Hearing

Section 4(b)(5) (16 U.S.C. 1533(b)(5)) of the Act provides for a public hearing on this proposal, if requested. Requests

must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

##### Previous Federal Actions

On June 21, 2016, we were petitioned by the Center for Biological Diversity and The Cahaba Riverkeeper to list the oblong rocksnail. On December 20, 2017, we published in the **Federal Register** (82 FR 60362) our determination that the petition presented substantial information indicating that listing may be warranted. This proposed rule constitutes our 12-month finding on that petition.

##### Peer Review

A species status assessment (SSA) team prepared an SSA report for the oblong rocksnail (Service 2022, entire). The SSA team was composed of Service biologists, and the report was prepared in consultation with species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act (16 U.S.C. 1531 *et seq.*), we solicited independent scientific review of the information contained in the oblong rocksnail SSA report. We sent the SSA report to six independent peer reviewers and received two responses. Results of this structured peer review process can be found at <https://www.regulations.gov>. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

##### Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from two peer reviewers on the draft SSA report. We

reviewed all comments received from the peer reviewers for substantive issues and new information regarding the contents of the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions, including clarifications in terminology and other editorial suggestions. We revised the SSA report to include information provided by reviewers about recent oil spill occurrences within the oblong rocksnail's range. Otherwise, no substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.0 of the SSA report.

## I. Proposed Listing Determination

### Background

A thorough review of the taxonomy, life history, and ecology of the oblong rocksnail (*Leptoxis compacta*) is presented in the SSA report (version 1.0; Service 2022, pp. 1–4).

The oblong rocksnail is a non-air-breathing, freshwater pleurocerid snail native to the Cahaba River, near Birmingham, Alabama. Oblong rocksnails are grazers and occur on large slabs and bedrock, typically toward the middle of the river. These large flat rocks provide the substrate on which periphyton (algae attached to hard surfaces), which the rocksnail uses for food, can grow (Miller-Way and Way 1989, p. 193; Johnson et al. 2013, p. 248). In general, periphyton availability, substrate composition, and water velocity are important components in determining habitat suitability of pleurocerid snails (Stewart and Garcia 2002, p. 178). Periphyton, which contains higher concentrations of limiting nutrients like nitrogen than other food sources, is more easily scraped from hard substrates by rocksnails (White 1978, pp. 73–74; McMahon et al. 1974, p. 392; Brown 2001, p. 305).

Pleurocerid snails are dioecious (*i.e.*, have separate sexes) and generally reach sexual maturity in the wild after 1 or 2 years (Aldridge 1982, p. 197; Whelan 2013, p. 73). Observations of wild *Leptoxis* snails indicate that eggs are often laid on vertical surfaces or undersides of rocks without siltation or much vegetation (Whelan et al. 2015, p. 88). Warming temperatures in spring (April–May) appear to serve as a cue to begin and end egg laying; oviposition in laboratory conditions ceased when the daily maximum water temperature reached 29 degrees Celsius (84 degrees Fahrenheit) (Whelan et al. 2012, p. 3).

Pleurocerid snails live between 2 and 6 years, depending on the species, but the specific lifespan is not known for the oblong rocksnail (Whelan 2013, p. 73).

The species was declared extinct in 2000 (Neves et al. 1997, p. 62; Turgeon et al. 1998, p. 65; Bogan 2000, entire), as it had not been seen in more than 70 years despite repeated surveys (Whelan et al. 2012, p. 1), but was rediscovered in 2011 (Whelan et al. 2012, entire). The best available information indicates that the oblong rocksnail currently occupies approximately 11 percent of its known historical range in the Cahaba River. The species has been extirpated from 44.4 river miles (71.5 kilometers (km)) and is currently found at only a few sites along 5.6 river miles (9 km) of the Cahaba River from Old Marvel Slab upstream to Booth's Ford (Wright et al. 2020, p. 6). Additional survey efforts have failed to locate the species at other sites within the historical range. The sites where the species is currently found are all above the Fall Line, which divides the Piedmont from the Coastal Plain. Due to higher gradients, streams above the Fall Line are generally swift and have rock substrates, while streams below the Fall Line are generally slower, have soft substrates, and have lower gradients (Cahaba River Basin Clean Water Partnership (CRBCWP) 2013, p. 11). The oblong rocksnail's currently occupied range is restricted to the lower range of suitable habitat before the habitat changes at the Fall Line.

### Regulatory and Analytical Framework Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any

existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

#### Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess oblong rocksnail viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand

environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We then used this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R4–ES–2023–0171 on <https://www.regulations.gov>.

#### *Summary of Biological Status and Threats*

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species’ current and future condition, in order to assess the species’ overall viability and the risks to that viability. We analyze these factors both individually and cumulatively to determine the current condition of the species and project the future condition of the species under several plausible future scenarios.

#### Species Needs

Oblong rocksnails need large, flat boulders and bedrock for feeding and reproduction. The river channel should be relatively free of fine sediment and with flows sufficient to maintain clean-swept rock surfaces for attachment, egg-

laying, and periphyton growth. Pleurocerid snails, as a group, are sensitive to changes in water quality parameters such as sodium chloride (salt), potassium, nickel, zinc, and pollutants. Streams that have minimal levels of these constituents are considered suitable, while those habitats with levels outside of the appropriate ranges are considered less suitable. Further, nutrient enrichment needs to remain low enough not to result in algal blooms, which can create a toxic cycle that decreases oxygen and food resources for snails. For further information about life stages and resource needs, see chapter 2 of the SSA report (Service 2022, pp. 3–4).

For the oblong rocksnail to maintain viability, it must be able to withstand and bounce back from both stochastic events (resiliency) and catastrophic events (redundancy), as well as adapt to changing environmental conditions (representation). Snail abundance must be sufficient for genetic diversity to be maintained and for the overall population in the stream reach to recover from stochastic events. Abundance should be stable or increasing for populations to be resilient. Surveys to date have not estimated numbers of oblong rocksnails; however, the species appears to be abundant within the presently occupied reach within the Cahaba River mainstem, except at the northernmost site where numbers are low (Wright et al. 2020, entire). A resilient population of oblong rocksnails must be reproducing and recruiting young individuals into the population. We have no data on reproduction or recruitment of the extant population but based on the short (approximately 2–6 years) probable lifespan of rocksnails, we assume that presence of snails at locations where it has been detected in the recent past indicates recruitment is occurring within the population.

For redundancy, the oblong rocksnail needs to occupy sufficient stream length and in enough tributaries such that stochastic and catastrophic events that could affect the population in the mainstem do not eliminate the entire population of the species. Occupying branches of a river network (dendritic networking) increases habitat diversity and allows the species to repopulate from those tributaries should a spill, flood, drought, or other catastrophic event create unsuitable habitat conditions in the Cahaba mainstem. Because the currently occupied reach is relatively short and only within the mainstem, increasing the complexity of the occupied area will increase redundancy by preventing the oblong

rocksnail from being eliminated by a single catastrophic event.

#### Influences on Viability

##### Water Quality Impairment

Water quality impairment for the oblong rocksnail occurs when there are adverse changes in water quality parameters, as well as impacts from contaminants and sedimentation, and catastrophic spills. Water quality in the Cahaba River has been and is currently affected by point and nonpoint sources, and these sources may be chronic or catastrophic in nature. Nonpoint sources of water quality impairment for the Cahaba River include urban runoff from the metropolitan area of Birmingham and stormwater runoff from roads and agricultural activities. Point sources include industrial sources and municipal effluents. Point source discharges and land surface runoff (nonpoint pollution) can cause eutrophication, decreased dissolved oxygen (DO) concentrations, increased acidity and conductivity, and other changes in water chemistry that are known to impact aquatic snails such as the oblong rocksnail (Gibson et al. 2016, pp. 1, 32–34; Gibson et al. 2018, pp. 239, 247, 249). Oblong rocksnails are sensitive to water quality impairment as they breathe via gills, which may allow toxicants in the water to be readily absorbed (Gibson et al. 2018, p. 251). They also need high oxygen in the water to breathe, so reduced DO levels will affect respiration and overall snail condition. Increased acidity and conductivity can affect shell production and maintenance. It is difficult for the oblong rocksnail to move large distances; thus, the species is not able to survive stochastic or catastrophic water quality events by moving to an unimpaired location.

##### Contaminants

The upper Cahaba River is home to municipal wastewater facilities, industrial facilities, and coal mines which contribute contaminants, including metals, hydrocarbons, pesticides, and other potentially harmful organic and inorganic compounds to the stream. These chemical contaminants contribute significantly to the current declining status of freshwater mollusk (like the oblong rocksnail) species nationwide (Augspurger et al. 2007, p. 2025), and within the Cahaba River (Wright et al. 2020, p. 2).

In Alabama, chloride is a common chemical used in oil and gas production, pesticide application, wastewater treatment plant effluent,

urban runoff, and mining (Gibson et al. 2018, p. 240). Studies of the toxicity of chloride revealed that a sister species of the oblong rocksnail, the round rocksnail (*Leptoxis ampla*), exhibited sensitivity to chloride at concentrations 250 times less than current criteria set by the U.S. Environmental Protection Agency (EPA), and at lower-than-average background levels in almost all watersheds in Alabama, including the Cahaba River watershed (Gibson et al. 2018, p. 247). Thus, the current EPA water quality criterion for chloride may not be sufficient for the survival of the oblong rocksnail. Further, the round rocksnail was the most sensitive mollusk species tested, likely indicating species in the genus *Leptoxis* are more sensitive overall to contaminants. Rocksnails are also sensitive to potassium, nickel, zinc, and sodium dodecyl sulfate (a common surfactant in household detergents), and several of these chemicals do not have regulated standards (Wang et al. 2013, entire; Gibson et al. 2016, p. 30; Wang et al. 2017, p. 786; Gibson et al. 2018, pp. 249–250).

There are six large municipal wastewater treatment plants in the upper Cahaba River drainage, several with documented elevated ammonia levels (EPA 2002, p. 35). Mollusks are also highly sensitive to ammonia (Augspurger et al. 2003, p. 2569), and non-pulmonate snails, like the oblong rocksnail, have been shown to be extremely sensitive to ammonia because they readily absorb it from the water via their gills (EPA 2013, p. 56; Besser et al. 2016, p. 33). The State of Alabama has not yet adopted EPA's ammonia criteria that are protective of the needs of these mollusks (EPA 2013, p. 67; Haslbauer 2020, pers. comm.).

##### Sedimentation

The upper Cahaba River watershed, which drains a large part of Birmingham, is rapidly urbanizing; between 1992 and 2011, urban cover has increased from 9.4 percent to 35.7 percent due to expansion of the metropolitan area (Dosdogru et al. 2020, p. 2). Sources of sedimentation include, but are not limited to, several aspects of urbanization: deforestation, road maintenance, impoundments, and impervious surfaces (EPA 2021, unpaginated).

Excessive sediments are believed to impact riverine snails requiring clean, hard shoal stream and river bottoms by making the habitat unsuitable for feeding or reproduction. In 2002, the EPA reported on the Cahaba River: “Because of excessive sedimentation, habitat evaluation scores in the middle

reach were affected and fell into the suboptimal to marginal range. Quite apparent is the filling of crevices or spaces between the natural rock substrates by sediments thus affecting both fish and benthic macroinvertebrates” (EPA 2002, p. 31). The middle reach of the Cahaba River is also where snails were most abundant when the EPA (2002, pp. 19–20) conducted eight different studies in the Cahaba River in spring 2002. Impacts from decades of excessive sedimentation deteriorated oblong rocksnail habitat such that it is currently confined to only a small portion of the Cahaba River. These impacts from sedimentation affect oblong rocksnail food sources by abrading or suffocating periphyton attached to underwater surfaces. Sedimentation also affects snail respiration, growth, reproductive success, and survival (Waters 1995, pp. 5–7, 74–78, 79–118).

##### Catastrophic Spills

Coalbed methane extraction in the watershed results in saline production-water that historically was discharged directly to receiving channels of the Cahaba River. Saline waters are toxic to snails, including the oblong rocksnail. While coalbed methane wells are common in the Cahaba River basin, there were approximately 400 wells in 2008 (EPA 2011, pp. 3–22), at present no discharges of this type go directly to the Cahaba (O’Neil 2021, pers. comm.). It is anticipated that future discharges of this type would require a permit to ensure integrity of the Cahaba. It is still possible a spill could occur from these sources; however, the probability of such an event, and its volume and nature, are unknown at this time. Pipelines remain one of the safest ways to transport fuel in the United States with a very low failure rate (Belvederesi et al. 2018, p. 1), and the majority of spills are small (National Oceanic and Atmospheric Administration (NOAA) 2020, entire). Despite all of this, spills do occur along pipelines and can have significant environmental consequences to waterways, wildlife, and people (Belvederesi et al. 2018, p. 1).

Two major oil and gas transmission lines cross the Cahaba River and its tributaries at several points ranging from 2.2 to 11 miles (3.7 to 18 km) above known oblong rocksnail locations. The area around the Cahaba River is considered a high consequence area (HCA) (Pipeline and Hazardous Material Safety Administration (PHMSA) 2021b, p. 5). These HCAs are designated areas where a release could have significant adverse consequences, in this case to highly sensitive ecological areas

(Belvederesi et al. 2018, p. 6), and the HCA designation confers additional oversight by the U.S. Department of Transportation's PHMSA to ensure integrity of pipelines in these areas.

Of the 11 counties crossed by these major pipelines in the State of Alabama, 5 counties have experienced oil spills associated with these pipelines or their infrastructure since 2005; these spills ranged in size from 3 to upwards of 7,000 barrels (125 to 293,999 gallons). The largest spill in Shelby County occurred in 2016 within a mile ( $\leq 1.6$  km) of the Cahaba River upstream of the occupied area. Fortunately for the oblong rocksnail and the Cahaba River ecosystem, the spill was diverted to a retention pond and did not reach the portion of the river where the oblong rocksnail occurs (Birmingham Watch 2016, p. 1).

#### Climate Change

We examined climate change on the Cahaba River through 2050, as detailed by Dosdogru et al. (2020, entire). Overall, the study projected more potential for flood and drought events (extreme weather events). Increasing summer temperatures lead to high stream evapotranspiration rates and thus lower overall flows, which reduce dissolved oxygen needed for oblong rocksnail respiration and metabolic activity. High flows during storm events increase soil erosion and muddy stream flows (Dosdogru et al. 2020, p. 14), increasing sedimentation and associated impacts to rocksnails. During droughts, nearly all the flow of the Cahaba River can disappear, leaving snails exposed. During drought events, nearly all the flow of the Cahaba River is removed at the Birmingham water intake and only a portion is returned downstream as treated wastewater (Service 2013, p. 2), exposing oblong rocksnails to higher concentrations of potentially harmful chemicals (see "Contaminants," above). Furthermore, developmental cues, rates of egg development, and juvenile growth are all strongly impacted by temperature regimes (Olden and Naiman 2010, p. 90), and projected increases in temperature can impact successful oblong rocksnail reproduction.

Based on adaptive capacity attributes identified using the approach described by Thurman et al. (2020, entire), oblong rocksnail cannot move large distances when conditions become unfavorable (e.g., when water quality deteriorates, or the system experiences drought or flooding), given its limited dispersal ability and reliance on chance events to carry dispersers downstream. Flashy flows from flooding storm events may

present opportunities that carry individuals to other downstream sites, but they could also carry them beyond the small reach of currently suitable habitat to unsuitable habitat below the Fall Line. Prolonged droughts can lower the water levels such that wetted habitat becomes limited or disappears, leaving the non-air-breathing oblong rocksnail unable to escape these conditions and prone to exposure to contaminants or desiccation.

#### Current Condition

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effect of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluated the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effect of the factors and replaces a standalone cumulative-effects analysis. Below, we describe the 3Rs—resiliency, representation, and redundancy—as they relate to oblong rocksnail viability.

#### Resiliency

The resiliency, or ability of the extant oblong rocksnail population to withstand stochastic events, was determined by analyzing three population factors (abundance, reproduction/recruitment, and occupied stream length/complexity) and two habitat factors (substrate and flowing water, and water quality). These factors are described below.

#### Abundance

While there are no numeric abundance estimates for the oblong rocksnail, we assume that because the population is detectable at multiple sites along 5.6 miles (approximately 9 km) of the Cahaba River, we consider the species locally abundant wherever it occurs.

#### Reproduction and Recruitment

We assume that the recent detections of oblong rocksnail at occupied sites indicates recruitment is currently occurring within the population.

#### Occupied Stream Length/Stream Complexity

The oblong rocksnail currently occupies 5.6 miles (approximately 9 km)

of the historical 44.4 miles (71.5 km) of the Cahaba River and is not known to occupy any tributaries. This limited occupied area and lack of stream complexity could make the species more susceptible to stochastic and catastrophic events.

#### Substrate and Flowing Water

The oblong rocksnail occupies a reach of the Cahaba River that is downstream of the confluence with several large tributaries. Currently, the volume and flow of water in this reach is sufficient to maintain clean-swept hard surfaces in the main channel of the Cahaba River and support periphyton, such that the oblong rocksnail can attach, feed, and lay eggs, thus supporting oblong rocksnail persistence.

#### Water Quality

Past water quality issues affected oblong rocksnail habitat such that it was once thought extinct. However, over the past 30 years, the Cahaba River's water quality has improved in the range of the oblong rocksnail. The Clean Water Act (33 U.S.C. 1251 *et seq.*) imposed water quality standards and reduced contaminants from urban runoff, industrial facilities, and municipal wastewater, which has resulted in suitable water quality in the currently occupied reach. At present, the Cahaba River's water quality appears sufficient to support known sites.

#### Representation

The oblong rocksnail has limited representation, as it is only found in one population with limited overall genetic diversity. The loss of genetic variation due to its range contraction may have negatively impacted its long-term survival and overall adaptive capacity (Wright et al. 2020, p. 10). Evidence suggests the oblong rocksnail has lost genetic diversity through both bottleneck and genetic drift (Wright et al. 2020, p. 12). Genetic diversity is increased at downstream sites (Whelan et al. 2019, p. 1593), facilitated by much greater downstream movement than upstream movement (Redak et al. 2021, p. 643). This downstream-biased movement, coupled with a lack of suitable habitat upstream, has resulted in a decline of genetic diversity at upstream sites despite the recent discovery of the species at multiple sites and a slightly expanded known distribution for the species.

#### Redundancy

The oblong rocksnail has limited to no redundancy. While the species is represented by only one population in one small river reach, oblong rocksnail

can be found at multiple sites within the singular population. These sites serve as “internal redundancy” within a singular population that could provide some ability to respond to stochastic events; however, because all sites occupied are linear in one stretch of the Cahaba River, it is possible that a catastrophic event could impact the entire population.

#### *Future Conditions*

As part of the SSA analysis, we developed three future-condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the oblong rocksnailed. Our scenarios examined changes in urbanization and climate change, potential mitigation of urbanization and climate impacts by an existing management program, and the potential of a catastrophic oil spill to the species. Because we determined that the current condition of the oblong rocksnailed is consistent with an endangered species (see *Determination of Oblong Rocksnailed's Status*, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2021, pp. 28–34) for the full analysis of future scenarios.

#### *Conservation Efforts and Regulatory Mechanisms*

Reintroduction efforts for the oblong rocksnailed are underway with the Alabama Department of Conservation and Natural Resources (ADCNR) (ADCNR 2021, entire). During a survey in the historical Belle Ellen shoal complex in May 2019, several federally listed species were located, but the oblong rocksnailed was not (ADCNR 2021, p. 2). Although a targeted survey in October 2020 again did not locate the oblong rocksnailed, ADCNR and Service personnel agreed to consider the site for future reintroduction efforts (ADCNR 2021, p. 2). Culture efforts, as a part of reintroduction efforts, began in 2020 (ADCNR 2021, p. 3). A total of 220 oblong rocksnailed brood stock were collected from a shoal adjacent to the Living River complex on the Cahaba River and brought back to the Alabama Aquatic Biodiversity Center (ADCNR 2021, p. 3). After an 11-month effort, a total of 544 juvenile and 201 brood stock snails were released adjacent to the right-descending bank at the Belle Ellen shoal (ADCNR 2021, p. 3). Future plans also include the collection of more brood stock for additional culturing, evaluation of additional oblong rocksnailed reintroduction sites in lower Buck Creek and lower Little Cahaba River, and a comprehensive

reintroduction plan encompassing all approved reintroduction sites for the oblong rocksnailed (ADCNR 2021, p. 3).

#### *Determination of Oblong Rocksnailed's Status*

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an “endangered species” as a species in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

#### *Status Throughout All of Its Range*

The oblong rocksnailed is a local endemic in the Cahaba River system of Alabama. The species once occupied approximately 50 miles of the river and was thought extinct before it was rediscovered in 2011. The species currently occupies only a 5.6-mile (approximately 9-km) reach in the Cahaba River. There are no abundance estimates, but the oblong rocksnailed is considered locally abundant where it occurs. Recruitment is presumed to be occurring in the occupied habitat. Current threats to the species include typical threats to aquatic species: water quality impairment, including sedimentation and contaminants from urbanization and habitat alteration (Factor A). The species' current distribution lacks dendritic networking; it is in a single reach of the mainstem river, and there is no ability for natural rescue if the main channel populations are lost when faced with a catastrophic event, such as a toxic spill or extreme weather event (flood or drought) (Factor E).

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determine that the oblong rocksnailed is affected by water quality impairment, including sedimentation, and potential

catastrophic spills. The current threats to the oblong rocksnailed present a high risk of extinction to the species, which occupies only about 11 percent of its historical range. This species has low resiliency; it is located in one stream reach, although it is locally abundant there. It has limited to no redundancy, with occupied sites in one linear population offering little ability to rebound from a catastrophic event, and it has low representation due to lost genetic diversity through bottleneck and subsequent genetic drift. Thus, after assessing the best available information, we determine that oblong rocksnailed is in danger of extinction throughout all of its range.

#### *Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the oblong rocksnailed is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the oblong rocksnailed warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act's Definitions of “Endangered Species” and “Threatened Species” (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

#### *Determination of Status*

Our review of the best available scientific and commercial information indicates that the oblong rocksnailed meets the Act's definition of an endangered species. Therefore, we propose to list the oblong rocksnailed as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

#### *Available Conservation Measures*

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (<https://www.fws.gov/program/endangered-species>), or from our Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Alabama would be eligible for Federal funds to implement management actions that promote the protection or recovery of the oblong rocksnail. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Although the oblong rocksnail is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled, "Interagency Cooperation" and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is

made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the oblong rocksnail that may be subject to conference and consultation procedures under section 7 are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the



United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following: (1) import endangered wildlife into, or export such wildlife from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) endangered wildlife within the United States or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

At this time, we are unable to identify specific activities that will be considered likely to result in a violation of section 9 of the Act beyond what is already clear from the descriptions of the prohibitions at 50 CFR 17.21 and general Service permitting regulations codified at 50 CFR part 13. Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Alabama Ecological Services Field

Office (see **FOR FURTHER INFORMATION CONTACT**).

## II. Critical Habitat

### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not

allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R.

5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule if one has been issued for the listed species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other

species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

#### Critical Habitat Determinability

Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

- (i) Data sufficient to perform required analyses are lacking, or
- (ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. The species' needs are sufficiently well known, but a careful assessment of the economic impacts that may occur due to a critical habitat designation is ongoing. Until these efforts are complete, information sufficient to perform a required analysis of the impacts of the designation is lacking; therefore, we find designation of critical habitat for the oblong rocksnail is prudent but not determinable at this time. We plan to publish a proposed rule to designate critical habitat for the oblong rocksnail concurrent with the availability of a draft economic analysis of the proposed designation. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

#### Required Determinations

##### Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your

comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that the oblong rocksnail does not occupy any Tribal lands, so this proposed rule should not affect any Tribes or Tribal lands.

#### References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Alabama Ecological Services Field Office.

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

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

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

“Rocksnailed, oblong” in alphabetical order under SNAILS to read as follows:

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

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
<b>Snails</b>				
Rocksnailed, oblong ....	<i>Leptoxis compacta</i> ..	Wherever found .....	E .....	[Federal Register citation when published as a final rule].
*	*	*	*	* * *

**Stephen Guertin,**  
*Acting Director, U.S. Fish and Wildlife Service.*  
[FR Doc. 2023–23994 Filed 10–30–23; 8:45 am]  
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