DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status and Designation of Critical Habitat for Cape Fear Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Cape Fear shiner *(Notropis mekistocholas)* to be an endangered species and designates its critical habitat under the Endangered Species Act (Act) of 1973, as amended. This fish has recently undergone a reduction in range and population. It is currently known from only three small populations in the Cape Fear River drainage in Randolph, Moore, Lee, and Chatham Counties, North Carolina. Due to the species' limited distribution, any factor that degrades habitat or water quality in the short river reaches its inhabits—e.g., land use changes, chemical spills, wastewater discharges, impoundments, changes in stream flow, or increases in agricultural runoff—could threaten the species' survival. This determination of endangered species status and the designation of critical habitat implements the protection provided by the Act for the Cape Fear shiner.

EFFECTIVE DATE: The effective date of this rule is October 26, 1987.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The Cape Fear shiner *(Notropis mekistocholas)*, the only endemic fish known from North Carolina's Cape Fear River drainage, was discovered in 1962 and described by Snelson (1971). This fish has been collected from nine stream reaches in North Carolina (Bear Creek, Rocky River, and Robeson Creek, Chatham County; Fork Creek, Randolph County; Deep River, Moore and Randolph Counties; Deep River, Chatham and Lee Counties; and Cape Fear River, Kenneth Creek, and Parkers Creek, Harnett County (Snelson 1971; W. Palmer and A. Braswell, North Carolina State Museum of Natural History, personal communication, 1985; Pottern and Huish 1985, 1986)). Based on a recently completed Service-funded study (Pottern and Huish 1985, 1986) involving extensive surveys in the Cape Fear River Basin (including all historic sites) and a review of historical fish collection records from the Cape Fear, Neuse, and Yadkin River systems, the fish is now restricted to only three populations that occur primarily on private lands. The strongest population (101 individuals collected in 1984 and 1985) is located around the junction of the Rocky River and Deep River in Chatham and Lee Counties where the fish inhabits the Deep River from the upstream limits of the backwaters of Locksville Dam upstream to the Rocky River then upstream from the Rocky River to Bear Creek and upstream from Bear Creek to the Chatham County Road 2156 Bridge. A few individuals were collected just downstream of the Locksville Dam, but because of the limited extent of Cape Fear shiner habitat at this site, it is not believed this is a separate population. Instead, it is thought these fish represent a small number of individuals that periodically drop down from the population above Locksville Dam pool.

The second population, represented by the collection of a specimen near State Highway Bridge 902 in Chatham County, is located above the Rocky River Hydroelectric Dam. This population was historically the best, but the area yielded only the one specimen after extensive surveys by Pottern and

Huish (1985). The third population was found in the Deep River system in Randolph and Moore Counties. This population is believed to be small (Pottern and Huish 1985, 1986). Three individuals were found above the Highfalls Hydroelectric Reservoir—one in Fork Creek, Randolph County, and two in the Deep River, Moore County. The species was also found downstream of the Highfalls Dam. However, the extent of suitable habitat in this stream reach is limited, and it is thought that these individuals likely result from downstream movement from above the reservoir where Cape Fear shiner habitat is more extensive.

The Cape Fear shiner is small, rarely exceeding 2 inches in length. The fish's body is flushed with a pale silvery yellow, and a black band runs along its sides (Snelson 1971). The fins are yellowish and somewhat pointed. The upper lip is black, and the lower lip bears a thin black bar along its margin. The Cape Fear shiner, unlike most other members of the large genus *Notropis*, feeds extensively on plant material, and its digestive tract is modified for this diet by having an elongated, convoluted intestine. The species is generally associated with gravel, cobble, and boulder substrates and has been observed to inhabit slow pools, riffles, and slow runs (Snelson 1971, Pottern and Huish 1985). In these habitats, the species is typically associated with schools of other related species, but it is never the numerically dominant species. Juveniles are often found in slackwater, among large rock outcrops in mid-stream, and in flooded side channels and pools (Pottern and Huish 1985). No information is presently available on breeding behavior, fecundity, or longevity.

The Cape Fear shiner may always have existed in low numbers. However, its recent reduction in range and its small population size (Pottern and Huish 1985, 1986) increases the species' vulnerability to a catastrophic event, such as a toxic chemical spill. Dam construction in the Cape Fear system has probably had the most serious impact on the species by inundating the species' rocky riverine habitat, and changes in flow regulation at existing hydroelectric facilities could further threaten the species. The deterioration of water quality has likely been another factor in the species' decline. The North Carolina Department of Natural Resources and Community Development (NCDNRCD) (1983) classified water quality in Deep River, Rocky River, and Bear Creek as good to fair, and referred to the Rocky River below Siler City as an area where sampling indicates degradation. That report also stated: "Within the Cape Fear Basin, estimated average annual soil losses from cropland ranged from 3 tons per acre in the lower basin to 12 tons in the headwaters." The North Carolina State Division of Soil and Water Conservation considers 5 tons of soil loss per acre as the maximum allowable.

The Cape Fear shiner was one of 29 fish species included in a March 18, 1975, Notice of Review published by the Service in the **Federal Register** (40 FR 12297). On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the Cape Fear shiner, along with 147 other fish species, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On April 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Asheville Endangered Species Field Office was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence. Twelve responses to the April 4, 1985, notification were received. The COE, Wilmington District; North Carolina Division of Parks and Recreation, Natural Heritage Program; and the North Carolina State Museum of Natural History provided data on potential threats and supported some type of protection for the species. Concern for the species' welfare was also expressed by private individuals. The other respondents provided no information on threats and did not take a position on the species' status. The Cape Fear shiner was included in the Services' September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958) as a category 1 species, indicating that the Service had substantial biological data to support a proposal to list the species as endangered or threatened.

Summary of Comments and Recommendations

In the July 11, 1986, proposed rule (51 FR 25219) and associated notifications, all interested parties are requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted (county governments, regional planning commission, U.S. Army Corps of Engineers (COE), and North Carolina Wildlife Resources Commission (NCWRC) were contacted in person or by phone) and requested to comment. A newspaper notice was published in the *Sanford Daily Herald* on August 2, 1986. A news release summarizing the proposed rule and requesting comments was also provided to newspapers in North Carolina. Fourteen written comments were received and are discussed below.

The COE analyzed, as part of its Section 7 responsibilities for proposed species and critical habitat, the potential impacts of two proposed Deep River COE projects (Randleman Dam and Howards Mill Dam) on the Cape Fear shiner and its critical habitat. The COE stated that Randleman Dam, which would be located in Randolph County, North Carolina, about 30 miles upstream of the Cape Fear shiner's proposed critical habitat in Randolph and Moore Countries, is not likely to adversely modify proposed critical habitat or jeopardize the continued existence of the Cape Fear shiner. The COE concluded that listing would not result in changes to the proposed design, construction, operation, or maintenance of the project. The COE further concluded that designation of the species' critical habitat should have no economic effect on the Randleman Dam project. The Service responds that analysis of the data presented by COE on the potential downstream impacts from siltation during construction and the relocation of a sewage treatment discharge further downstream indicates that COE's assessment is correct and that no significant impacts to the fish and its proposed critical habitat are expected to occur. Concerning Howards Mill Dam, which is proposed to be located within the critical habitat in Randolph and Moore Counties, COE responded that this project could be precluded by designating critical habitat on the Deep River. However, the COE stated that the Howards Mill Dam project was placed in a deferred category in October 1980 because it lacked economic justification. The NCDNRCD, Division of Water Resources, also addressed Howards Mill Dam and concluded that it ". . . is presently a low priority project with unfavorable benefit-cost considerations. Howards Mill Dam will probably never be constructed." The Service concurs that the designation of critical habitat on the Deep River in Randolph and Moore Counties could preclude construction of the Howards Mill Dam. However, if the project were ever to become economically justifiable and of national or regional significance, the dam proponents could file for an exemption pursuant to section 10 of the Endangered Species Act.

The Federal Energy Regulatory Commission (FERC) commented that no new hydroelectric facilities were proposed for the area and that all hydroelectric facilities presently operating within or above the species and its proposed critical habitat were operating as run-of-the-river facilities and therefore should not affect stream flows and habitat conditions. FERC did conclude that the listing and designation of critical habitat could have future unknown impacts on hydroelectric activities under its jurisdiction. The Service agrees that if the existing projects are operating as conditioned in their permits as fun-of-the-river facilities, impacts to stream flow and habitat should be minimal. The Service also agrees that there may be some unknown future impacts to activities under FERC jurisdiction by the listing of the species and the designation of its critical habitat, but the Service cannot assess the significance of unknown future impacts.

The NCDNRCD provided comments through the North Carolina State Clearinghouse and stated "We concur with the listing . . . ." Other divisions within the NCDNRCD also provided individual comments. The Division of Forest Resources responded that it did not perceive any adverse impacts on its activities. The Division of Water Resources informed the Service of two COE projects and requested additional data on the potential impacts of the listing on these projects. The Service has supplied the analysis conducted by COE (see above COE comments). The NCWRC, Division of Environmental Management (DEM), Division of Coastal Management, and Division of Parks and Recreation supported the proposal. The NCWRC and DEM also expressed concern that construction and operation of Randleman Dam and the associated downstream relocation of a sewage treatment plant outfall could adversely affect the species and its habitat. The Service is aware of the potential problems associated with the Randleman Dam project. However, the only hard data and complete analysis provided on the project's potential impacts was provided by the COE (see above COE comments). Based on analysis of this data, the Service believes that the impacts of the Randleman Dam project on the fish and its habitat should be minimal. However, subsequent to listing, further consultation between the COE and the Service will occur regarding this matter.

The North Carolina Department of Human Resources, Division of Health Services, stated that it would be opposed to the listing if it would delay completion of Randleman Dam. The Service has been in contact with the COE on potential conflicts concerning Randleman Dam, and, based on analysis of the COE's data and its conclusions, the Service does not anticipate that the listing of the fish or the designation of its critical habitat will delay the completion of Randleman Dam. Further, the Service will be working with the COE as the Randleman Dam project progresses to deal quickly with any presently unforeseen conflicts between the fish and the project.

The U.S. Geological Survey, North Carolina Department of Transportation, and Pee Dee Council of Governments commented that they foresaw no major conflicts with listing the fish and designating its critical habitat. Support for listing was expressed by a college biology professor.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Cape Fear shiner should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act 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 Cape Fear shiner (*Notropis mekistocholas*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A review of historic collection records (Snelson 1971; W. Palmer and A. Braswell personal communication 1985), along with recent survey results (Pottern and Huish 1985, 1986), indicates that the Cape Fear shiner is presently restricted to only three populations (see "Background" section). Three historic populations have apparently been extirpated (Pottern and Huish 1985, 1986). The Robeson Creek population, Chatham County, was believed lost when Jordan Lake flooded part of the creek. The reasons for the loss of populations from Parkers Creek and Kenneth Creek in Harnett County are not known. The shiner has also not been recollected (Pottern and Huish 1985) from the Cape Fear River in Harnett County. However, review of historical and current collection records reveals that only one specimen has ever been collected from this portion of the river, and the fish likely was a stray individual from an upstream or tributary population. Since much of the Deep, Haw, and Cape Fear Rivers and their major tributaries has been impounded for hydroelectric power, and much of the rocky shoal habitat inundated, other populations and population segments that were never discovered have likely been lost to these reservoirs.

Of the three remaining populations, only the one located around the confluence of the Deep and Rocky Rivers in Chatham and Lee Counties (inhabiting a total of about 7.3 river miles) appears strong (Pottern and Huish 1985). The second population in the Rocky River, above the Rocky River hydroelectric facility, was the source of the type specimens used to describe the species (Snelson 1971). Historic records (W. Palmer and A. Braswell personal communication, 1985) reveal that collections of 15 to 30 specimens could be expected in this stretch of the Rocky River (State Route 902) or Chatham County Road 1010 Bridge) during a sampling visit in the late 1960s and early 1970s. Pottern and Huish (1985) sampled the Rocky River throughout this reach on numerous occasions and were able to collect only one specimen. The reason for the apparent decline in this population is unknown. The third population, located in the Deep River system in Moore and Randolph Counties, is represented by the collection of six individuals (Pottern and Huish 1986). Three individuals were taken above the Highfalls Hydroelectric Reservoir. The other specimens were taken from below the dam. As the available habitat below the dam was limited, these fish were probably migrants from the unstream population.

Potential threats to the species and its habitat could come from such activities as road construction, stream channel modification, changes in stream flows for hydroelectric power, impoundments, land use changes, wastewater discharges, coal mining operations and other projects in the watershed if such activities are not planned and implemented with the survival of the species and the protection of its habitat in mind. The species could be impacted by two COE projects presently under review for the Deep River. The Randleman Dam project would consist of a reservoir of the Deep River in Randolph County, above known Cape Fear shiner habitat. However, according to data presented by the COE to the Service, this project as presently planned should not further threaten the species' survival. The Howards Mill Reservoir would be on the Deep River in Moore and Randolph Counties and

would flood proposed Cape Fear shiner critical habitat. However, this reservoir is not likely to be constructed (see "Background" section). The species and its habitat could also be impacted by coal mining if the activity was not carried out in a manner compatible with the species. The Office of Surface Mining within the Department of the Interior is currently reviewing and evaluating a coal mining permit application submitted April 30, 1987 by the Chatham Coal Company, Inc. of Stanford, North Carolina. Preliminary discussions between the Service and the Office of Surface Mining indicate that mining operations could be planned that are also compatible with the conservation of the Cape Fear shiner and its critical habitat. Both agencies are aware of the permit application and are cooperating in their efforts to ensure the survival of this freshwater fish species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Most of the present range of the Cape Fear shiner is relatively inaccessible and overutilization of the species has not been and is not expected to be a problem.

C. *Disease or predation.* Although the Cape Fear shiner is undoubtedly consumed by predatory animals, there is no evidence that this predation is a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (Subsection 113–272.4) prohibits collecting wildlife and fish for scientific purposes without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The major portion of the best Cape Fear shiner population is located at the junction of the Deep and Rocky Rivers in Chatham and Lee Counties. A major toxic chemical spill at the U.S. Highway 15–105 Bridge upstream of this site on the Rocky River could jeopardize this population, and as the other populations are extremely small and tenuous, the species' survival could be threatened.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Cape Fear shiner (*Notropis mekistocholas*) as an endangered species. Because of the species' restricted range, and vulnerability of the isolated populations to a single catastrophic accident, threatened status does not appear to be appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is being proposed for the Cape Fear shiner).

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 (III) specific areas outside the geographical area occupied by a species at the time it is listed, upon a 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. The critical habitat designation for the Cape Fear shiner consists of about 17 river miles including: (1) Approximately 4 river miles of the Rocky River in Chatham County, North Carolina; (2) approximately 7 river miles of Bear Creek, Rocky River, and Deep River in Chatham and Lee Counties, North Carolina; and (3) approximately 6 river miles of Fork Creek and Deep River in Randolph and Moore Counties, North Carolina. (See "Regulation Promulgation" section of this final rule for the precise description of critical habitat.) These stream sections contain gravel, cobble, and boulder substrates with pools, riffles, and shallow runs for adult fish and slackwater areas with large rock outcrops, side channels, and pools for juveniles. These areas also provide water of good quality with relatively low silt loads.

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) that 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, boating, scientific research, and nature study. These activities, at their present use level, do not appear to be adversely impacting the area.

There are also Federal activities that do or could occur within and in the vicinity of critical habitat that may affect or be affected by the critical habitat designation. These activities include construction of impoundments (such as the COE reservoirs under study for the upper Deep River), stream alterations, bridge and road construction, discharges of municipal and industrial wastes, hydroelectric facilities and a coal mining permit application. These activities could, if not carried out with the protection of the species in mind, degrade the water and substrate quality of the Deep River, Rocky River, Bear Creek, and Fork Creek 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 it authorizes, funds, or carries 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. The Service has considered the critical habitat designation in light of relevant additional data obtained. Based on this analysis, there does not appear to be any foreseeable significant economic or other impact from the designation of any of the particular critical habitat areas. Therefore, no adjustment has been made in critical habitat.

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 for Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate

their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 aware of only two Federal actions under consideration (Randleman and Howards Mill Reservoirs) that may affect the Cape Fear shiner and the proposed critical habitat. The Service has been in contact with the COE concerning the potential impacts of these projects on the species and its habitat (See "Summary of Comments and Recommendations" section). It has been the experience of the Service, however, that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives can be met.

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 commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are availabe 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 this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 et seq.). Based on currently available data, 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 habitat, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there is no known involvement of Federal funds 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 designation. 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 22201.

References Cited

North Carolina Department of Natural Resources and Community Development. 1983. Status of Water Resources in the Cape Fear River Basin. 135 pp.

Pottern, G.B., and M.T. Huish. 1985. Status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14-16-0009-1522. 44 pp.

Pottern, G.B., and M.T. Huish. 1986. Supplement to the status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14-16-0009-1522. 11 pp.

Snelson, F.F. 1971. *Notropis mekistocholas*, a new cyprinid fish endemic to the Cape Fear River basin, North Carolina. Copeia 1971:449-462.

Author

The primary author of this final rule is Richard G. Biggins, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

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

PART 17—[AMENDED]

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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

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							
*	*	*	*	*	*	*	
Shiner, Cape Fear	*Notropis, mekistocholas*	U.S.A. (NC)	Entire	E	290	17.95(e)	NA
*	*	*	*	*	*	*	

3. Amend § 17.95(e) by adding critical habitat of the "Cape Fear Shiner," in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

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Cape Fear Shiner (Notropis mekistocholas)

(1) *North Carolina.* Chatham County. Approximately 4.1 river miles of the Rocky River from North Carolina State Highway 902 Bridge downstream to Chatham County Road 1010 Bridge;

(2) *North Carolina.* Chatham and Lee Counties. Approximately 0.5 river mile of Bear Creek, from Chatham County Road 2156 Bridge downstream to the Rocky River, then downstream in the Rocky River (approximately 4.2 river miles) to the Deep River, then downstream in the Deep River (approximately 2.6 river miles) to a point 0.3 river mile below the Moncure, North Carolina, U.S. Geological Survey Gaging Station; and

(3) *North Carolina.* Randolph and Moore Counties. Approximately 1.5 river miles of Fork Creek, from a point 0.1 river mile upstream of Randolph County Road 2873 Bridge downstream to the Deep River then downstream approximately 4.1 river miles of the Deep River in Randolph and Moore Counties, North Carolina, to a point 2.5 river miles below Moore County Road 1456 Bridge.

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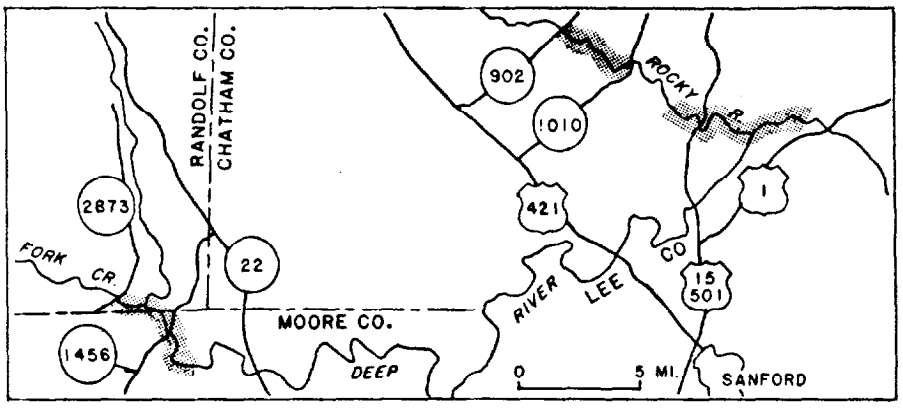

Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22268 Filed 9-24-87; 8:45 am]

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