DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0073; 4500090023]

RIN 1018–BD40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Trispot Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the trispot darter (*Etheostoma trisella*) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 181 river miles (291 kilometers) and 16,735 acres (6,772 hectares) in the Coosa River system in Alabama, Georgia, and Tennessee fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. We also announce the availability of a draft economic analysis (DEA) of the proposed designation.

Elsewhere in today's *Federal Register*, we published a final rule listing the trispot darter as a threatened species under the Act.

DATES: We will accept comments on this proposed rule or the associated DEA that are received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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 public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Comment submission:* You may submit comments on this proposed rule or the associated DEA by one of the following methods:

(1) *Electronically*: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R4–ES–2018–0073, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0073, U.S. Fish and Wildlife Service, MS: BPHC, 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 *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

Document availability: The DEA is available at *https://www.fws.gov/daphne/*, at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073, and at the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *https://www.fws.gov/daphne/*, at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0073, and at the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service website and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bill Pearson, Field Supervisor, U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208 Main Street, Daphne, AL 36526; telephone 251–441–5181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, if we determine that any species is endangered or threatened, we must designate critical habitat, to the maximum extent prudent and determinable concurrently with listing. Designations and revisions of critical habitat can only be completed by issuing a rule.

This rule proposes to designate critical habitat for the trispot darter. Elsewhere in today's *Federal Register*, we published a final rule listing the trispot darter as a threatened species under the Act.

The basis for our action. Section 4(a)(3) of the Act requires that if we determine that any species is endangered or threatened, we must designate critical habitat, to the

maximum extent prudent and determinable, concurrently with listing. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

We prepared a draft economic analysis (DEA) of the proposed designation of critical habitat. We prepared a draft analysis of the economic impacts of the proposed critical habitat designation. In this proposed rule, we announce the availability of the DEA for public review and comment.

Peer Review. 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, we sought the expert opinions of appropriate specialists regarding the species status assessment report, which informed this proposed rule. The purpose of peer review is to ensure that our designation is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in fish biology, habitat, and stressors (factors negatively affecting the species) to the trispot darter. We invite any additional comment from the peer reviewers during this public comment period.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this

proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq*.), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of trispot darter habitat, in particular locations and extent of spawning habitat used seasonally by the species;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the trispot darter and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of

including or excluding areas that may be impacted.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis (DEA) is a reasonable estimate of the likely economic impacts.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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**.

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. We also invite additional comments from peer reviewers during the public comment period.

All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the *Federal Register* (see **DATES**, above). 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.

Previous Federal Actions

On April 20, 2010, we received a petition from Center for Biological Diversity and others to list 404 aquatic species in the southeastern United States, including the

trispot darter. In response to the petition, we completed a 90-day finding on September 27, 2011 (76 FR 59836), in which we announced our finding that the petition contained substantial information that listing may be warranted for the trispot darter. We conducted a status review for the species, and on October 4, 2017, we published a proposed rule to list the trispot darter as a threatened species (82 FR 46183). Elsewhere in today's *Federal Register*, we published a final rule listing the trispot darter as a threatened species under the Act.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the trispot darter. The SSA team was composed of Service biologists, in consultation with other 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. The SSA report underwent independent peer review by scientists with expertise in fish biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA report and other materials relating to this proposal can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073. The draft economic analysis is available at *https://www.fws.gov/southeast/*, at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073, and at the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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 Federal agencies 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 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 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. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to 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 and commercial data available, those physical or biological features that are essential to the conservation of the species

(such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

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. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation.

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) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. 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 this 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 (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. The regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include, but are not limited to, whether the present or threatened destruction,

modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

As discussed in the final listing rule, which is published elsewhere in today's *Federal Register*, there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we must next determine whether such designation of critical habitat would not be beneficial to the species. In the final listing rule, we state our determination that there are habitat-based threats to the trispot darter identified under Factor A. Therefore, we find that the designation of critical habitat would be beneficial to trispot darter through the provisions of section 7 of the Act. Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and would be beneficial, we find that designation of critical habitat is prudent for the trispot darter.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the trispot darter is determinable. 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. We find that this information is sufficient for us to conduct both the biological and economic analyses required for the critical habitat determination. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is now determinable for the trispot darter.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service

may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The trispot darter is a freshwater fish found in the Coosa River System in the Ridge and Valley ecoregion of Alabama, Georgia, and Tennessee. It is a migratory species that utilizes distinct breeding and nonbreeding habitats. From approximately April to October, the species inhabits its nonbreeding habitat, which consists of small to medium margins of rivers and lower reaches of tributaries with slower velocities. It is associated with detritus, logs, and stands of water willow, and a substrate that consists of small cobbles, pebbles, gravel, and often a fine layer of silt. During low flow periods, the darters move away from the peripheral zones and toward the main channel; edges of water willow beds, riffles, and pools; and mouths of tributaries.

Migration into spawning areas begins in approximately late November or early December, with fish moving from the main channels into tributaries and eventually reaching adjacent seepage areas where they will congregate and remain for the duration of spawning, until approximately late April. Breeding sites are intermittent seepage areas and ditches with little to no flow; shallow depths (12 inches (30 centimeters) or less); moderate leaf litter covering mixed cobble, gravel, sand, and clay; a deep layer of soft silt

over clay; and emergent vegetation. Additionally, breeding sites possess channels that maintain base flow throughout the winter and early spring.

Trispot darters predominantly feed on mayfly nymphs and midge larvae and pupae.

A thorough review of the life history and ecology of the trispot darter is presented in the SSA report (Service 2017, entire). A summary of the resource needs of the trispot darter is provided below in Table 1.

Table 1. Life-history and resource needs of the trispot darter.

Life stage	Resources needed
Fertilized Eggs	Ephemeral streams/ditches connected to nonbreeding habitat with adequate water quality; vegetation, rocks for adhesive eggs; eggs submerged on vegetation and/or rocks for approximately 30 days at 53 ºF (12 ºC)
Larvae	Ephemeral streams/ditches connected to nonbreeding habitat with adequate water quality; low predation, disease, and environmental stress; flushing rain events to reach lower stream reaches; 41 days to reach juvenile stage
Juveniles	Flowing water with good water quality; low predation, disease, and environmental stress; adequate food availability
Nonbreeding Adults (Mid-April to Mid-October)	Clear, flowing water in shallow pools and backwaters in main channel with good water quality but documented to be found with a fine layer of silt and/or debris, leaf litter; adequate food availability
Breeding Adults (Late November to Late April)	Flowing water with adequate water quality, adequate flow to connect to breeding areas; clean structure (vegetation, rock, substrate); appropriate male to female demographics; appropriate spawning temperatures

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of trispot darter from studies of this species' habitat, ecology, and life history. Additional information can be found in the proposed listing rule published in the *Federal Register* on October 4, 2017 (82 FR 46183), the SSA report (Service 2017, entire), and the final listing rule published elsewhere in today's *Federal Register*. We have determined that the following physical or biological features are essential to the conservation of trispot darter:

(1) Geomorphically stable, small to medium streams with (a) detritus, woody debris, and stands of water willow (*Justicia americana*) over stream substrate that consists of small cobble, pebbles, gravel, and fine layers of silt; and (b) intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(2) Adequate seasonal water flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time) necessary to maintain appropriate benthic habitats and to maintain and create connectivity between permanently flowing streams with associated streams that hold water from November through April, providing connectivity between the darter's spawning and summer areas.

(3) Water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) Prey base of aquatic macroinvertebrates.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are

essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the trispot darter may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment); (2) nutrient pollution from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) improper forest management or silviculture activities that remove large areas of forested wetlands and riparian systems; (5) culvert and pipe installation that creates barriers to movement; (6) changes and shifts in seasonal precipitation patterns as a result of climate change; (7) other watershed and floodplain disturbances that release sediments or nutrients into the water or fill suitable spawning habitat; and (8) creation of reservoirs that convert permanently flowing streams and/or streams that hold water from November through April into lake or pond-like (lentic) environments.

Management activities that could ameliorate these threats include, but are not limited to, use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank-side destruction; protection of riparian corridors and suitable spawning habitat; retention of sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the stream systems; placement of culverts or bridges that accommodate fish passage; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of the trispot darter is reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring there are adequate numbers of fish in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as floods, cannot simultaneously affect all known populations. Range-wide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this proposed critical habitat designation.

Sources of data for this proposed critical habitat include multiple databases maintained by universities and State agencies in Tennessee, Alabama, and Georgia, and numerous survey reports on streams throughout the species' range. Other sources of available information on habitat requirements for this species include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2017, entire).

Areas Occupied at the Time of Listing

The proposed critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it focuses on currently occupied streams and rivers within the historical range that have retained the necessary physical or biological features that will allow for the maintenance and expansion of existing populations. For the purposes of critical habitat designation, we determined a unit to be occupied if it contains recent (*i.e.*, observed in the past 10 years (since 2007), based on the data available for the SSA analysis) observations of trispot darter. Collection records were compiled and provided to us by State partners funded under a concurrent section 6 status assessment for the trispot darter. Collection records were obtained through the website FISHNET2 (an online repository of ichthyological museum data) or directly from institutions. To delineate spawning areas for trispot darter, we identified waterways where trispot darter was observed from November to April between the years 2007 and 2017. We assume these observations represented fish in or near spawning habitat within the timeframe. We based this assumption on the knowledge that this short-lived migratory species will stage near spawning areas in pre-spawning congregations and that both spawning and non-spawning individuals will make a migration.

We considered areas of low topographic variation at lower elevations as exhibiting topographic characteristics that support recharge of a shallow soil water table, slow release of water into breeding channels, and connectivity between ephemeral breeding channels and permanent trispot darter summer habitat. These areas support the essential physical and biological features that allow for adequate seasonal water flows, the hydrologic flow regime that maintains appropriate trispot habitat, and connectivity between streams in the winter. Areas of low topographic variation would generally have

slower stream velocities and retain water for longer duration (*i.e.*, have a less "flashy" hydrograph), in order to maintain necessary benthic habitat and stream substrate. Areas at lower elevation would interact with permanent streams and rivers, and be accessible to trispot darters attempting to migrate into adjacent ephemeral spawning streams.

To identify areas with both low elevation and low topographic variation, we conducted a geographic information system (GIS) analysis using a 30-meter digital elevation model (DEM). Low elevation for this analysis was defined as two standard deviations away from the mean elevation at which spawning trispot darters were observed. Therefore, elevation ranged from 558 to 790 feet (ft) (170 to 241 meters (m)). We used roughness as a measure of topographic variation. To calculate roughness, we used an ArcGIS tool (Evans *et al.* 2014) that implements an algorithm described by Riley *et al.* (1999, entire). We then conducted an overlay analysis using the spawning elevation layer and roughness layer to produce a map of potential spawning habitat.

Finally, we considered the dispersal ability of trispot darter when delineating critical habitat that included spawning habitat. Trispot darters have been recorded to travel approximately 6,000 ft (1,829 m). Therefore, we only delineate lands that exhibit topographic characteristics we consider suitable for trispot darter spawning habitat that are within 6,000 ft (1,829 m) of a trispot darter observed between November and April in the years 2007 to 2017.

The following rivers and streams meet the criteria described above and are considered occupied by the species at the time of listing where the essential physical and biological features are found: Big Canoe Creek, Ballplay Creek, Conasauga River, Mill Creek, Coahulla Creek, and Coosawattee River.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are not proposing to designate any areas outside the geographical area currently occupied by the species because we did not find any unoccupied areas that were essential for the conservation of the species. The protection of six moderately or highly resilient management units across the physiographic representation of the range would sufficiently reduce the risk of extinction. Improving the resiliency of populations in the currently occupied streams will likely increase viability to the point that the protections of the Act are no longer necessary.

Developed Areas

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for trispot darter. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Critical Habitat Maps

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in **Proposed Regulation Promulgation**. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073, on our Internet site at *https://www.fws.gov/daphne/*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We are proposing 181 river miles (mi) (291 kilometers (km)) and 16,735 acres (ac) (6,772 hectares (ha)) in six units as critical habitat for the trispot darter. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for trispot darter. All 6 areas we propose as critical habitat are in the Coosa River system in Alabama, Georgia, and Tennessee (Table 2). Table 2 shows the name, land ownership, acres, and approximate stream miles of the proposed designated units for the trispot darter. Per State regulations (Alabama Code section 9-11-80, Tennessee Code Annotated section 69-1-101, and Georgia Code section 52-1-31), navigable waters are considered public rights-of-way. Most, if not all, lands beneath the navigable waters included in this proposed rule are owned by the States of Alabama, Georgia, or Tennessee. Ownership of lands beneath most nonnavigable waters included in this proposed rule are determined by riparian land ownership. As discussed below, riparian lands along the waters described are owned by either private, State, or Federal entities.

Table 2. Proposed critical habitat units for trispot darter.

Unit	**Ownership* of River Miles (Kilometers)**					**Ownership* of Acres (Hectares)**			
	Private	*Local*	*State*	*Federal*	**Total**	*Private*	*State*	*Federal*	**Total**
1. Big Canoe Creek	41 (66)	0	0	0	41 (66)	10,167 (4,114)	0	0	10,167 (4,114)
2. Ballplay Creek	17 (27)	0	0	0	17 (27)	2,527 (1,023)	0	0	2,527 (1,023)
3. Conasauga River	54.58 (87.84)	0	2.42 (3.90)	0	57 (92)	2,161 (875)	0	0	2,161 (875)
4. Mill Creek	13.69 (22.03)	1.31 (2.11)	0	0	15 (24)	438 (177)	0	0	438 (177)
5. Coahulla Creek	26 (42)	0	0	0	26 (42)	1,442 (584)	0	0	1,442 (584)
6. Coosawattee River	24.24 (39)	0	0.34 (0.55)	0.42 (0.68)	25 (40)	0	0	0	0
Total	176.51 (283.87)	1.31 (2.11)	2.76 (4.45)	0.42 (0.68)	181 (291)	16,735 (6,772)	0	0	16,735 (6,772)

*Adjacent riparian ownership is reported under "River Miles."
Note: Measurements may not sum due to rounding.

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for trispot darter below. All of the proposed units are currently occupied by the darter and contain the physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection.

Unit 1: Big Canoe Creek

Unit 1 consists of 41 stream mi (66 km) in St. Clair County, Alabama, from approximately 3.5 mi (5.6 km) upstream of Pinedale Road, west of Ashville, Alabama, to approximately U.S. Highway (Hwy.) 11. In addition to Big Canoe Creek, Unit 1 includes the westernmost portion of Little Canoe Creek to State Hwy. 174 and all of its associated tributaries. Unit 1 also includes all low elevation areas (10,167 ac (4,114 ha)) containing channels that hold water from November through April beginning 0.5 mi (0.8 km)

upstream of County Road 31 upstream to the U.S. Hwy. 11 crossing with Big Canoe Creek, approximately 0.70 miles (1.1 km) downstream of the Interstate 59 (I-59) crossing with the Left Hand Prong Little Canoe Creek, and the State Hwy. 174 crossing with Little Canoe Creek and Stovall Branch. The low elevation riparian areas that hold water seasonally in Unit 1 are privately owned, except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 1 to alleviate impacts from stressors that have led to the degradation of the habitat, including roadside erosion, urban development, fish barriers, and unstable stream banks. Livestock accessing streams and riparian buffers have led to high levels of sedimentation, siltation, contamination, and nutrient-loading, as well as destabilized stream banks.

Unit 2: Ballplay Creek

Unit 2 consists of 17 stream mi (27 km) of Ballplay Creek in Etowah, Cherokee, and Calhoun Counties, Alabama, and 2,527 ac (1,023 ha) of ephemeral spawning habitat. Unit 2 begins upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately at County Road 32, and continues upstream approximately to the U.S. Hwy. 278 crossing over Ballplay Creek in Calhoun County, Alabama. Unit 2 includes all low elevation areas (2,527 ac (1,023 ha)) containing channels that hold water from November through April beginning upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately 0.60 mi (1 km) southwest of County Road 32 and extending upstream to the confluence of Ballplay and Little Ballplay Creeks and to the west along Rocky Ford Road and Alford

Road. The ephemeral spawning habitat proposed in Unit 2 is privately owned except for bridge crossings and road easements, which are owned by the State or Counties.

Additional special management considerations or protection may be required within Unit 2 because entrenchment and channelization have altered the channel and may degrade spawning habitat and reduce floodplain access.

Unit 3: Conasauga River

Unit 3 consists of 57 stream mi (92 km) and 2,161 acres (875 ha) of ephemeral wetland spawning habitat in Whitfield and Murray Counties, Georgia, and Polk and Bradley Counties, Tennessee. Unit 3 begins in the Conasauga River upstream of the mouth of Coahulla Creek and continues upstream to the mouth of Minneawauga Creek. Unit 3 also includes: Mill Creek from its confluence with the Conasauga River in Bradley County, Tennessee, upstream to the first impoundment on Mill Creek approximately at Green Shadow Road SE; Old Fort Creek from Ladd Springs Road SE in Polk County, Tennessee, to its confluence with Mill Creek in Bradley County, Tennessee; and Perry Creek from its headwaters (approximately 0.35 mi (0.6 km) upstream of Tennga Gregory Road) to its confluence with the Conasauga River in Murray County, Georgia, and both of its tributaries. Unit 3 includes all low elevation areas (2,161 ac (875 ha)) containing channels that hold water from November through April, beginning from the confluence of the Conasauga River and Shears Branch (west of U.S. Hwy. 411 in Polk County, Tennessee) to approximately 0.30 mi (0.5 km) downstream of the confluence of the Conasauga River and Perry Creek; Mill Creek from Hicks Tanyard Road downstream to its confluence with the Conasauga River; Old Fort Creek from Hicks Tanyard Road to its confluence with Mill Creek; and Perry Creek. The ephemeral wetland areas surrounding

the river proposed in this unit is a combination of private ownership, conservation easements, and State Natural Areas. These easements are held by Georgia Department of Transportation, Georgia Department of Natural Resources, and Georgia-Alabama Land trust.

Additional special management considerations or protection may be required within the Conasauga River Unit to reduce impacts from pollutants from agricultural runoff, construction of farm ponds that destroy spawning habitat, development, erosion, sedimentation, and dams and other barriers to dispersal.

Unit 4: Mill Creek

Unit 4 consists of 15 stream mi (24 km) of Mill Creek and 438 ac (177 ha) of ephemeral spawning habitat in Whitfield County, Georgia. The land surrounding the river in this unit is both in private ownership and owned by the City of Dalton, Georgia. Unit 4 begins at the confluence of Mill Creek with Coahulla Creek and continues upstream along Mill Creek for approximately 15 mi (24 km) to the U.S. Hwy. 41 crossing. The unit includes all low elevation areas (438 ac (177 ha)) containing channels that hold water from November through April, beginning from the U.S. Hwy. 41 crossing with Mill Creek downstream to the confluence of Mill Creek and Haig Mill Branch. Unit 4's spawning habitat is privately owned except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 4 to address pollutants from agricultural runoff, agricultural ditching, and the construction of farm ponds that remove spawning habitat. Sediment loading and

excessive fecal contamination have degraded water quality and also require special management considerations.

Unit 5: Coahulla Creek

Unit 5 consists of 26 stream mi (42 km) of Coahulla Creek and 1,442 ac (584 ha) of ephemeral spawning habitat in Whitfield County, Georgia, and Bradley County, Tennessee. Unit 5 begins immediately upstream of the Prater Mill dam upstream of State Hwy. 2 in Georgia. The unit continues upstream for approximately 26 mi (42 km) to Ramsey Bridge Road SE and includes ephemeral wetland habitat from 0.5 mi (0.8 km) downstream of Hopewell Road to approximately 0.5 mi (0.8 km) upstream of McGaughey Chapel Road. The ephemeral spawning habitat surrounding the river in this unit is privately owned, except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 5 to address pollutants from agricultural runoff, agricultural ditching, and the construction of farm ponds that remove spawning habitat. Sediment loading and excessive fecal contamination have degraded water quality and also require special management considerations.

Unit 6: Coosawattee River

Unit 6 consists of 25 stream mi (40 km) of the Coosawattee River beginning at the confluence with the Conasauga River in Gordon County, Georgia. The unit continues upstream to Old Highway 411 downstream of Carters Lake Reregulation Dam in Murray County, Georgia. The ephemeral spawning habitat surrounding the river in this unit is a mix of State, private, and Federal (U.S. Army Corps of Engineers) ownership.

Additional special management considerations or protection may be required within Unit 6 to address erosion and sedimentation from urban runoff and development, rural unpaved roads, forestry practices, dam construction and use, and agriculture, leading to impairment of water quality.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency 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 proposed critical habitat.

We published a final rule adopting a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process 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 or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the trispot darter. Such alterations may include, but are not limited to, those that alter the

physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the trispot darter. These activities include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of trispot darter by decreasing or altering flows to levels that would adversely affect their ability to complete their life cycles.

(2) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals (including pharmaceuticals, metals, and salts), biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the

tolerances of the trispot darter and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the trispot darter by increasing the sediment deposition to levels that would adversely affect the species' ability to complete its life cycle.

(4) Actions that would significantly increase the phytoplankton algal community within the stream channel. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities can result in excessive filamentous algae filling streams and reducing habitat for fish, degrading water quality during phytoplankton decay, and decreasing oxygen levels at night from phytoplankton respiration to levels below the tolerances of the fish.

(5) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the trispot darter habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the fish.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the trispot darter. Possible actions could include, but are not limited to, stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease; result in direct predation; or affect the growth, reproduction, and survival of trispot darter.

(7) Actions that would result in the conversion of aquatic habitats from seeps or from ephemeral, periodic, intermittent, or permanent flowing streams to lake or pond-like environments. Such activities could include, but are not limited to, creating impoundments, digging ponds, or excavating channels. These actions could eliminate or reduce habitat and adversely affect the growth and reproduction of the trispot darter.

(8) Actions that would result in the conversion of aquatic habitats to terrestrial habitats. Such activities could include, but are not limited to, filling wetlands, seeps, or ephemeral, periodic, intermittent, or permanent flowing streams with soil or other material or draining wetlands. These actions could reduce water quantity to levels below the tolerances of the trispot darter.

(9) Actions that would result in decreased connectivity within and between suitable spawning and non-spawning habitat for the trispot darter. Such activities could include, but are not limited to, levee construction; transportation projects that span streams without consideration for fish passage or debris left in seeps; and logging or site preparation for development without consideration for ephemeral, periodic, intermittent,

or permanent flowing streams. These activities could reduce the accessibility to habitat necessary for the growth and reproduction of the trispot darter and adversely affect the species' ability to complete its life cycle.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically,

section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyze INRMPs developed by military installations located within the range of the proposed critical habitat designation to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. We have determined that there are no Department of Defense lands within the proposed critical habitat designation.

Exclusions

Consideration of Impacts under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the

statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factors to use and how much weight to give to any factor.

As discussed below, we are not proposing to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information we obtain during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially

affected by the designation of critical habitat (*e.g.*, under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the trispot darter (IEc 2018, entire). The screening analysis enables us to focus on the key factors that are likely to result in incremental economic impacts. Its purpose is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the

habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitutes our draft economic analysis (DEA) of the proposed critical habitat designation for the trispot darter, which is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the trispot darter, first we identified, in the IEM dated August 8, 2018, probable incremental economic impacts associated with the following categories of activities: (1) Oil and gas;

(2) agriculture; (3) silviculture/timber; (4) development; (5) conservation and restoration; (6) renewable energy; (7) in-water construction; and (8) transportation. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Beginning on the effective date of the final rule listing the trispot darter as a threatened species (published elsewhere in today's *Federal Register*), in areas where the trispot darter is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into that existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the trispot darter's critical habitat. Because the designation of critical habitat for trispot darter is being proposed at the same time as the listing decision is made final, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and

(2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the trispot darter would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation.

The proposed critical habitat designation for the trispot darter totals approximately 181 river mi (291 km) and 16,735 ac (6,772 ha), all of which is currently occupied by the species. In these areas, any actions that may affect the species would also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the trispot darter. Therefore, even though some analysis of the impacts of the action of critical habitat may be necessary, and this additional analysis will require costs in time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. We do not expect any additional consultations resulting from the designation of critical habitat. The total annual incremental costs of critical habitat designation are anticipated to be the additional resources expended in a maximum of four section 7 consultations annually at a cost of approximately $13,000 per year.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of this proposed rule and our required determinations. We

may revise this proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, under section 4(b)(2) of the Act and its implementing regulations at 50 CFR 424.19, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. As discussed above, we have prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. Based on this analysis, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on economic impacts.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we also consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. We have determined that the lands within the proposed designation of critical habitat for trispot darter are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of

factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for trispot darter, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on partnerships or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory

approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771

This rule is not an E.O. 13771 ("Reducing Regulation and Controlling Regulatory Costs") (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq*.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq*.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e*., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific

regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated if we adopt this rule as proposed, the Service certifies that, if made final, this proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental

mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests

squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the lands being proposed for critical habitat designation are Federally or privately owned, or owned by the States of Alabama, Georgia, and Tennessee. These government entities do not fit the definition of "small governmental jurisdiction." Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for trispot darter in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify

critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for trispot darter would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Alabama, Georgia, and Tennessee. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule would not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed critical habitat units are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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 Secretarial 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 no tribal lands would be affected by this designation.

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.

Authors

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

List of Subjects in 50 CFR Part 17

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

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

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

AUTHORITY: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. Amend § 17.95(e) by adding an entry for "Trispot Darter (*Etheostoma trisella*)" immediately following the entry for Slackwater Darter (*Etheostoma boschungi*), to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Trispot Darter (*Etheostoma trisella*)

(1) Critical habitat units are depicted for St. Clair, Etowah, Cherokee, and Calhoun Counties, Alabama; Whitfield, Murray, and Gordon Counties, Georgia; and Polk and Bradley Counties, Tennessee, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the trispot darter consist of the following components:

(i) Geomorphically stable, small to medium streams with:

(A) Detritus, woody debris, and stands of water willow (*Justicia americana*) over stream substrate that consists of small cobble, pebbles, gravel, and fine layers of silt; and

(B) Intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(ii) Adequate seasonal water flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time) necessary to maintain appropriate benthic habitats and to maintain and create connectivity between permanently flowing streams with associated streams that hold water from November through April, providing connectivity between the darter's spawning and summer areas.

(iii) Water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(iv) Prey base of aquatic macroinvertebrates.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

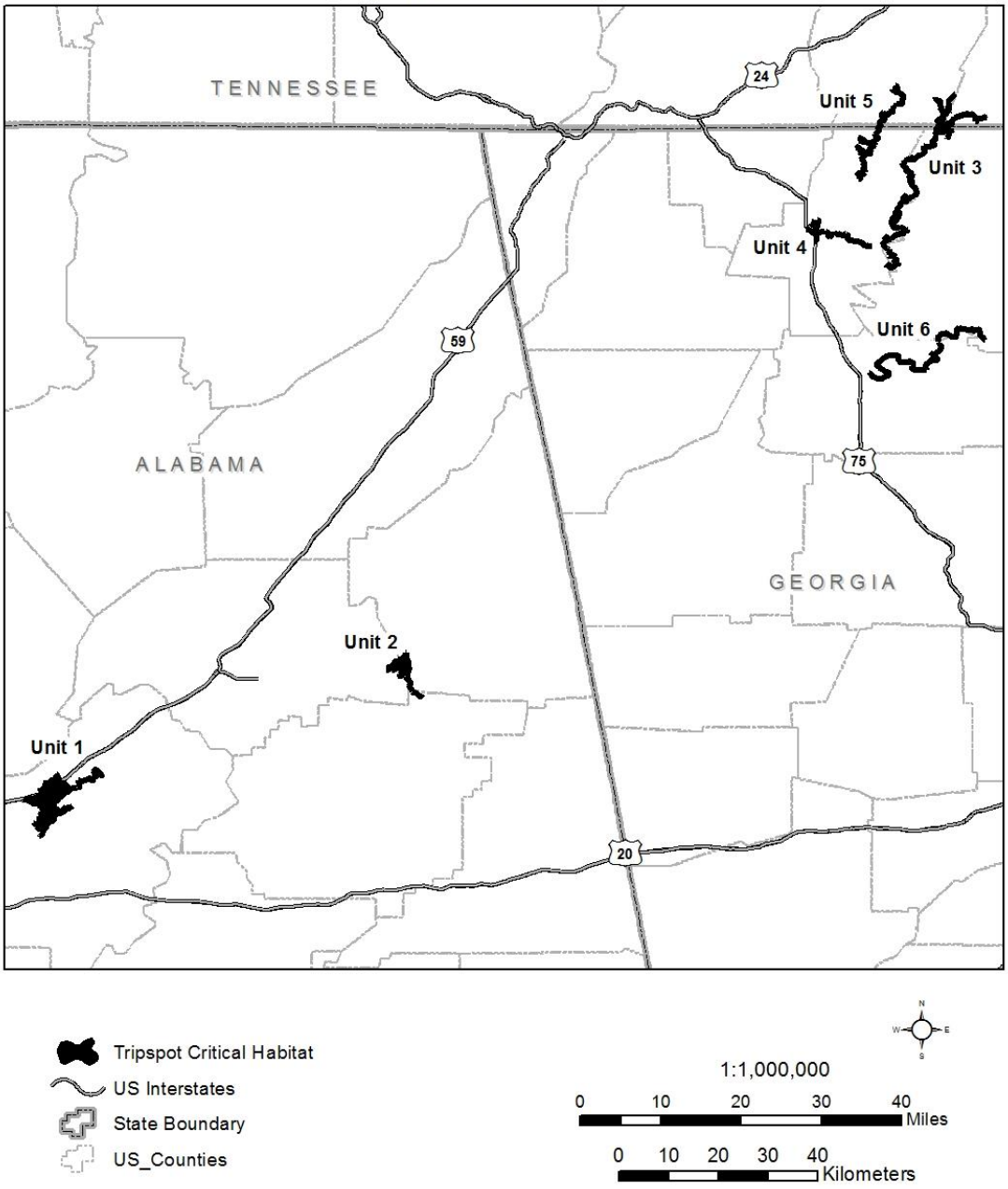
(4) *Critical habitat map units.* The hydrologic data used in the critical habitat maps were extracted from the U.S. Geological Survey's 1:1M scale nationwide hydrologic layer with a projection of EPSG:4269–NAD83 Geographic. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/daphne/*, at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073, and at the field office responsible for this designation. You may obtain

field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note*: Index map follows:

Trispot Darter (*Etheostoma trisella*)
Critical Habitat Index Map

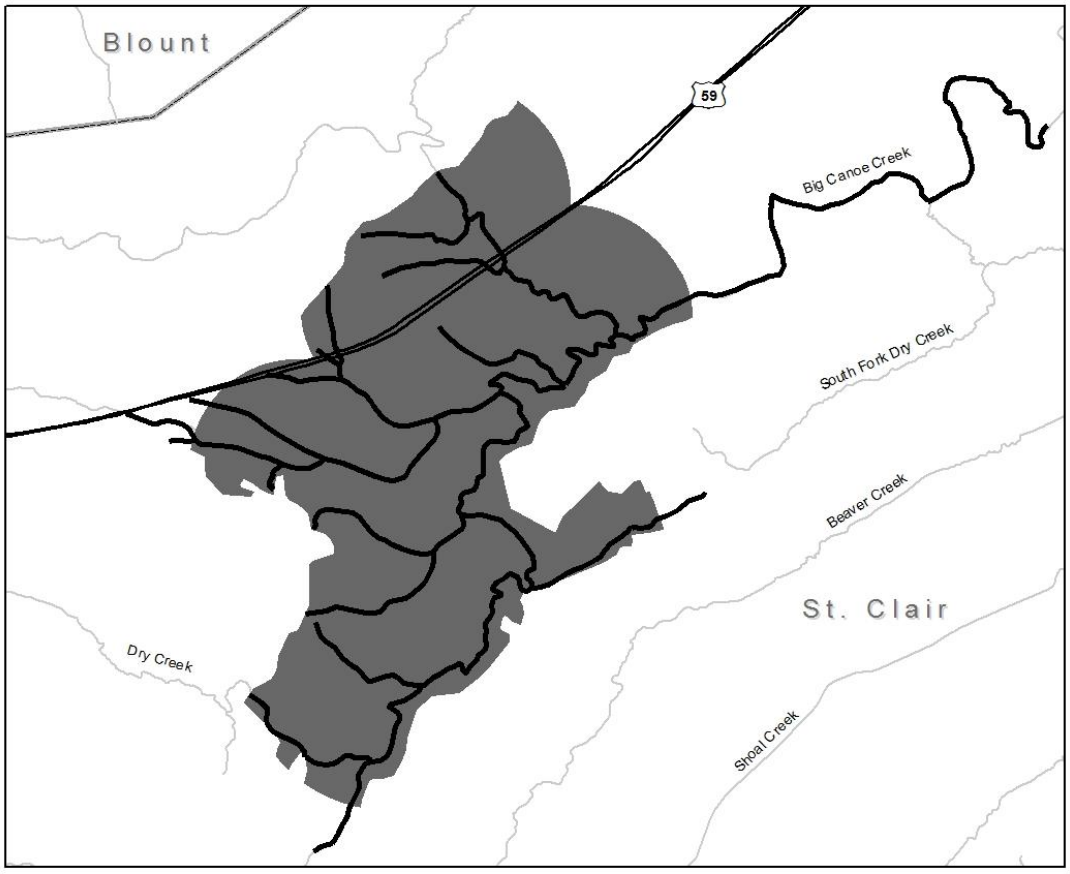
Etowah, Cherokee, Calhoun and St. Clair Counties, Alabama; Gordon, Murry and Whitfield Georgia; Bradley and Polk Counties Tennessee



(6) Unit 1: Big Canoe Creek, St. Clair County, Alabama. Map of Unit 1 follows:

Unit 1 Big Canoe Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

St. Clair Counties, Alabama



Big Canoe Creek Critical Habitat Streams

Big Canoe Creek Critical Habitat

Rivers and Streams

Cities

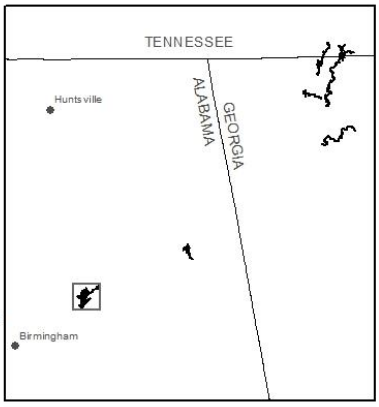
County Boundary

State Boundary

1:90,974

0 1 2 3 4 Miles

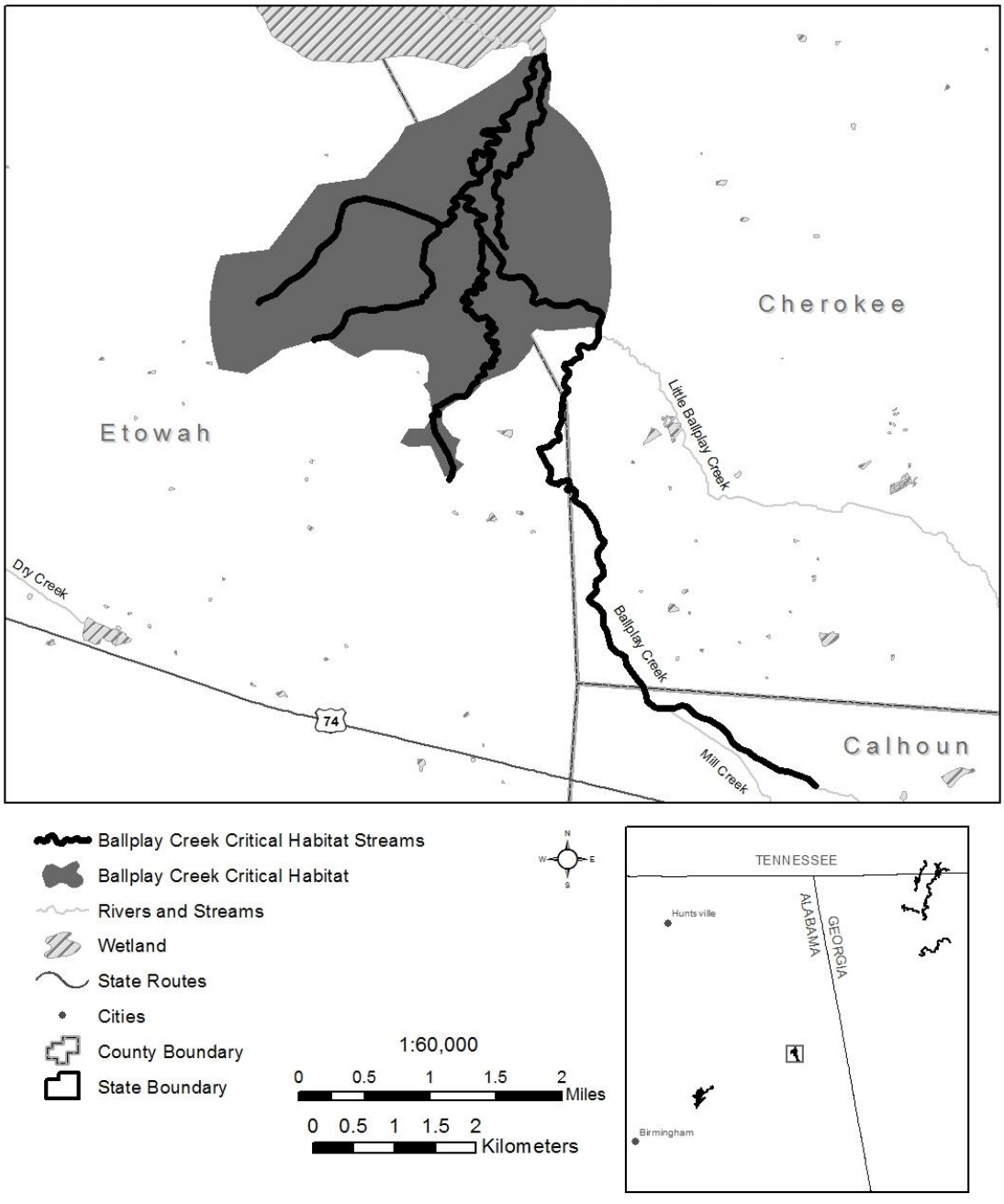
0 1 2 3 4 Kilometers



(7) Unit 2: Ballplay Creek, Etowah, Cherokee, and Calhoun Counties, Alabama. Map of Unit 2 follows:

Unit 2 Ballplay Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

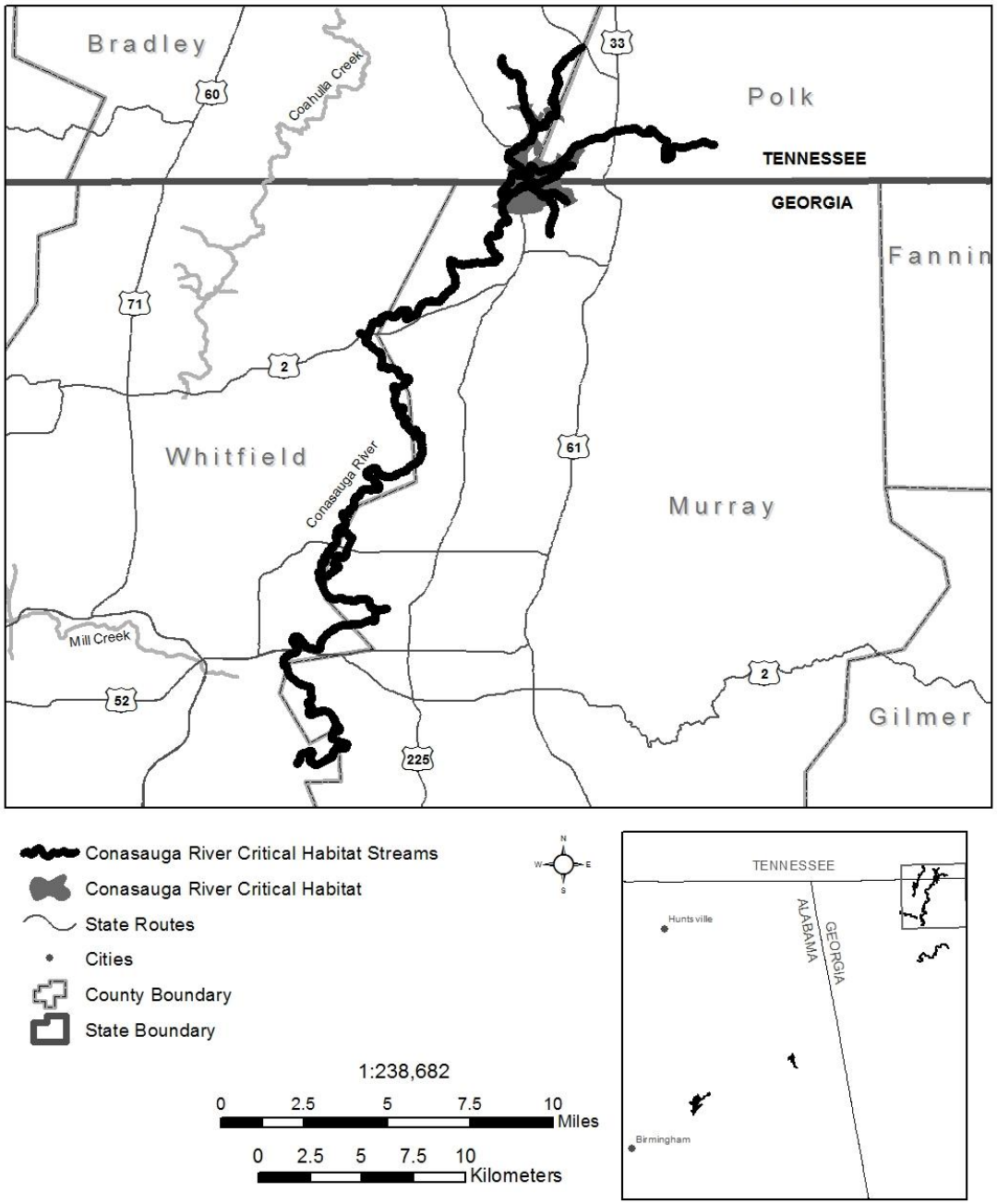
Etowah, Cherokee, and Calhoun Counties, Alabama



(8) Unit 3: Conasauga River, Whitfield and Murray Counties, Georgia, and Polk and Bradley Counties, Tennessee. Map of Unit 3 follows:

Unit 3 Conasauga River Critical Habitat for Trispot Darter (*Etheostoma trisella*)

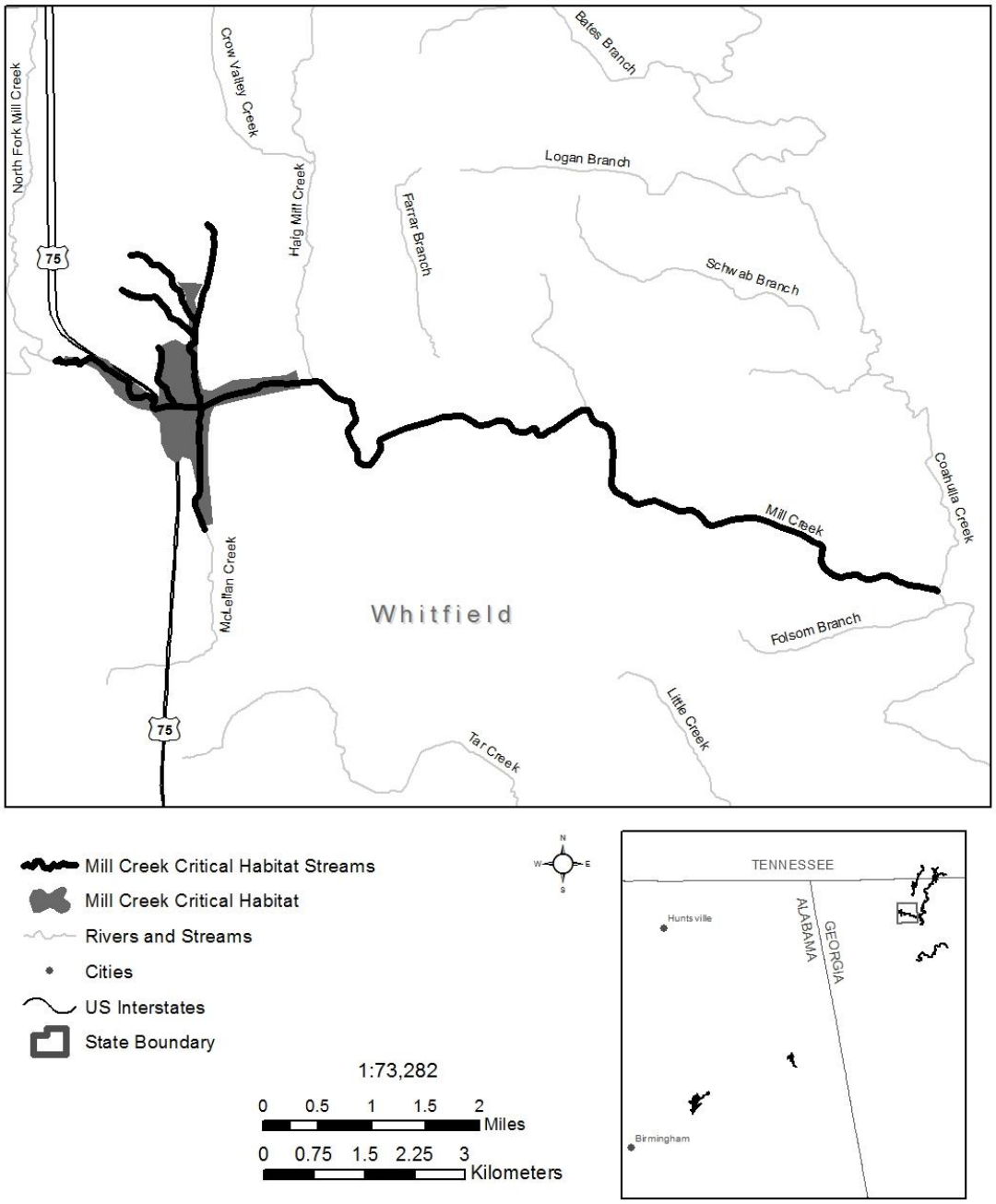
Bradley and Polk Counties, Tennessee & Whitfield and Murray Counties, Georgia



(9) Unit 4: Mill Creek, Whitfield County, Georgia. Map of Unit 4 follows:

Unit 4 Mill Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

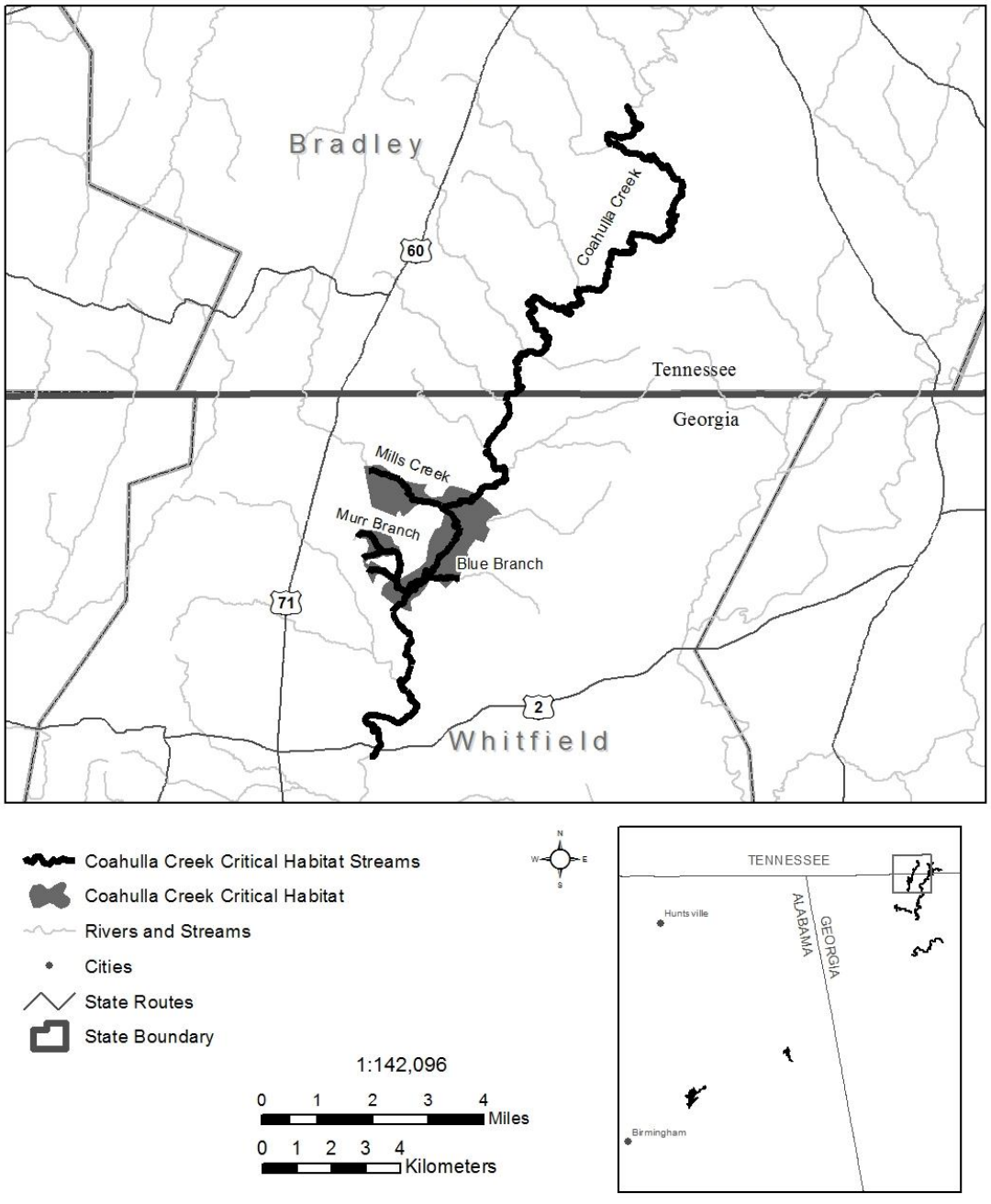
Whitfield County, Georgia



(10) Unit 5: Coahulla Creek, Whitfield County, Georgia, and Bradley County, Tennessee. Map of Unit 5 follows:

Unit 5 Coahulla Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

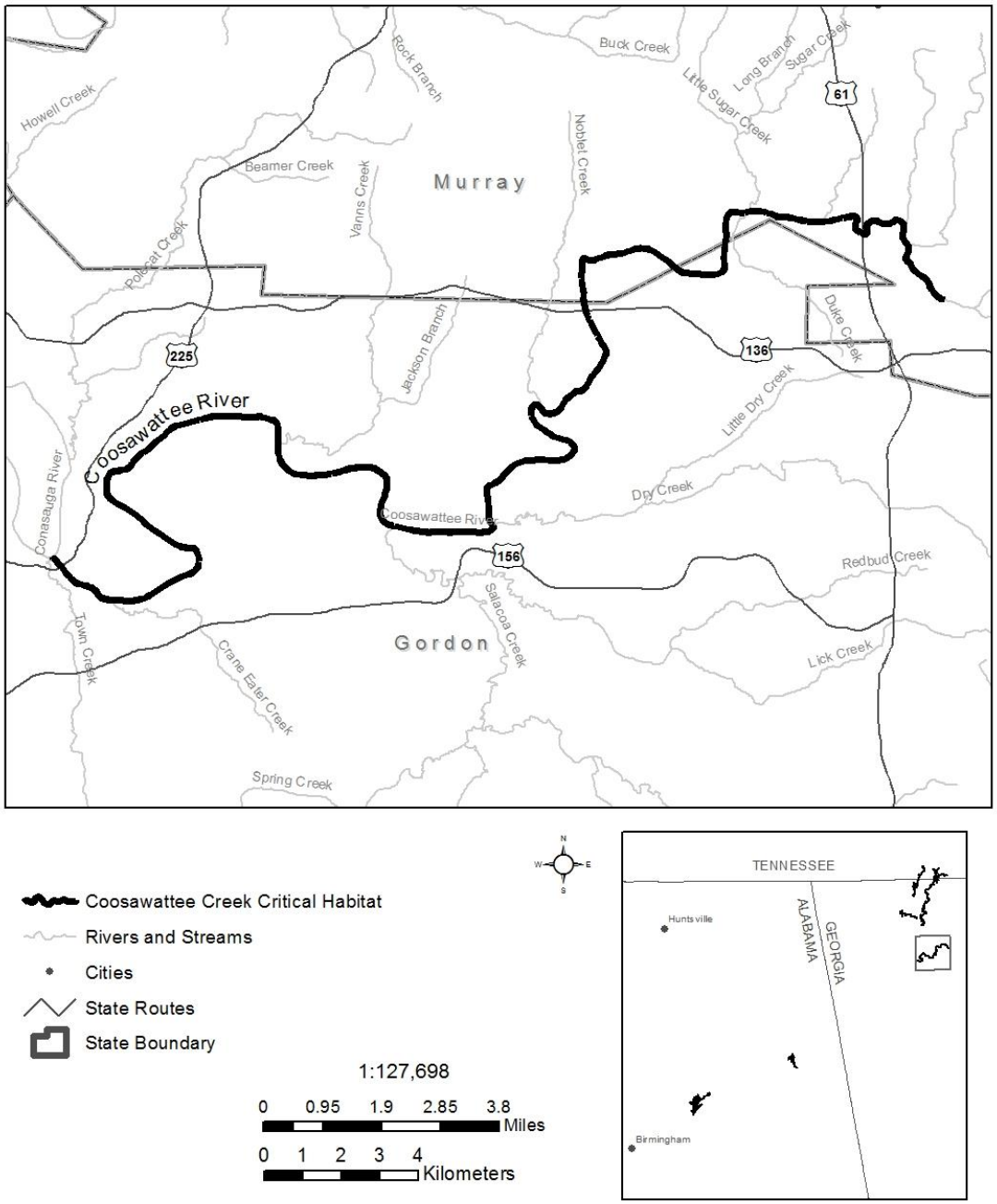
Whitfield County, Georgia; Bradley County, Tennessee



(11) Unit 6: Coosawattee River, Gordon and Murray Counties, Georgia. Map of Unit 6 follows:

Unit 6 Coosawattee Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

Gordon & Murray Counties, Georgia



* * * * *

Dated: October 26, 2018

Signed:

James W. Kurth
Deputy Director,
U.S. Fish and Wildlife Service,
Exercising the Authority of the Director,
U.S. Fish and Wildlife Service.

Billing Code 4333–15

[FR Doc. 2018-27976 Filed: 12/27/2018 8:45 am; Publication Date: 12/28/2018]