

# **Endangered Species Act**

## **How It Works What Critical Habitat Means to Arkansas**



**Joint Senate and House Interim Committees on City, County, and Local Affairs  
and Agriculture, Forestry, and Economic Development  
Little Rock, Arkansas November 12, 2013**

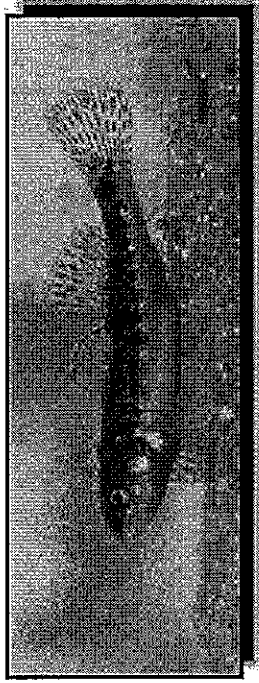
**Chris Davidson, AR Ecological Services Endangered Species Program Team Leader  
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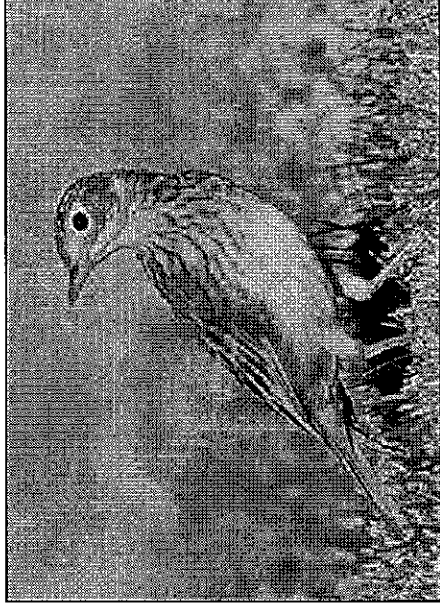
## A Little History...

In 2011, FWS settled Multi-District Litigation (MDL) 6 year work plan for a backlog of 251 candidate species including 61 in the Southeast and 7 in Arkansas.

“Status Reviews” are due by 2017.



Arkansas Darter



Sprague's Pipit

## Listing and Critical Habitat

Strict rulemaking process

Use best available scientific and commercial information

Use peer review to ensure sound science and decision-making

Publish *Federal Register* Notice for proposed rule

Respond to public comment

Critical habitat should be designated concurrent with listing

Statutory requirement to make final determination within 1 year

## What is Critical Habitat?

Refers to those areas containing primary constituent elements, which are the physical and biological features essential to the conservation of the species.

Section 4(b)(2) requires critical habitat designation when determinable and prudent and after considering economic impact, national security and any other relevant impact.

Only applies to federal actions (e.g., funding or a permit)

Critical habitat does not affect land ownership or establish a refuge, wilderness, preserve, or other conservation area.

## Benefits of Designating Critical Habitat

Helps FWS and our partners focus on locations with highest conservation value to mussel recovery and conservation.

Helps FWS educate and inform our partners and the public early on about these valuable areas for mussel conservation.

## What Does Consultation Mean?

Consultation is a process by which federal agencies use the FWS' expertise to evaluate the potential effects of a proposed action on listed species and their critical habitat.

Requirement of Section 7(a)(2) of the ESA

Federal activities (e.g., actions authorized, permitted or funded).

Designated critical habitat will not change the process.

Critical habitat consultations will be incorporated into existing consultation process.

Private land use activities with no federal nexus, such as farming and silviculture, would be unaffected.

# Neosho Mucket and Rabbitsfoot

## Timeline

October 16, 2012 - Proposed listing and critical habitat

December 17, 2012 – 60 day comment period closed

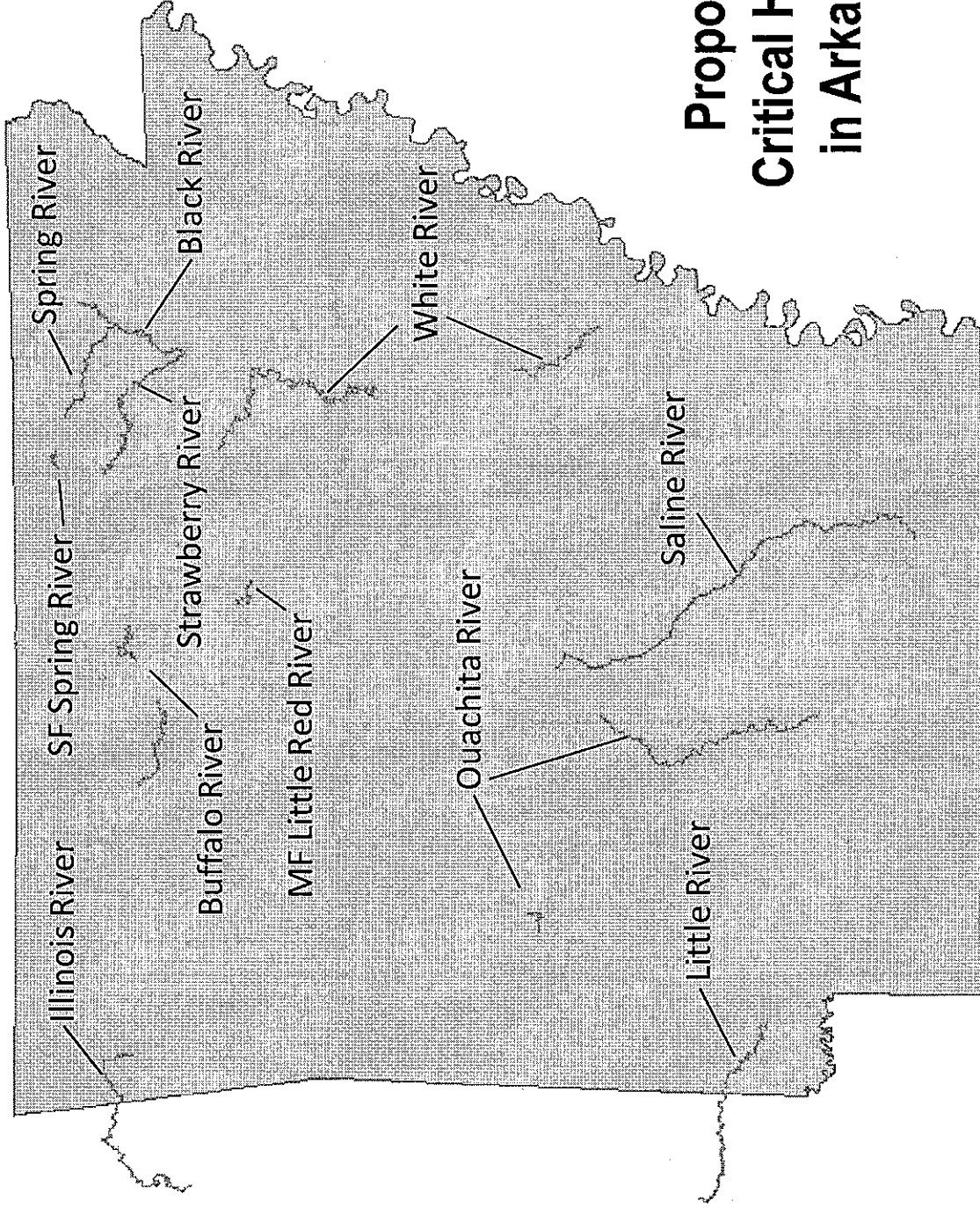
May 9, 2013 – Reopen comment period for 30 days  
Release Draft NEPA and Economic Analysis

June 10, 2013 – 30 day comment period closed  
2 requests to extend comment period for critical habitat

August 27, 2013 – Reopen comment period for 60 days  
Critical habitat, draft NEPA, and draft Economic Analysis

September 17, 2013 – Final listing rule published

Mid-January, 2014 – Final determination regarding proposed critical habitat



# Proposed Critical Habitat in Arkansas

## Criteria Used to Identify Critical Habitat for Rabbitsfoot

Best scientific information available to us.

Evaluate occurrence records in river.

Evaluate unoccupied and occupied habitat.

Is the population sizeable, small, or marginal?

Are physical and biological features sufficient?

Are there special management considerations?

## Physical and Biological Features for Rabbitsfoot

Geomorphically stable river channels

Hydrologic flow regime necessary to maintain habitat

Water and sediment quality necessary to support mussels

Presence of fish hosts

No competitive or predacious invasive (nonnative) species

By law, the Service is required to identify sufficient areas containing these characteristics to ensure conservation of the species.

## AAC Review (October 17, 2013)

Large portions of some critical habitat units have not been documented to support rabbitsfoot and/or the river reach does not provide substrate and flow essential to rabbitsfoot.

Two units demonstrate water temperatures not conducive to mussel survival.

They also question presence of fish hosts in critical habitat.

They propose modification of 6 units and no comments to 6 units.

## Process for Evaluating Economic Impact

Incremental approach comparing “with and without critical habitat” scenarios

Baseline (without critical habitat) represents costs attributable to listing.

Study area broader than critical habitat (potential for effects)

Consistent with recent court decisions and OMB regulations.

## AAC Economic Study

1. Assumes economic activity near critical habitat will be subject to new restrictions, prohibitions, delays, etc.
2. Criticizes DEA for using narrow watershed boundaries and census tracts in those watersheds rather than county boundaries or defined local market area. DEA fails to consider the interconnectedness of modern economies.
3. Estimates economic impacts of hypothetical project modifications using IMPLAN multipliers. They argue this approach is appropriate for answering impact analysis questions, noting DOT recommends this approach for construction planning.

## Key Findings of the IEC Draft Economic Analysis

No additional conservation measures above and beyond baseline (listing) necessary.

Incremental economic impacts likely limited to additional administrative costs based on:

1. Baseline protections exist.
2. All proposed critical habitat is occupied.

Incremental costs not expected without critical habitat designation.

Incremental economic impact to Arkansas critical habitat units:

Neosho mucket (one unit): \$400,000 over 20 years

Rabbitsfoot (12 units): \$1.57 million over 20 years

# Additional Actions to Address Threats

- PFW agreements
- Conservation easements
- Department of Agriculture programs
- Conservation banks
- State & NGO agreements
- Department of Energy programs
- Changes in management regimes (e.g., flows)
- State & local laws/ordinances
- Safe Harbor Agreements
- Habitat Conservation Plans



