

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and of Critical Habitat for the Amber Darter and the Conasauga Logperch****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service determines the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) to be endangered species and designates their critical habitats under the Endangered Species Act of 1973, as amended. These fishes are currently known only from the upper Conasauga River basin in Georgia and Tennessee. The continued existence of these fishes could be jeopardized if water development projects now being considered for the Conasauga River basin are implemented without adequately considering the requirements of these species. Due to the limited distribution of the two fishes, any factor that degrades habitat and water quality in the short river reaches they inhabit, i.e., major land use changes, chemical spills, and significant increases in agricultural and urban runoff, could jeopardize the survival of these species. The trispot darter (*Etheostoma trisella*), which also occurs in the Conasauga River area, was included in the proposal but is not included in this final rule. Additional biological information concerning the occurrence of this species is being collected and evaluated. The final decision on listing the trispot darter with critical habitat will be delayed for further evaluation as provided for in Section 4(b)(6) of the Act.

**EFFECTIVE DATE:** The effective date of this rule is September 4, 1985.**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801.**FOR FURTHER INFORMATION CONTACT:** Richard G. Biggins, Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).**SUPPLEMENTARY INFORMATION:****Background**

A study of the amber darter (*Percina antesella*), trispot darter (*Etheostoma trisella*), and Conasauga logperch (*Percina jenkinsi*), funded by the Service, was completed in October 1983 (Freeman, 1983). That survey involved extensive sampling and a review of historical fish collection records for the upper Coosa River basin in Alabama, Georgia, and Tennessee. The study concluded that these three fish species (except for a possible small population of the amber darter in the Etowah River in Cherokee County, Georgia) were restricted to the upper Conasauga River basin (a tributary of the Coosa River) in Georgia and Tennessee.

The trispot darter was now from two populations (Freeman, 1983) when the species was proposed for endangered species status in the July 13, 1984, **Federal Register** (49 FR 28572). Since that proposed rule was published, two additional trispot darter populations have been located by the Georgia Department of Natural Resources. One of the newly discovered populations is in Holly Creek, a tributary of the Conasauga River in Murray County, Georgia. The other population is located in the Coosawattee River, a Conasauga River tributary in Gordan County, Georgia. Based on present data, the species qualifies for threatened status. However, biologists familiar with this darter believe that this new information indicates additional populations may be found.

Section 4(b)(6) of the Act provides that the Service must make a determination on whether a species is an endangered species or a threatened species within 1 year of the date it is proposed. However, if the Service finds that there is substantial disagreement regarding the sufficiency or accuracy of available data relevant to the determination, the Act allows a delay in the determination for up to 6 months past the 1-year deadline. The Service believes the new information on the trispot darter's distribution has created substantial disagreement regarding the sufficiency of available data on which to make a determination of the trispot darter's status. The Service therefore has extended the deadline for the determination of the trispot darter's status by 6 months from July 13, 1985, to January 13, 1986. During this time extension, the Service proposes to fund an additional survey to assist in making the final determination on the trispot darter's status.

The amber darter, described by Williams and Etnier (1977), is presently known from approximately 33.5 miles of

the Conasauga River (from between the Tennessee Highway 74 crossing and the U.S. 411 bridge in Polk County, Tennessee, downstream to the Tibbs Bridge crossing, Murray County Road 109 (Tibbs Bridge Road), Murray County, Georgia) in Polk and Bradley Counties, Tennessee, and Murray and Whitfield Counties, Georgia (Freeman, 1983). One amber darter was taken in 1980 from a site on the Etowah River in Cherokee County, Georgia (Etnier *et al.* 1981). Freeman (1983) surveyed that site and other sites on the Etowah River in 1982 and 1983, but he was unable to again collect the species. If a population of the amber darter does exist in the Etowah River, it is believed to be very small. The only other collection record for the amber darter was from Shoal Creek, a tributary to the Etowah River in Cherokee County, Georgia. Shoal Creek was surveyed by Freeman (1983) on several occasions, but no amber darters were found. It is believed this population was destroyed in the 1950's when Allatoona Reservoir inundated the lower portion of Shoal Creek.

The amber darter is a short, slender-bodied fish generally less than 2½ inches in length. The upper body is golden brown with dark saddle-like markings, and its belly is yellow-to-cream color. The throats of breeding males are blue in color. The species was observed by Freeman (1983) to inhabit gentle riffle areas over sand and gravel substrate. He also noted that as the summer season progressed and aquatic vegetation developed in the riffles, the amber darter used this vegetated habitat for feeding (primarily on snails and insects) and for cover. The species has not been observed in slack current areas over silty substrate with detritus or mud bottoms. The habitat preference for gentle riffles may explain why the species has not been found above the U.S. Highway 411 bridge in Polk County, Tennessee, where the Conasauga River's gradient increases. The extent of the species' downstream range is possibly limited by the increase in silt.

The Conasauga logperch (*Percina jenkinsi*), formerly referred to by the Service as the reticulate logperch (*Percina* sp.), has recently been described by Dr. Bruce Thompson (1985). This species is apparently restricted to about 11 miles of the upper Conasauga River in Tennessee and Georgia. Specifically, it has been observed in the Conasauga River from approximately ¼ mile above the junction of Minnewauga Creek, Polk County, Tennessee, downstream through Bradley County, Tennessee, to the Georgia State Highway 2 Bridge, Murray

County, Georgia. Freeman (1983), in his fish survey and review of historical collections, reported that the fish has never been found outside this short river reach.

The Conasauga logperch is a larger darter, sometimes exceeding 6 inches in length, and is characterized by having many "tiger-like" vertical dark stripes over a yellow background (Starnes and Etnier, 1980). The fish spawns in the spring in the fast riffles over gravel substrate. It has been observed to feed on aquatic invertebrates by flipping over stones with its "pig-like" snout.

The Tennessee Wildlife Resource Agency the Tennessee Heritage Program of the Tennessee Department of Conservation list both darters as threatened (Starnes and Etnier, 1980). In a publication entitled *Tennessee Rare Wildlife Volume I: The Vertebrates*, they stated, relative to the amber darter's habitat, that "The combination of gently flowing runs and silt-free substrate is rare in these times of widespread siltation due to poor watershed management or impoundments. The Conasauga River in Tennessee remains clear in all but the heaviest floods, indicating its uniqueness and importance in preserving the amber darter. . . ." J. S. Ramsey in a 1973 unpublished report on extinct and rare freshwater fishes in Georgia, classified the amber darter as a "rare—1 species," which he defined, in part, as a species not known to survive in reservoirs or channelized streams. Ramsey further categorized the darter as "vulnerable," which he defined as ". . . species whose range is limited and a species that could be rendered extinct by a single land use change."

The amber darter and Conasauga logperch apparently require unpolluted, clean water streams. The amber darter utilizes areas with moderate current over gravel and silt-free sand substrate (Williams and Etnier, 1977). The Conasauga logperch occurs in flowing pool areas and riffles over clean substrate of rubble, sand, and gravel (Starnes and Etnier, 1980). Siltation, which often results when lands are cleared for agriculture or other land uses, is a major threat to the quality of stream habitats. Siltation changes the character of streams so that gravel riffle areas become infiltrated with silt.

The upper Conasauga River flows through National Forest lands. This provides some protection for the downstream habitat sections where the fishes are found. However, the fishes are threatened from agricultural and urban runoff from the development sections of the watershed. There is also the potential threat that a toxic chemical

spill could eliminate a major portion of any of these fishes' populations. Another threat could come from a water supply project being studied for the Conasauga River near Dalton, Georgia. This project, depending on type and extent, could severely impact the species if the biological requirements of these fishes are not considered in the project's development, construction, and operation.

On December 30, 1982, the Service announced in the *Federal Register* (47 FR 58454) that the amber darter, along with 146 other fish species, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On November 4, 1983, the Service published a notice in the *Federal Register* (48 FR 50909) that a status review was being conducted on the amber darter and Conasauga logperch (referred to therein as the reticulate logperch) to determine if these fish species and any habitat critical to their continued existence should be protected under the Endangered Species Act of 1973, as amended. The November 4, 1983, notice solicited data on the status and location of the species and their habitat, likely impacts which could result if the species and their critical habitat were protected, current and planned activities which may adversely affect the species or their habitat, and possible impacts to Federal activities if critical habitat were designated. The following is a summary of each of the responses to the notice of status review.

The Tennessee Wildlife Resources Agency responded that it concurred with the protection of the species under the Endangered Species Act and was aware of no Federal actions that would jeopardize the continued existence of the species. It also commented that the upper Conasauga River's watershed, primarily within the Cherokee National Forest, is one of the better protected areas in Tennessee.

The Georgia Department of Natural Resources stated it had no evidence to contradict the assertions made in the Service's November 4, 1983, notice of review. It agreed that if the species were as restricted in geographic range and population size as stated in the notice of review and as reported by Freeman (1983), it would not object to the protection of these species under the Endangered Species Act.

The Office of Chief Engineer, Department of the Army, Washington, D.C., informed the Service that two of its projects, the Dalton Lake project being planned for the Conasauga River in Murray and Whitfield Counties, Georgia, and the Jacks River project on the upper Conasauga River in Polk

County, Tennessee, could be impacted by listing these species and designating their critical habitats. It stated that the Jacks River project, although authorized for study by Congress in 1945, had never been funded for further planning. It further commented that (1) the Dalton Lake project was authorized for planning; (2) Dalton Lake, as presently being planned, would inundate much of the remaining known range of the fishes; and (3) the remaining habitat in the upper Conasauga may not be sufficient to support viable populations of these fishes. It concluded that the presence of the species in the study area would be considered in its environmental planning.

The Forest Service, U.S. Department of Agriculture, provided information on Forest Service fish collections (no records of these darters) within the Cohutta Wilderness. It was unaware of any direct proposed or existing impacts to the species or their habitat nor did it expect any perturbations from the National Forest administered watershed.

The Soil Conservation Service, U.S. Department of Agriculture, responded: "Designating the mentioned area of the Conasauga River as critical habitat would not impact programs of the Soil Conservation Service."

A professor with the Alabama Cooperative Fishery Research Unit, Auburn University, reported that of the 394 fish collection samples catalogued at Auburn University from the Coosa River basin, only two included the amber darter (both from the upper Conasauga River). The Conasauga logperch was not represented in the collection. He commented that the concentration of the fishes' habitat and their vulnerability to change supported at least threatened status for the species.

A professor of biology at the University of Tennessee strongly supported the protection of these species and their habitat under the Endangered Species Act. He provided information on six other species that have experienced reductions in their range but are still present in the upper Conasauga River. He stressed the importance of the Conasauga River ". . . as a reservoir for aquatic organisms that have disappeared throughout much or all of the remainder of the Mobile basin drainage. . . ."

An adjunct professor at the Tennessee Technical University supported protecting the species and designating their critical habitat. He further stated: "In view of the water development projects proposed for the upper Conasauga, I view it as urgent that these

species and their habitat be afforded protection under the Endangered Species Act."

On July 13, 1984, the Service published, in the *Federal Register* (49 FR 28572), a proposal to list the amber darter, trispot darter, and Conasauga logperch as endangered species and to designate their critical habitats. That proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the species and potential impacts of the proposed critical habitat designations.

#### Summary of Comments and Recommendations

In the July 13, 1984, proposed rule (49 FR 28572) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted (county governments, the North Georgia Area Planning Commission, the U.S. Army Corps of Engineers, and Georgia and Tennessee natural resource agencies were also contacted in person) and requested to comment. A newspaper notice summarizing the proposed rule was published in the *Cleveland Daily Banner*, Cleveland, Tennessee, on July 25, 1984, and in the *Daily Citizen News*, Dalton, Georgia, on August 3, 1984, and invited general public comment. The Service held an information meeting on the proposed rule in Dalton, Georgia, on August 23, 1984. This meeting was attended by approximately 30 people, including local government leaders, business persons, and newspaper reporters. A public hearing was requested on the proposed rule by the North Georgia Area Planning and Development Commission. In the September 28, 1984, *Federal Register* (49 FR 38320), the Service announced that a public hearing would be held October 16, 1984, and that the public comment period would be extended until October 26, 1984. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other parties were again contacted and requested to comment. A newspaper notice of the public hearing and comment period extension was published in the *Cleveland Daily Banner* on September 26, 1984, and in the *Daily Citizen News* on September 28, 1984. A total of 15 written comments were received. Nine were received prior to the public hearing, two were presented at the hearing, and four were provided

after the public hearing. The comments and public hearing are discussed below:

The Corps of Engineers, Department of the Army, Washington, D.C. stated:

The U.S. Army Corps of Engineers, South Atlantic Division reports the proposed critical habitat designation for the amber darter and the trispot darter includes the reach of the Conasauga River that would be inundated by the Dalton Lake project and proposed critical habitat for the logperch includes part of the lake area. Consequently, designation of the proposed critical habitat could very well preclude construction of the Dalton Lake project.

The Jacks River site, while upstream of the proposed critical habitat, could also be affected by the listing of three species of fishes in its drainage.

The Service agrees that construction of a Conasauga River reservoir could be precluded if such a reservoir would adversely modify habitat essential to the species. The section of the Conasauga River proposed as trispot darter critical habitat could also be impacted by a reservoir project, but the Service is not considering the trispot darter in this final rule. The Service has deferred judgment on this species under provisions in section 4(b)(6) of the Act (see Background section for discussion of the trispot darter). However, with respect to a Conasauga River reservoir, the Service understands that: (1) The main purpose of a reservoir would be to provide a water supply for Dalton, Georgia, and the surrounding area; (2) other alternatives are available to meet this water supply need; (3) the U.S. Army Corps of Engineers (Corps) is presently studying a variety of alternatives to meet water supply requirements; and (4) the Corps has already rejected two plans for a Conasauga River reservoir, including the project referred to in the above comment, because of low benefit/costs ratios.

The Service therefore believes that if alternative methods are fully evaluated, the area's water needs can be met utilizing a project which is compatible with protecting critical habitat for the amber darter and Conasauga logperch. The Service is presently involved in discussions with the Corps concerning alternative projects.

The Service also agrees that a project on the Jacks River (a tributary of the Conasauga River upstream of the critical habitat) could be affected by the protection of essential habitat. However, that project, although authorized for study by Congress in 1945, has never received any funding for planning. Without a project design and economic data, the Service cannot evaluate potential impacts.

The Chief of the U.S. Forest Service, Department of Agriculture, responded:

I foresee no impacts upon these three species originating from Forest Service activities in upstream areas. Due to the severely restricted distribution of these fishes, however, we concur with the proposal to list them as endangered species.

The Service agrees that if present management practices within the National Forest are maintained, no adverse impacts on the amber darter or Conasauga logperch should occur. The Service also concurs that the amber darter and Conasauga logperch should be listed as endangered. The Service has deferred judgment on the trispot darter's status under provision in section 4(b)(6) of the Act (see Background section).

The U.S. Nuclear Regulatory Commission informed the Service that it had no licensed facility that would be affected by critical habitat designation.

The Federal Energy Regulatory Commission stated:

At this time there are no hydroelectric projects under license and no applications for license or preliminary permit pending before the FERC that would be located in the known habitat range of the above-identified fishes. Therefore, we conclude that proposing these fishes for listing as endangered species would have no economic or other effect on hydroelectric activities under FERC jurisdiction.

The Federal Highway Administration, U.S. Department of Transportation, responded that Federal-aid funds are used for bridge replacements in the area proposed for critical habitat. It further stated that:

We see no reason why these projects could not be implemented with proper measures to prevent jeopardizing the continued existence of listed species or adverse modification of critical habitat. Listing of the species and designating critical habitat may result in additional coordination/consultation requirements and some increase in construction costs but should not have a significant effect on the Federal-aid highway program.

The Service agrees with this assessment. Numerous section 7 consultations have been conducted with the Federal Highway Administration and the Service has found that the Administration has been able to implement measures at its construction sites which avoid jeopardizing species and adversely modifying critical habitat.

Dalton Utilities and two individuals supporting the multi-purpose Dalton Lake project on the Conasauga River expressed the belief that the future of the area's economic growth was dependent on this reservoir supplying the area's water needs. They also

requested that the Service consider the economic impact that listing could have on the area.

The Service has been in close contact with the Corps, the agency that is exploring methods of meeting the area's water supply needs, and it has informed the Service that the proposed multi-purpose Dalton Lake project is no longer being considered a viable option because of a low benefit/cost ratio. The Corps is now evaluating other alternatives for meeting the area's water requirements.

Three individuals commented in support of the listing and designation of critical habitat. The Service agrees that the amber darter and Conasauga logperch and their critical habitat should be protected under the Act. It also, however, believes that substantial disagreement regarding the sufficiency of data on the trispot darter exists, and therefore the decision on this species' status will be delayed in accordance with section 4(b)(6) of the Act (see Background section).

One individual commented that the darters proposed for listing were present in many streams in the area. A Service representative visited this individual and showed him pictures of the darters. After viewing the pictures, the individual agreed that the darters he had seen in local streams were not the fishes the Service was proposing for endangered species status.

The public hearing was held October 16, 1984, at 7:30 p.m. in the Dalton Utilities Building Auditorium, 1200 South Harris Street, Dalton, Georgia. The hearing was divided into four phases:

(1) A description of the hearing objectives and procedures given by a U.S. Department of the Interior Assistant Regional Solicitor, (2) a review of the Endangered Species Act and discussion of the proposal presented by a Service biologist, (3) a public comment session when individuals were presented an opportunity to make public statements, and (4) a question and answer period when those in attendance could ask the Service representative questions relative to the proposal.

A total of 28 individuals attended the public hearing. Two comments were received, and no questions were asked during the question and answer session. The comments received at the hearing are summarized below.

The Tennessee Department of Conservation commented that it supported the proposal. The Service concurs with its statement on the amber darter and Conasauga logperch but has postponed judgment on the trispot darter under provisions in section 4(b)(6) of the Act (see Background section).

The Dalton-Whitfield Chamber of Commerce resubmitted the comments it had provided the Service during the initial 60-day comment period provided in the proposal. Its comments supported the construction of the multi-purpose dam on the Conasauga River and restated the organization's belief that the economic growth of Dalton, Whitfield County, and surrounding counties was linked to completion of the project. It added that the Chamber of Commerce had no cost comparisons of alternatives for meeting the area's water supply needs (see above for the Service response to this comment).

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Pat 424, 49 FR 389000, October 1, 1984) were followed. 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 amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Both species are presently known from restricted ranges. The amber darter is known from approximately 33.5 miles of the upper Conasauga River, and it may also exist at very low numbers in a short reach of the Etowah River. The Conasauga logperch is known only from about 11 miles of the upper Conasauga River. With such limited ranges, both species could be jeopardized by a single catastrophic event, either natural or human related. Potential threats to these species and their habitats could also come from increased silvicultural activity, road and bridge construction, stream channel modifications, impoundments, changes in land use, and other projects in the watershed, if such activities are not planned and implemented with the survival of the species and the protection of their habitat in mind.

Both species are also potentially threatened by two U.S. Army Corps of Engineers projects—the Dalton Lake project and the Jacks River project. The

Jacks River project was authorized for study by Congress in the Rivers and Harbors Act of 1945, but it has not been founded for further planning. This project, if constructed, would be located on the Jacks River which enters the Conasauga River upstream of the area inhabited by these fishes. If this project were completed without consideration of potential impacts on the fishes and their habitat, the effect on these fishes would depend on the type and extent of the project and the resultant modifications to stream flows, water temperature, and silt loads, especially during the construction stage.

The multi-purpose Dalton Lake, on the Conasauga River (as discussed in the proposed rule), is no longer being considered by the Corps as a viable project because of a low benefit/cost ratio. However, the Corps is studying alternatives for meeting the lake's prime objective, which is water supply augmentation for the local community.

A reservoir on the Conasauga River could also affect both fish upstream of the proposed reservoir. Some game fish and non-game species common to reservoirs, such as carp (*Cyprinus carpio*), generally respond to reservoir construction by dramatically increasing their population levels. These reservoir fish at times could migrate upstream into the habitat of the two darter species. An influx of reservoir fish can be expected, through competition, predation, and changes in the habitat caused by some of the fishes' feeding behavior (carp stirring up the substrate during feeding), to reduce the chances of survival for these two darters.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence that overutilization is or will be a problem for the amber darter or Conasauga logperch.

C. *Disease or predation.* There is no evidence of threats to these two fishes from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Tennessee State Code Annotated Section 70-8-104 and the Official Code of Georgia Annotated 27-2-12 prohibit the taking of these fishes without a State collecting permit. Federal listing provides additional protection by requiring Federal permits for taking the fishes and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species or their critical habitat.

E. *Other natural or manmade factors affecting their continued existence.* Freeman (1983) reported on the impact of a channel modification on these two

darters. An island in the Conasauga River, just downstream of Murray County Road 173 bridge, Murray County, Georgia, was removed (the reason for the removal is not known) in 1982. This site had been sampled prior to the island's removal, and both darters were observed to inhabit the area. Six to nine months after the area was modified, the amber darter and the Conasauga logperch were not seen at the site. Similar modifications in other sections of the Conasauga River could be expected to result in elimination, at least temporarily, of the amber darter and the Conasauga logperch from a river section.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) as endangered species with critical habitat. Because of the restricted range of these species, the vulnerability of these isolated populations to a single catastrophic accident, and the threats posed by a possible reservoir project, threatened status does not appear to be appropriate for these species. Reasons for the critical habitat designations are discussed in the "Critical Habitat" section of this rule.

#### Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon the determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the amber darter to include approximately 33.5 miles of the Conasauga River in Polk and Bradley Counties, Tennessee, and Murray and Whitfield Counties, Georgia (see Regulations Promulgation section of this final rule for a precise description of critical habitat). This stream section contains high quality

water with riffle areas (free of excessive silt) composed of sand, gravel, and cobble which becomes vegetated (primarily with *Podostemum*) during the summer. The species utilizes this riffle environment for cover and foraging habitat.

Critical habitat is being designated for the Conasauga logperch to include approximately 11 miles of the Conasauga River in Polk and Bradley Counties, Tennessee, and Murray County, Georgia (see Regulations Promulgation section of this final rule for precise description of critical habitat). This river section contains high quality water, pool areas with flowing water, riffles with gravel and rubble substrate for feeding, and fast riffle areas and deeper chutes with gravel and small rubble for spawning.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities which presently occur within the designated critical habitat include, in part, fishing, swimming, boating, scientific research, and nature study. These activities, at their present use level, do not appear to be adversely impacting the area. Other activities which do or could occur in the upper Conasauga River basin and could impact the proposed critical habitat include, in part, logging, land use changes, stream alterations, bridge and road construction, and construction of impoundments.

There are also Federal activities which do or could occur within the upper Conasauga River basin and which may be affected by protection of critical habitat. These activities include, in part, construction of impoundments (in particular, a reservoir on the Conasauga River), stream alterations, bridge and road construction, logging, and discharges of municipal and industrial wastes. These activities, along with others that alter the watershed, could, if not constructed with the protection of the species in mind, degrade the water and substrate quality of the upper Conasauga River basin by increasing siltation, water temperatures, organic pollutants, and extremes in water flow. If any of these activities may affect the critical habitat area and are the result of a Federal action, section 7(a)(2) of the Act, as amended, requires the agency to consult with the Service to ensure that actions they authorize, fund, or carry out, are not likely to destroy or adversely modify critical habitat

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. To collect this information, the Service has solicited comments from Federal and State agencies, local governments, planning entities, businesses, the scientific community, and interested parties through written requests. Public notices and news releases have been published and interviews have been conducted with local news media. Telephone conversations and individual contacts have been made with local governmental officials, Federal and State agency personnel, and business leaders. The Service has held an informal public information meeting and a public hearing in Dalton, Georgia, to inform the public and solicit comments. The material collected during this process was incorporated into an economic analysis of the impacts of designating critical habitat.

All Federal and State agencies responding, except the U.S. Army Corps of Engineers, indicated that they anticipate no economic impacts of designating critical habitat. The Corps responded that the designation of critical habitat could impact on a reservoir project that was under consideration for the Conasauga River. Several local businessmen and the Dalton, Georgia, Chamber of Commerce indicated they believe the failure to build a multi-purpose reservoir on the Conasauga River to supply the area's water needs would have an economic impact on the local community, but they provided no specific information concerning economic or other impacts. Recent conversations with the Corps have revealed that the multi-purpose reservoir option is no longer viable because of a low benefit/cost ratio. The Corps is now evaluating other options for meeting the area's water supply needs. However, they have not decided on a preferred option and have not calculated the benefit/cost ratio for any of the options.

The States of Georgia and Tennessee and Murray and Whitfield Counties, Georgia, and Bradley and Polk Counties, Tennessee, use land fronting the Conasauga River for highway and bridge rights-of-way. Local county governments and State and Federal highway agencies have been contacted. These agencies are aware of the requirements of section 7 of the Act and the potential for the proposed critical habitat designations to affect highway projects. These agencies informed the Service that no projects currently planned or underway would affect or be

affected by the proposed critical habitat designations. The U.S. Department of Transportation further stated: "... designating critical habitat may result in additional coordination/consultation requirements and some increase in construction costs, but should not have a significant effect on Federal-aid highway programs." A quantitative estimate of the increase in construction and management costs that might result from the proposed critical habitat designations cannot be calculated at this time due to the unknown or hypothetical nature of the consultations that may occur. Highway projects, in any case, however, are not expected to be significantly affected by the proposed critical habitat designations.

Much of the upper watershed of the Conasauga River above the proposed critical habitats is located within U.S. National Forests. The past management of this land has contributed to the present high quality of the critical habitats. The U.S. Forest Service has informed the Service that it foresees no impacts on the proposed critical habitat designations resulting from Forest Service activities.

Private lands that front the proposed critical habitats are used primarily for row crop farming, livestock grazing, and woodlot operations. These activities are not expected to affect or be affected by the proposed critical habitat designations. The U.S. Department of Agriculture's, Soil Conservation Service (SCS), which works extensively with rural landowners, has been contacted in both Tennessee and Georgia. The SCS does not anticipate any economic impact on existing or currently authorized projects from the proposed critical habitat designations. Any conservation efforts by private landowners would be voluntary.

#### 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. Such actions are initiated by the Service following listing. 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). 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 a listed 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. The Service is presently not aware of any planned project which may affect the amber darter and Conasauga logperch or their critical habitats. The U.S. Army Corps of Engineers (Corps) is studying alternatives for meeting the water supply needs of the Dalton, Georgia, area. The Service has been in contact with the Corps concerning the potential impacts of a Conasauga River project on the species and their habitat.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a 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 had 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 wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. 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. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

#### 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).

#### Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Present and planned uses of the critical habitat area and the watershed above it are compatible with the critical habitat designation. Based on the information discussed in this rule concerning public projects within and private lands fronting the proposed critical habitats, it is not expected that significant economic impacts will result from the critical habitat designations. In addition, there is no known involvement of Federal funds or permits that would affect or be affected by the critical habitat designation for the private lands that front the critical habitat areas. No direct costs, enforcement costs, information collection or recordkeeping requirements are imposed on small entities by the critical habitat designations. Further, the rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia.

#### Literature Cited

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- Freeman, B.J. 1983. Final report on the status of the trispot darter (*Etheostoma trisella*) and the amber darter (*Percina antesella*) in the upper Coosa River system in Alabama, Georgia, and Tennessee. U.S. Fish and Wildlife Service Contract No. 14-16-0004-048. 112 pp.
- Ramsey, J.S. 1976. Freshwater fishes. Pages 53-65 *In* H. Boschung (ed.), *Endangered and Threatened Plants and Animals of Alabama*. Bull. Alabama Mus. Nat. Hist. No. 2. 92 pp.
- Starnes, W.C., and D.A. Etnier. 1980. Fishes. Pages B1-B134 *In* D.C. Eagar and R.M. Hatcher (eds.), *Tennessee's Rare Wildlife Volume I: The Vertebrates*. Tennessee Heritage Program.

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**Author**

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

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

**§ 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, amber	<i>Etheostoma antesella</i>	U.S.A. (AL, GA, TN)	Entre	E	193	17.95(e)	NA
Logperch, Conasauga	<i>Percina jenkinsi</i>	U.S.A. (GA, TN)	do	E	193	17.95(e)	NA

3. Amend Section 17.95(e) by adding critical habitat of the amber darter and Conasauga logperch as follows: The position of this entry under Section 17.95(e) follows the same sequence as the species occur in Section 17.11.

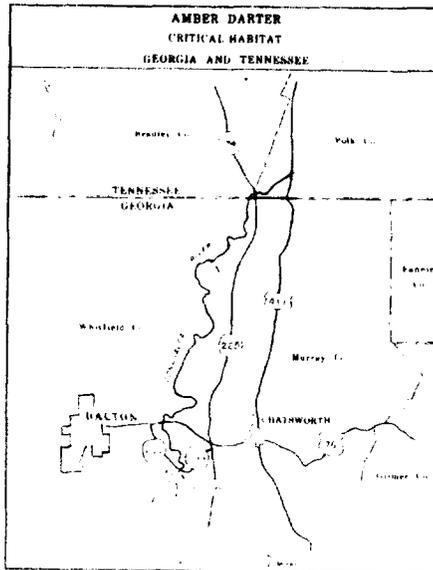
**§ 17.95 Critical habitat—fish and wildlife.**

(e) *Fishes.*

**Amber Darter (*Percina antesella*)**

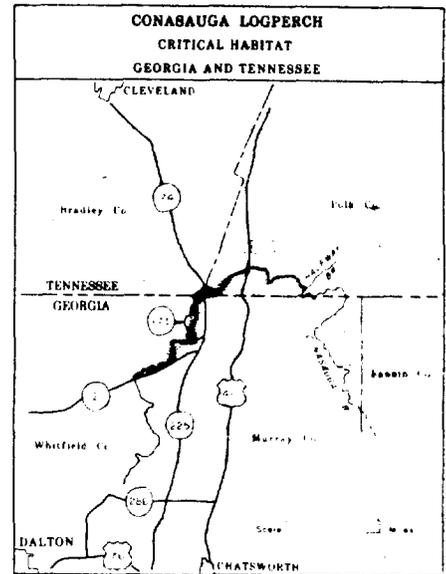
Tennessee and Georgia: Conasauga River from the U.S. Route 411 bridge in Polk County, Tennessee, downstream approximately 33.5 miles through Bradley County, Tennessee and Murray and Whitfield Counties, Georgia, to the Tibbs Bridge Road bridge (Murray County Road 109 and Whitfield County Road 100).

Constituent elements include high quality water, riffle areas (free of silt) composed of sand, gravel, and cobble, which becomes vegetated primarily with *Podostemum* during the summer.



**Conasauga Logperch (*Percina jenkinsi*)**

Tennessee and Georgia: Conasauga River from the confluence of Halfway Branch with the Conasauga River in Polk County, Tennessee, downstream approximately 11 miles to the Georgia State Highway 2 Bridge, Murray County, Georgia.



Constituent elements include high quality water, pool areas with flowing water and silt free riffles with gravel and rubble substrate, and fast riffle areas and deeper chutes with gravel and small rubble.

Dated: July 8, 1985.

**Susan E. Reece,**

*Acting Assistant Secretary for Fish and  
Wildlife and Parks.*

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BILLING CODE 4310-55-M

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