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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

Chief, Video Services Division, Mass Media Bureau.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AG38

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spruce-fir Moss Spider

**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 spruce-fir moss spider (*Microhexura montivaga*) under the Endangered Species Act of 1973, as amended (Act). The proposed designation of critical habitat for the spruce-fir moss spider includes—(1) Areas at and above 1,646 meters (m) (5,400 feet (ft)) in elevation in the Great Smoky Mountains National Park (GSMNP) on and/or in the vicinity of Mount LeConte in Sevier County, Tennessee, and Mount Collins, Clingmans Dome, and Mount Buckley in Swain County, North Carolina, and Sevier County, Tennessee; (2) areas at and above 1,646 m (5,400 ft) in elevation at Grandfather Mountain in

Avery, Caldwell, and Watauga Counties, North Carolina; and (3) portions at and above 1,646 m (5,400 ft) in elevation at Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. All of the areas on or in the vicinity of Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley that are proposed for critical habitat designation are within the boundaries of the GSMNP; all of the areas of Roan Mountain that are proposed for critical habitat designation are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee; and the areas of Grandfather Mountain that are proposed for critical habitat designation are privately owned.

If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory impact of critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address comments and other information received during the comment period.

**DATES:** We will consider comments received by December 5, 2000. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 20, 2000.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address or fax your comments to 828/258-5330.

3. You may send comments by electronic mail (e-mail) to john\_fridell@fws.gov. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** John A. Fridell, Fish and Wildlife Biologist (see **ADDRESSES** section).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Taxonomy and Description

The spruce-fir moss spider (*Microhexura montivaga*) was originally described by Crosby and Bishop (1925) based on collections made in 1923 from Mount Mitchell in western North Carolina, the highest point in eastern North America. Only a few specimens were taken, and little was known about the species until its "rediscovery" on Mount Mitchell, approximately 50 years later by Dr. Frederick Coyle (Western Carolina University) and Dr. William Shear (Hampden-Sydney College) (Coyle 1981). The subsequent work (Coyle 1981, 1985, 1997, 1999; Harp 1991, 1992) represents the bulk of what is presently known of the biology, habitat, behavior, range of, and threats to, the spider.

The spruce-fir moss spider belongs to the genus *Microhexura* in the family Dipluridae. Diplurids are in the primitive spider suborder Mygalomorphae, which are often referred to as "tarantulas" due to the inclusion of the large, hairy spiders of the family Theraphosidae. Only two genera of Dipluridae, *Euagrus* and *Microhexura*, are found in the United States. Species in the genus *Euagrus* are medium to large spiders that build their silk sheets and funnels in rocky situations in the arid Southwest. The genus *Microhexura* is the northernmost representative of the family Dipluridae, and contains only two species—the spruce-fir moss spider (*M. montivaga*) and one with no common name (*M. idahoana*) (Chamberlin and Ivie). The two are distinguished by geographic distribution and by features of the male genitalia (Coyle 1981). Otherwise, they appear to be similar in both appearance and habits (Service 1998). *Microhexura idahoana* is found in conifer forests in the Pacific Northwest (Coyle 1981). The spruce-fir moss spider (*M. montivaga*) is known only from conifer forests in the mountains of North Carolina and Tennessee (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1995, 1998).

The spruce-fir moss spider is the smallest of the mygalomorph spiders, with adults measuring only 2.5 to 3.8 millimeters (0.10 to 0.15 inch) in length

(Coyle 1981, Service 1995). The species' coloration ranges from light brown to a darker reddish brown, and there are no markings on the abdomen (Harp 1992). The carapace (hard covering over the front part of the body) is generally yellowish brown (Harp 1992). The most reliable field identification characteristics for the species are chelicerae (fangs) that project forward well beyond the anterior (front) edge of the carapace, a pair of very long posterior spinnerets (organ for producing threads of silk), and the presence of a second pair of book lungs that appear as light patches posterior to the genital furrow (Harp 1992; Coyle, *in litt.* 1994; Service 1995).

#### *Distribution, Habitat, and Life History*

*Microhexura montivaga* is known from only the highest mountain peaks (at and above 1,646 m (5,400 ft) in elevation) in the Southern Appalachian Mountains of North Carolina and Tennessee. It has been recorded from Mount Mitchell, Yancey County, North Carolina; Grandfather Mountain, Watauga, Avery, and Caldwell Counties, North Carolina; Mount Collins, Swain County, North Carolina; Clingmans Dome, Swain County, North Carolina; Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee; Mount Buckley, Sevier County, Tennessee; and Mount LeConte, Sevier County, Tennessee.

Recent and ongoing surveys funded by the National Park Service (NPS), U.S. Forest Service (USFS), and us indicate that reproducing populations of the spruce-fir moss spider still survive on Grandfather Mountain in North Carolina (Harp 1992; pers. observation 1995; Jane Thompson, The Nature Conservancy, pers. comm. 1997); Mount LeConte in Tennessee (Coyle 1997); and Mount Buckley (Coyle, pers. comm. 2000) and Roan Mountain in North Carolina and Tennessee (Coyle 1999). The Mount Mitchell population is believed to be extirpated (Harp 1992), and both the Mount Collins and Clingmans Dome populations, if still present, are extremely small, with only one spruce-fir moss spider having been found at each of these two sites in recent years (Harp 1991, 1992). The occurrences of the species on Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley are all within the boundaries of the GSMNP, administered by the NPS. The sites supporting the species on Roan Mountain are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, and are managed by the USFS. The area on Grandfather Mountain that still supports

the spruce-fir moss spider is privately owned and is managed by The Nature Conservancy through an agreement with the landowner.

Recent work by Coyle (1997) indicates that Mount LeConte currently supports the healthiest of the surviving populations of the spruce-fir moss spider. In his study of the species on Mount LeConte, Coyle (1997) recorded the species from four small, separate areas of rock outcrop (approximately 0.10 hectare [0.25 acre], 0.15 hectare [0.38 acre], 0.25 hectare [0.63 acre], and 0.50 hectare [1.25 acres] in size) and estimated that the largest three of these areas support a population of approximately 5,000 individuals. He estimated that the 0.25-hectare site provided a total of approximately 12 square meters (m<sup>2</sup>) (roughly 133 square feet) of suitable microhabitat, and the 0.15-hectare site provided approximately 7 m<sup>2</sup> (78 square feet) of suitable microhabitat for the spruce-fir moss spider. Measurements of likely suitable microhabitat have not yet been made at the other two sites on Mount LeConte.

The typical microhabitat of the spruce-fir moss spider appears to be associated with moderately thick and humid, but well-drained, moss and liverwort mats growing in sheltered spots on surfaces of rock outcrops and boulders in mature high-elevation forests dominated by Fraser fir (*Abies fraseri*) (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). The portions of the moss mats supporting the spruce-fir moss spider are generally from 1 to 4 centimeters (cm) thick (roughly 0.5 to 1.25 inches) and are well-shaded (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). They cannot be too dry, because the spider is quite sensitive to desiccation (drying out), nor can they be too wet (Coyle 1997, 1998; Harp 1991, 1992). The humidity levels required by the spruce-fir moss spider have yet to be determined. In a study of the spruce-fir moss spider on the Roan Mountain, Coyle (1999) reported that the moss/liverwort mats in which spruce-fir moss spiders were found were—(1) sheltered from the sun and the rain; (2) typically not far above either the ground or a horizontal ledge with accumulated soil; (3) included a thin layer of humid soil and/or humus (decayed vegetation and other organic material) between the moss and rock surface; (4) moderately thick (1 to 3 centimeters (0.5 to 1 inch); and (5) humid but not wet. He reported that, clearly, most rock outcrop surfaces, even those covered by bryophytes (mosses, liverworts, etc.), do not meet these microhabitat requirements and do not support the spruce-fir moss spider.

Population and microhabitat estimates are not available for the Grandfather Mountain, Mount Buckley, or Roan Mountain populations of the spruce-fir moss spider. However, existing data indicate that the Grandfather Mountain population is restricted to small patches of suitable microhabitat occurring on a single rock outcrop and a nearby boulder (Harp 1992; pers. observation 1995). The Mount Buckley population is restricted to scattered patches of suitable microhabitat on separate rock outcrop sites within an area roughly 0.20 hectare (0.5 acre) in size. On Roan Mountain, Coyle (1999) recorded scattered occurrences of the spruce-fir moss spider at 12 small, separate rock outcrop sites but found more than two spiders living in the same discrete patch of moss/liverwort on only three occasions. He found four spiders in an 800 square centimeters (sq cm) (approximately 1.0 square feet (sq ft)) patch of liverwort at one site, five spiders in a 900 sq cm (1.2 sq ft) patch of moss at another site, and four spiders in a 900 sq cm (1.2 sq ft) patch of moss at the third site. He reported that, at none of these three sites, nor at any other sites on Roan Mountain where he found the spider, were they able to find additional spiders with ease and that the spruce-fir moss spider population densities on Roan Mountain were clearly not as high as those observed at some of the sites on Mount LeConte. As stated above, individual spruce-fir moss spiders (one each) have been observed in recent years on Mount Collins and on Clingmans Dome, indicating extremely low population levels. Coyle (*in litt.* 1991) reported that the spruce-fir moss spider was common at a site on Clingmans Dome as late as 1983 but was extremely rare by 1988, which he suspected was largely due to deterioration of the forest canopy at the site.

The moss species associated with occurrences of the spruce-fir moss spider have been identified by David K. Smith, Botany Department, University of Tennessee at Knoxville, as *Polytrichum pallidesetum* Funck (Harp 1991, 1992), *Dicranodontium denudatum* (Brid.) E. G. Britt ex Williams (Harp 1992; Coyle 1997, 1999), and *D. asperulum* (Mitt.) Broth. (Coyle 1997, 1999). In addition, Coyle (1999) reported finding the spruce-fir moss spider on two occasions in liverwort mats (species was not identified) on rock outcrops. However, on both Mount LeConte and Roan Mountain, Coyle (1997, 1999 respectively) found the spruce-fir moss spider most often in

association with mosses in the genus *Dicranodontium*. Though Harp (1991, 1992) reported finding the spruce-fir moss spider on Mount LeConte in mosses identified as *Polytrichum pallidesetum*, Coyle was unable to find the spider on either Mount LeConte or Roan Mountain in mosses in this genus. The association between the spruce-fir moss spider and mosses in the genus *Dicranodontium* is noteworthy, because mosses in this genus are much less common than many other rock surface mosses (Coyle 1999).

While humid, well-drained moss/liverwort mats on inclined, well-shaded surfaces of rock outcrops and boulders appear to be the optimal microhabitat for the spruce-fir moss spider, it has also, on occasion, been found: (1) Under moss and litter mats at the base of rock outcrops (Coyle 1981); (2) under moss on loose rock at the base of rock outcrops; (3) in litter/humus under flat rocks lying on the ground in well-shaded situations in the vicinity of rock outcrops; and (4) on well-drained, well-shaded ground in or under needle and/or heath litter and moss in the vicinity of rock outcrops (Coyle 1997).

The species has also rarely been found in moss mats on tree trunks (Coyle 1981) and moss mats on logs (Harp 1992), though Coyle has been unable to find the species in either of these habitat types in his recent surveys for the species (Coyle, 1997, 1999; pers. comm. 2000).

An ongoing study of spiders of the GSMNP by Coyle and recent surveys of the spruce-fir moss spider on Mount LeConte (Coyle 1997) and Roan Mountain (Coyle 1999) support earlier findings (Coyle 1981; Harp 1991, 1992) that the microhabitat of the spruce-fir moss spider is virtually restricted to certain areas of rock outcrops and boulders in Fraser fir and/or fir-dominated spruce-fir forests. The Fraser fir is the only species of fir native to the Southeastern United States (Burns and Honkala 1990). In his study of the population of the spruce-fir moss spider on Mount LeConte, Coyle (1997) reported finding the species "only in stands containing many old (well over 25 years of age) fir trees and in areas where patches of fir containing old fir trees interface with heath communities." In both situations he found the species only on or in the vicinity of rock outcrops. In his work on Roan Mountain, Coyle (1999) found the species only on rock outcrops in fir forests or fir-dominated areas of spruce-fir forests. Searches for the spruce-fir moss spider in other habitat types have failed to locate occurrences of the

species (Coyle, *in litt.*, 1991; Coyle 1997, 1999).

Coyle (1981, 1997) describes the webs of the spruce-fir moss spider as silk tubes sandwiched between the interface of the moss mat and boulder surface. The tubes are thin-walled and are typically broad and flattened, with short side branches. Some of the tubes occasionally extend into crevices in the rock or litter (Coyle 1997) or the vegetative interior of the moss mat (Harp 1991, 1992).

The spruce-fir moss spider has not been observed taking prey in the wild, nor is there any record of prey having been found in spruce-fir moss spider webs. The abundant springtails (small wingless insects in the order Collembola) found in moss mats with the spiders provide the most likely source of food. The spiders have been observed to take springtails in captivity (David Hodge, Louisville Zoological Park, pers. comm. 1992).

Mating behavior has been described in detail (Coyle 1985). Females of the spruce-fir moss spider are known to lay eggs in June (Coyle 1981). The egg sac of the species is thin-walled, nearly transparent, and generally contains only 7 to 9 eggs (Coyle 1981). The female remains with the egg sac and, when disturbed, will carry the sac with her fangs. Coyle (1997) hypothesized that the ability of the female to move the egg sac may be useful not only in protecting the eggs from predators but also in repositioning the egg sac to protect it from microhabitat changes within the web. Development and evaporative water loss by early instar (a stage between molts) spiderlings within the egg sac are likely dependent on temperature and humidity levels. The spiderlings emerge during September (Coyle 1981). It has been estimated that it may take at least two to three years for spruce-fir moss spiders to reach maturity (Coyle 1985). The life span of the spruce-fir moss spider is currently unknown. Many species of spiders live for only one season. But, like other "tarantulas," spruce-fir moss spiders molt (shed their skin) continuously through life, which means they can keep growing and can live for several years.

Modes of dispersal of spiderlings from the parental moss mats are unknown. Ballooning is a possibility since males of *M. idahoana* have been collected as "windblown fallout" on snow fields on Mt. Rainier (Coyle 1981). Ballooning spiders use a sheet of silk played out into a wind current as a kite to carry them into the air. Ballooning spruce-fir moss spiders have not been collected. If they do balloon, they would be capable of an effective mode of dispersal over

long distances. Even short-range dispersal between moss mats has not been documented for this species. Pit fall trap and Berlese funnel sampling done in the area of the Mount LeConte population did not yield any specimens of the spruce-fir moss spider (Lambden *et al.* 1994).

Possible predators and competitors of the spruce-fir moss spider include pseudoscorpions, centipedes, carabid beetles, and other spiders. A number of other species of spiders are commonly found in the same moss as the spruce-fir moss spider (Service 1998).

### Threats

The majority of the high-elevation spruce-fir forests of the Southeast have suffered extensive changes and declines in size and/or vigor during the past century, likely as a result of a number of factors, including storm damage, site deterioration due to the logging and burning practices of early 1900s (Peart *et al.* 1992), atmospheric pollution (Johnson *et al.* 1992), exposure shock (Nicholas *et al.* 1992), climate changes, and other factors not yet fully understood. However, the primary threat to, and reason for, the recent decline of the spruce-fir moss spider at all of the sites from which it has been recorded appears to be associated with the loss of suitable moss habitat, due primarily to the loss of mature Fraser firs (Coyle, *in litt.*, 1991, 1999; Harp 1991, 1992; Service 1998). The spruce-fir moss spider appears to be very sensitive to desiccation and requires situations of high and constant humidity. The loss of mature Fraser firs, the dominate canopy species in the forest stands where the spider has been found, leading to increased light and temperature and decreased moisture on the forest floor (resulting in drying out of the moss mats), appears to be the major cause for the loss of the spruce-fir moss spider on Mount Mitchell and the recent decline of the Mount Collins, Clingmans Dome, and a portion of the Mount LeConte populations (Harp 1991, 1992). It is also likely the major factor limiting the species' distribution on Roan Mountain, Grandfather Mountain, and Mount Buckley. Mature Fraser firs on all of these mountains have suffered extensive mortality in the last few decades, primarily due to infestation by the balsam wooly adelgid (*Adelges picea* (Ratzeburg) (Homoptera, Adelgidae)). The balsam wooly adelgid is a nonnative insect pest believed to have been introduced into the Northeastern United States from Europe around 1900 (Kotinsky 1916, Eagar 1984). The adelgid was first detected in North Carolina on Mount Mitchell (the

type locality for the spruce-fir moss spider) in 1957 (Speers 1958), though it was likely established at that site as early 1940. From Mount Mitchell, the adelgid spread to the Fraser fir stands throughout the Southern Appalachians (Eagar 1984). All ages of fir trees are attacked by the adelgid, but damage is generally minimal until the trees reach maturity, at around 30 years of age (Hoffard *et al.* 1990). Most mature Fraser firs are easily killed by the adelgid (Amman and Speers 1965), with death occurring within 2 to 7 years of the initial infestation (Eagar 1984). The death of the fir trees and the resultant opening of the forest canopy causes the remaining trees to be more susceptible to wind and other storm damage. The adelgid is transported and spread primarily by the wind but may also be spread by contaminated nursery stock; on the fur or feathers of animals; or by humans on contaminated clothes, equipment, or vehicles (Eagar 1984). All efforts to control the spread of the adelgid have failed thus far.

All existing data (Coyle 1981, 1997, 1999; Harp 1991, 1992) indicate that suitable habitat for the spruce-fir moss spider is extremely limited and restricted to small areas of rock outcrops occurring in forest stands dominated by fir trees, providing the shelter and organic substrata required by the spider. This restricted range of each of the surviving populations of the spruce-fir moss spider also makes it extremely vulnerable to extirpation from a single event or activity, such as a severe storm, wildfire, land-clearing or timber operation, pesticide/herbicide application, etc. In addition, the spider and the moss mats it inhabits are very fragile and easily destroyed by human trampling or other disturbance. Many of the high-elevation areas where the spider occurs are frequented by tens of thousands of visitors each year. Coyle (1999) suggested that boulder climbing by visitors may have been one of the factors contributing to the scarcity of suitable moss habitat for the spider in areas on Roan Mountain. Because of their small size, disturbance of the moss mats or damage to the surrounding vegetation shading the mats could result in the extirpation of entire spruce-fir moss spider populations and/or population fragments.

#### Previous Federal Actions

On December 31, 1992, we notified (in writing) appropriate Federal, State, and local government agencies, landowners, and individuals knowledgeable about this or similar species that a status review was being conducted and that the species might be

proposed for Federal listing. We received ten written comments. The NPS, the North Carolina Division of Parks and Recreation, and three private individuals (including the owner of the site containing the Avery/Caldwell County, North Carolina, population) expressed strong support for the potential listing of the spruce-fir moss spider as an endangered species. The U.S. Soil Conservation Service, Tennessee Wildlife Resources Agency, Tennessee Department of Environment and Conservation, Tennessee Valley Authority, and the North Carolina Department of Agriculture stated that they had no new or additional information on the species or threats to its continued existence. We received no comments opposing the potential listing of the spruce-fir moss spider.

On August 30, 1993, we classified the spruce-fir moss spider as a category 1 candidate based on the results of status surveys, funded by the NPS and us, documenting significant habitat loss and increased threats to the species throughout its range (Harp 1991, 1992). At that time, category 1 represented those species for which we had substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

On January 27, 1994, we published in the **Federal Register** (59 FR 3825) a proposal to list the spruce-fir moss spider as an endangered species without designating critical habitat. The proposal provided information on the species' range, biology, status, and threats to its continued existence and a proposed determination that designation of critical habitat was not prudent for the species because such designation would not be beneficial and could further threaten the spruce-fir moss spider. Through associated notifications, we invited comments on the proposal and factual reports or information that might contribute to the development of a final rule. We contacted and requested comments from appropriate Federal and State agencies, county governments, scientific organizations, individuals knowledgeable about the species or its habitat, and other interested parties. We published a legal notice, which invited general public comment, in the following newspapers: The *Avery Journal*, Newland, North Carolina, February 10, 1994; the *News-Topic*, Lenoir, North Carolina, February 10, 1994; the *Watauga Democrat*, Boone, North Carolina, February 16, 1994; the *Smoky Mountain Times*, Bryson City, North Carolina, February 10, 1994; and the *Mountain Press*, Sevierville,

Tennessee, February 11, 1994. We received ten written comments. Six of them expressed strong support for the findings presented in the proposed rule and listing of the species as proposed; three either expressed concurrence with the data presented in the proposed rule and/or provided additional information but expressed neither support for nor opposition to the listing; and one comment opposed the listing, stating that the "scientific community, and the Service in particular, needs to recognize that extinction has always been a continuing process and will continue to be so."

Following our review of all the comments and information received throughout the listing process, by final rule (60 FR 6968) dated February 6, 1995, we listed the spruce-fir moss spider as endangered. We addressed all the comments received throughout the listing process and/or incorporated changes into the final rule as appropriate. That decision included a determination that the designation of critical habitat was not prudent for the spruce-fir moss spider because, after a review of all the available information, we determined that such designation would not be beneficial to the species and that designation of critical habitat could further threaten the spider (see "Prudency Determination" section).

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging the not prudent critical habitat determinations for four species in North Carolina—the spruce-fir moss spider, Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and submit to the **Federal Register**, by October 1, 2000, if appropriate, withdrawal of the existing not prudent determination, together with a new proposed critical habitat determination. If, upon consideration of all available information and comments, we determine that designating critical habitat is not prudent for the spruce-fir moss spider, we have agreed to submit a notice of that finding to the **Federal Register** by April 1, 2001. If we determine that designation of critical habitat is prudent for the spruce-fir moss spider, we have agreed to send a

final rule of this finding to the **Federal Register** by July 1, 2001.

This proposal is the product of our reexamination of our prudency determination for the spruce-fir moss spider and reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a "not prudent" determination. If additional information becomes available on the species' biology and distribution and threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

#### Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that 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 activity and the 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 our February 6, 1995, final rule, we determined that both situations applied to the spruce-fir moss spider.

A critical habitat designation has no effect on situations where a Federal agency is not involved. The regulations that provide protection for critical habitat come into play through section 7 of the Act. Requirements under section 7 of the Act apply only to Federal actions and activities. They require Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. Regulations for the implementation of section 7 of the Act (50 CFR 402.2) provide for both a "jeopardy" standard and an "adverse modification or destruction of critical habitat" standard. 50 CFR 402.2 defines "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of both the "survival and recovery" of a listed species in the wild

by reducing the reproduction, numbers, or distribution of that species. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the "survival and recovery" of a listed species. These regulations require that the adverse modification or destruction of critical habitat analysis, like the jeopardy analysis, consider the detrimental effects of a proposed Federal action to both the survival and recovery of the listed species. Because of the extremely restricted range and limited amount of suitable habitat available to the spruce-fir moss spider, we determined in the February 6, 1995, final rule that any action that would likely result in the destruction or adverse modification of the species' habitat would also likely jeopardize the species' continued existence. Since Federal actions resulting in jeopardy are also prohibited by section 7, we determined that designation of critical habitat would not provide any additional protection benefitting the species beyond that provided by the jeopardy standard.

Further, although we had no documented evidence of collecting or other human disturbance (prior to publication of the proposed rule to list this tiny tarantula as endangered, the species was largely unknown to the general public), we were concerned that the rarity and uniqueness of this spider could generate interest in the species. The low numbers, slow reproductive rate, and restricted range of the spruce-fir moss spider make it unlikely that its populations could withstand even moderate collecting pressure (adapted from Harp 1992) or the habitat disturbance that would result from people visiting its habitat. Accordingly, in the 1995 final rule, we determined that the designation of critical habitat, and the associated publication of maps and descriptions of critical habitat, could increase the vulnerability of the species to collecting or other disturbance.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For instance, in *Conservation Council for Hawaii v. Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the "increased threat" rationale for a "not prudent" determination without specific evidence of the threat to the species at issue 2 F. Supp. 2d 1280 (D. Hawaii 1998)). And in *Natural Resources Defense Council v. U.S. Department of the Interior*, the United States Court of Appeals for the

Ninth Circuit ruled that the Service must balance, in order to invoke the "increased threat rationale," the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the spruce-fir moss spider is extremely vulnerable to unrestricted collection or disturbance of its habitat and that these threats might be increased by the publication of critical habitat maps and further dissemination of location and habitat information. However, at this time we do not have specific evidence of taking, collection, trade, or other unauthorized human disturbance of the spruce-fir moss spider or any similarly situated species. Furthermore, we acknowledge that some educational or informational benefit may derive from designation. Consequently, we hereby propose to withdraw our previous determination that the identification of critical habitat can be expected to increase the degree of threat to the species.

Courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection besides designation, even if it offers potentially greater protection to the species, does not justify a not prudent finding *Conservation Council for Hawaii v. Babbitt* 2 F. Supp. 2d 1280.

Accordingly, we withdraw our previous determination that designation of critical habitat will not benefit the spruce-fir moss spider. It is true that we are already working with the NPS, USFS, the owner of Grandfather Mountain, and others in carrying out research and conservation activities for the spruce-fir moss spider, and these entities are fully aware of the species' location and habitat requirements, as currently known. However, as stated above, some educational or informational benefit may result from designating critical habitat. Therefore, we propose that designation of critical habitat is prudent for the spruce-fir moss spider.

#### Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas

are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations (50 CFR 424.02 (j)) define "special management considerations or protection" to mean any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

Section 4(b)(2) of the Act requires that we base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

## Methods

The proposed areas of critical habitat described below constitute our best assessment of the areas needed for the conservation and recovery of the spruce-fir moss spider in accordance with the goals outlined in our recovery plan for the species (Service 1998), and are based on the best scientific and commercial information currently available to us concerning the species' known present and historic range, habitat, biology, and threats. All of the areas we propose to designate as critical habitat are within what we believe to be the geographic area occupied by the spruce-fir moss spider and include all known surviving occurrences of the species. Despite extensive surveys and ongoing research, we currently are not aware of any areas outside the geographical area occupied by the spruce-fir moss spider that are essential for the conservation of the spider. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available that indicates that other areas within the spruce-fir moss spider's historic range that are essential to the conservation of the species, we will revise the proposed

critical habitat or designated critical habitat for the spruce-fir moss spider accordingly.

## Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements 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 and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering areas for designation as critical habitat, we are required to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12(b)). Although additional information is needed to better define the habitat requirements of the species, particularly the microhabitat requirements, based on the best available information, the primary constituent elements essential for the conservation of the spruce-fir moss spider are:

1. Fraser fir or fir-dominated spruce-fir forests at and above 1,646 m (5,400 ft) in elevation.
2. Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium*, and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

As a result of the massive Fraser fir die-offs and associated loss of moss habitat for the spruce-fir moss spider, the remaining areas of suitable habitat for the spider exist only in scattered patches, ranging from a single rock outcrop to scattered rock outcrop sites (see "Background" section). Due to the patchiness and small size of the areas providing suitable habitat for the spruce-fir moss spider, we have elected to propose an inclusive area on each of the mountain peaks still providing

habitat for the species as critical habitat rather than attempt to identify each individual site separately.

Regulations at 50 CFR 424.12(c) require that we define the specific limits of critical habitat by using reference points and lines as found on standard topographic maps of the area(s). Because of the small size and limited number of suitable habitat patches and for ease of reference, we did not map critical habitat in sufficient detail to exclude lands unlikely to contain all of the primary constituent elements essential for conservation of the spruce-fir moss spider. Consequently, the areas we are proposing as critical habitat include areas of unsuitable habitat, for example, fir or fir-dominated forests without rock outcrops, rock outcrops without suitable moss or liverwort mats, spruce or hardwood forests with or without rock outcrops, areas dominated by early herbaceous vegetation, and other habitat types that do not provide the habitat or microhabitat required by the spider. Federal actions limited to these other habitat types, therefore, would not trigger a section 7 consultation. Please note, however, that any activity authorized, funded, or carried out by a Federal agency that has a potential to affect the constituent elements of designated critical habitat or to destroy or adversely modify areas proposed as critical habitat, regardless of the activity's location in relation to designated or proposed critical habitat, will require a consultation or conference, respectively, with us, as required under the provisions of section 7 of the Act (see "Effects of Critical Habitat Designation" section).

## Proposed Critical Habitat Designation

Proposed critical habitat includes spruce-fir moss spider habitat throughout the species' existing range in the United States. Lands proposed are under private and Federal ownership. Lands proposed as critical habitat have been divided into four critical habitat units. Areas proposed for designation as critical habitat and their ownership are described below.

### *Unit 1: Swain County, North Carolina, and Sevier County, Tennessee*

Unit 1 encompasses all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The

Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

*Unit 2: Sevier County, Tennessee*

Unit 2 encompasses all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.

*Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee*

Unit 3 encompasses all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.

Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina.

Unit 4 encompasses all areas of privately owned Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

**Effects of Critical Habitat Designation**

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under

section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat on Grandfather Mountain will not have any regulatory effect on private or State activities in these areas unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant, if applicable, in identifying and resolving potential conflicts. Conference reports resulting from these discussions provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat are prepared according to 50 CFR 402.14 as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If this proposal is finalized, activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect designated critical habitat of the spruce-fir moss spider will require consultation under section 7 of the Act. However, section 7 of the Act also requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species and to consult with us on any action that may affect a listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce

appreciably the likelihood of both the survival and recovery of a listed species' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 requires Federal agencies also to ensure that activities they authorize, fund, or carry out do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery of the species" (50 CFR 402.02). Common to the definitions of both "jeopardy" and "destruction or adverse modification of critical habitat" is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of surviving populations of the spruce-fir moss spider, the species' restricted range, and the limited amount of suitable habitat available to the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the spruce-fir moss spider, this designation would not be likely to change the outcome of section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate, in any proposed or final regulation that designates critical habitat, those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the spruce-fir moss spider is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to, the carrying out or issuance of permits for construction, recreation, and development; pesticide/herbicide applications for the control of noxious insects or weeds; controlled burns; timber activities; and other activities that could result in the removal or damage of high-elevation fir forest canopy that is sheltering moss mats or damage to the moss mats themselves.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities



will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

#### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas identified above as critical habitat prior to a final determination. When a draft of the economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

#### Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we are required to assess the effects of critical habitat designations on tribal land and tribal trust resources. We did not propose any tribal land for designation as critical habitat, and we do not anticipate any effects on tribal trust resources if this proposal is made final.

#### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

2. Specific information on the numbers and distribution of the spruce-fir moss spider and what habitat is essential to the conservation of the species and why;

3. Information on specific characteristics of habitat essential to the conservation of the spruce-fir moss spider;

4. Land use practices and current or planned activities in the subject areas and their possible effects on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

6. Economic and other values associated with designating critical habitat for the spruce-fir moss spider, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, bird watching, enhanced watershed protection, improved air quality, "existence values," and reductions in administrative costs); and

7. Potential adverse effects to the spruce-fir moss spider and/or its habitat associated with designating critical habitat for the species; *e.g.*, increased risk to species from collecting or the destruction of its habitat.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (see "Addresses" section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such

review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the State Supervisor, Asheville Field Office (see Addresses section). Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this document easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the document contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

#### Required Determinations

##### Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).



(a) This rule will not have an annual economic effect of \$100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The spruce-fir moss spider was listed as an endangered species in 1995. Since that time, we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the spruce-fir moss spider.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal

agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" to the species under the Act.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a

Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spruce-fir moss spider since the listing in 1995. As shown in Table 1 (below), no additional effects on agency actions are anticipated to result from critical habitat designation. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

TABLE 1.—IMPACTS OF SPRUCE-FIR MOSS SPIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only <sup>1</sup>	Additional activities potentially affected by critical habitat designation <sup>2</sup>
Federal Activities Potentially Affected <sup>3</sup>	Activities such as carrying out, or issuing permits, authorization or funding for, utility construction; construction of recreational facilities; development activities; pesticide/herbicide applications; logging activities; or other activities that could result in damage to the moss mats or removal or damage to the high-elevation fir forest canopy that is sheltering moss mats providing habitat for the species.	None.
Private and other non-Federal Activities Potentially Affected <sup>4</sup>	Activities occurring on Federal lands or that require a Federal action (permit, authorization, or funding) and that involve such activities as damaging or destroying spruce-fir spider habitat, whether by mechanical or other means (scientific or other collecting, timber harvest, right-of-way access across Federal land, etc.).	None.

<sup>1</sup> This column represents the activities potentially affected by listing the spruce-fir moss spider as an endangered species (February 6, 1995; 60 FR 6968) under the Endangered Species Act.

<sup>2</sup> This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.

<sup>3</sup> Activities initiated by a Federal agency.

<sup>4</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies currently are required to ensure that their activities do not jeopardize the continued existence of the species and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of proposed critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

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

In the draft economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat

will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of proposed critical habitat.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the

designation of critical habitat will not have any additional effects on these activities in areas of critical habitat within the geographical range occupied by the species.

*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.):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal

governments or the private sector of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

#### Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by critical habitat designation; however, we expect no regulatory effect from this designation since all proposed areas are considered to be within the geographical range occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the spruce-fir moss spider as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spruce-fir moss spider.

#### Federalism

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with,

appropriate State resources agencies in North Carolina and Tennessee. We will continue to coordinate any future designation of critical habitat for the spruce-fir moss spider with the appropriate State agencies. The designation of critical habitat for the spruce-fir moss spider imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

#### Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

#### 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 44 U.S.C. 3501 et seq. This rule will not impose new record-keeping or reporting requirements on State or local

governments, individuals, businesses, or organizations.

#### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited in this proposed rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

#### Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

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

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

#### Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

#### PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for the "Spider, spruce-fir moss" under "ARACHNIDS" to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
ARACHNIDS							
*	*	*	*	*	*		*
Spider, spruce-fir moss.	<i>Microhexura montivaga</i> .	U.S.A. (NC, TN) .....	NA .....	E	576	17.95 (g)	NA
*	*	*	*	*	*		*

3. Amend § 17.95 by adding paragraph (g) to read as follows:

§ 17.95

Critical habitat-fish and wildlife.

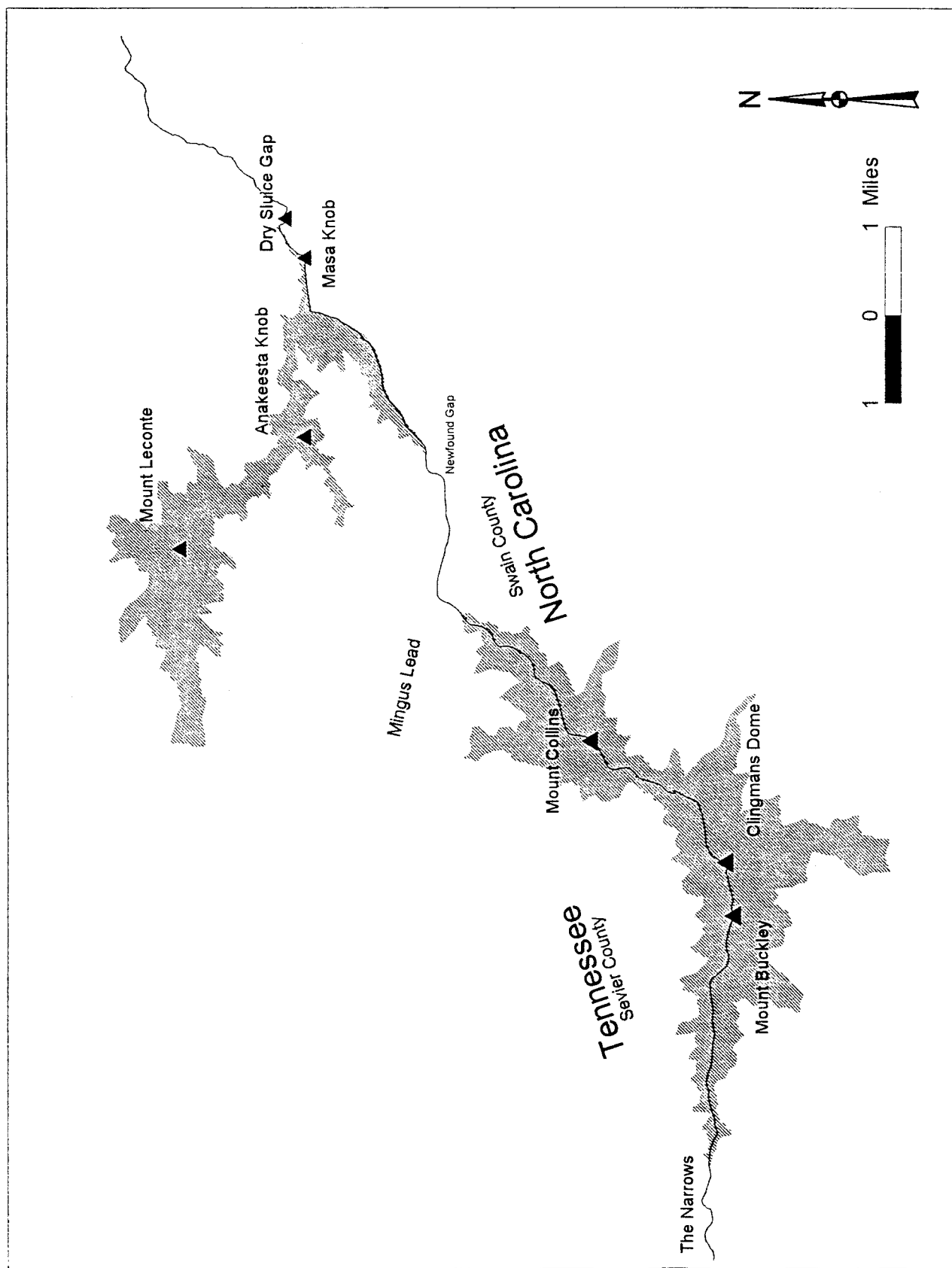
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(g) *Arachnids.*  
Spruce-fir moss spider (*Microhexura montivaga*)

1. Critical habitat units proposed for designation as critical habitat and their

ownership are described below and depicted in the following maps.

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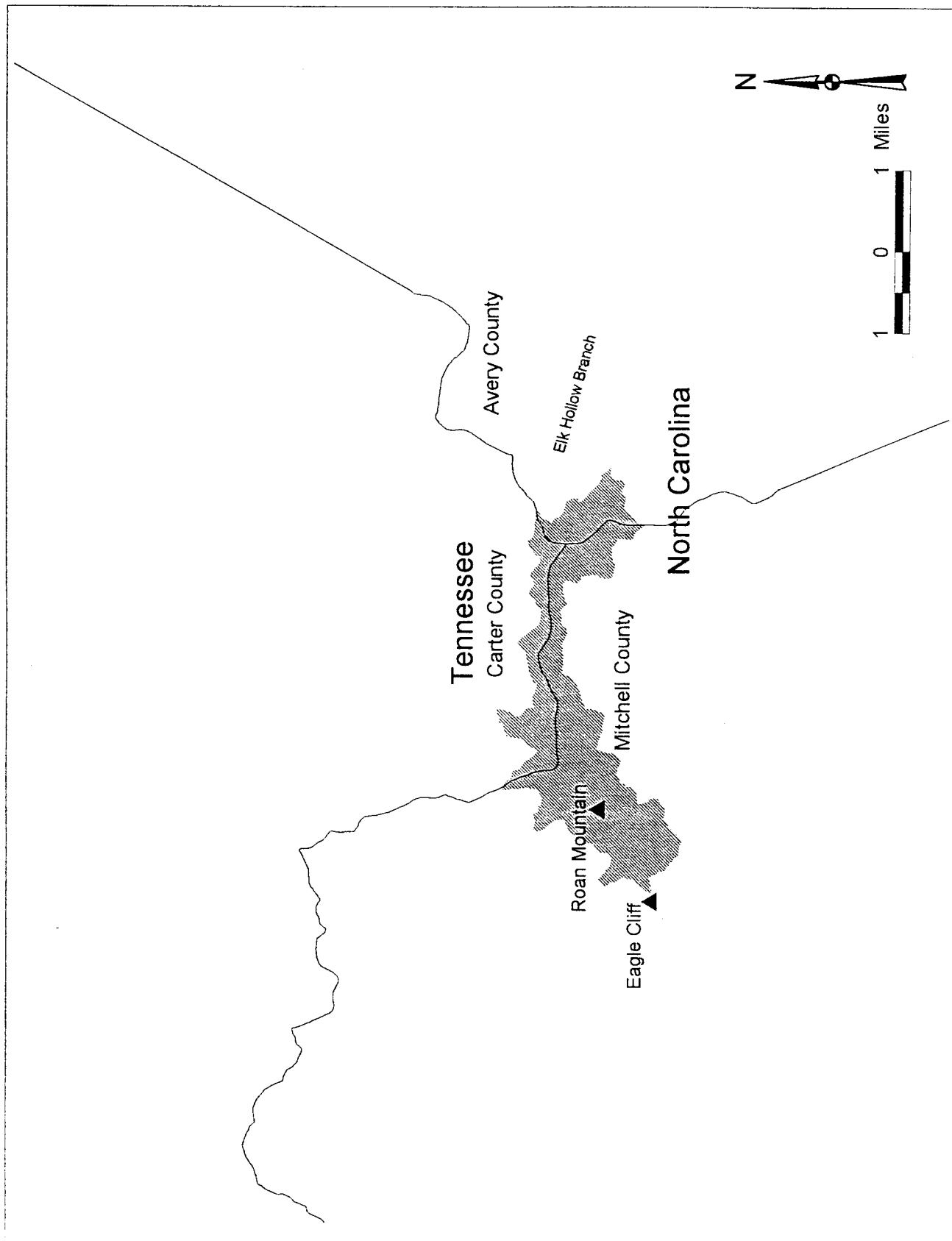


Unit 1: Swain County, North Carolina, and Sevier County, Tennessee—all

portions of the GSMNP bounded to the north and to the south of the North

Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour,

from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The	Narrows and west of Jenkins Knob, North Carolina, and Tennessee. Unit 2: Sevier County, Tennessee—all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the	1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.
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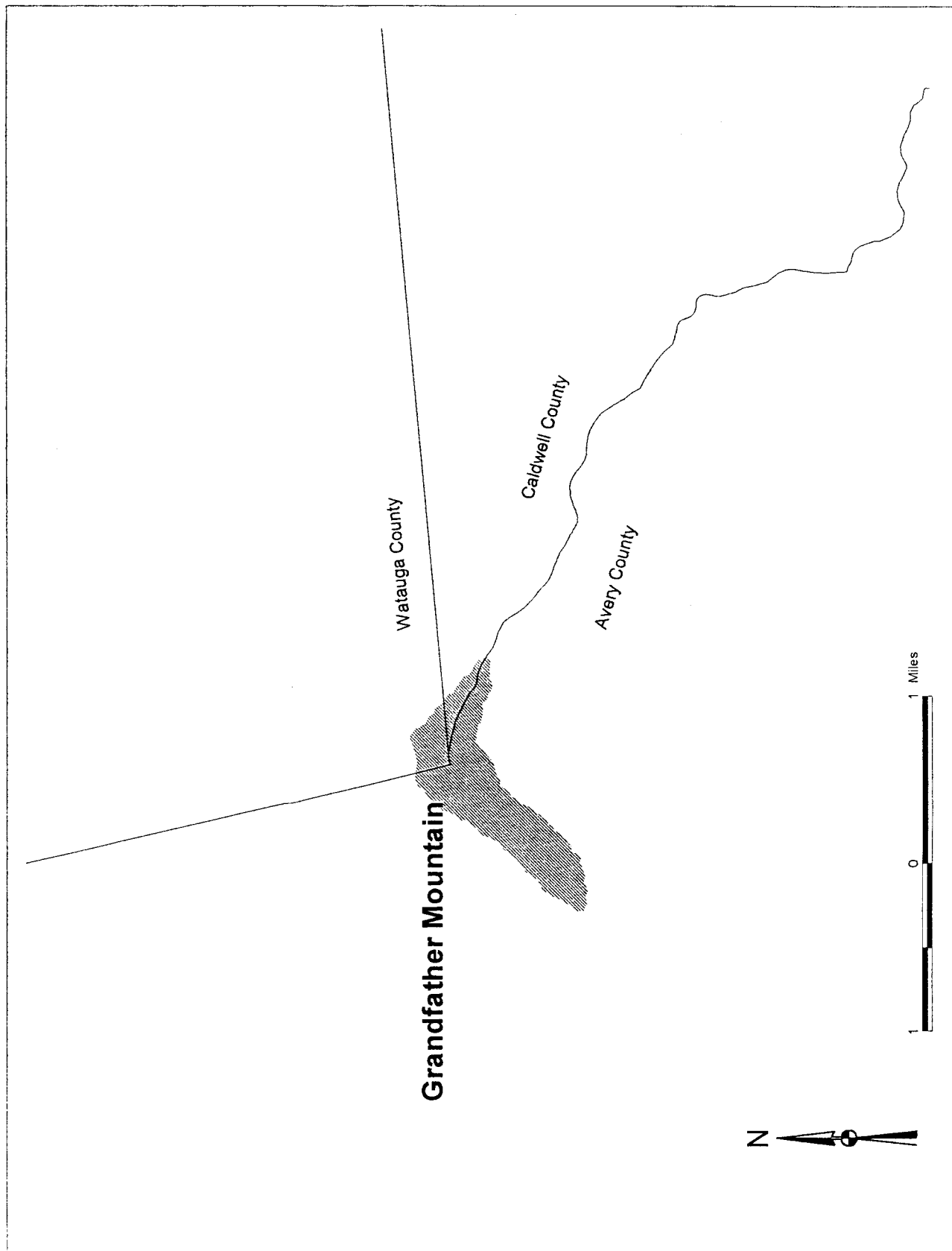
Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County,

Tennessee—all portions of the Pisgah National Forest in North Carolina and

the Cherokee National Forest in Tennessee, bounded to the north and to

the south of the North Carolina/ Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with	the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the	1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.
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Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina—all areas of

Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

2. Within these areas, the primary constituent elements include:

i) Fraser fir or fir-dominated spruce-fir forests at and above 1,646-m (5,400-ft) in elevation; and

ii) Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium*, and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

3. Existing human structures and other features not containing all of the primary constituent elements are not considered critical habitat.

Dated: September 28, 2000.

**Kenneth L. Smith,**

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

[FR Doc. 00-25671 Filed 10-5-00; 8:45 am]

BILLING CODE 4310-55-C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 000927275-0275-01; I.D. 082800F]

RIN 0648-AO31

#### Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 12

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing a rule to implement portions of Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) prepared Amendment 12 to provide procedures for developing rebuilding plans for overfished species, for setting guidelines for contents of rebuilding plans, and for sending rebuilding plans to NMFS for review and approval/disapproval. Amendment 12 would also declare all Pacific coast groundfish to be fully utilized by domestic harvesters and processors. This action would remove references to foreign and joint

venture fishing in the groundfish regulations, and is intended to update the FMP and its implementing regulations to reflect the current status of the fishery.

**DATES:** Comments must be submitted in writing by November 20, 2000.

**ADDRESSES:** Send comments to Donna Darm., Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 12 to the Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to William Stelle, Jr. or Rebecca Lent.

#### FOR FURTHER INFORMATION CONTACT:

William Robinson at: phone, 206-526-6140; fax, 206-526-6736, and email, [bill.robinson@noaa.gov](mailto:bill.robinson@noaa.gov) Svein Fougner at: phone, 562-980-4000; fax, 562-980-4047; and email, [svein.fougner@noaa.gov](mailto:svein.fougner@noaa.gov)

**Electronic Access:** This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: <<<http://www.access.gpo.gov/su-docs/aces/aces140.html>>>

**SUPPLEMENTARY INFORMATION:** NMFS is proposing this rule to implement the portions of Amendment 12 that declare the West Coast groundfish resource fully utilized by domestic harvesting and processing entities. Minor regulatory changes would be needed to make the regulations at 50 CFR part 660 consistent with Amendment 12. This proposed rule is based on the Council's recommendations, under the authority of the Pacific Coast Groundfish FMP and the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized here; further details appear in the EA/RIR prepared by the Council for Amendment 12.

#### Background

In September 1998, the Council adopted Amendment 11 to the FMP to

make the FMP consistent with revisions to the Magnuson-Stevens Act. Among other things, Amendment 11 set control rules to define rates of "overfishing" and set defined levels at which managed stocks are considered "overfished." Amendment 11 was approved and incorporated into the FMP in March 1999.

While implementing Amendment 11 provisions for rebuilding overfished stocks, the Council determined that it needed to set procedures within the groundfish FMP for developing overfished species rebuilding plans and for providing NMFS with the opportunity to review and approve/disapprove those plans. Amendment 12 provides a process by which the Council will develop overfished species rebuilding plans during its annual specifications and management measures process.

During the Council's two-meeting process for setting annual specifications and management measures (usually September and November,) the Council would make overfished species rebuilding plans available for public review, and would incorporate measures to implement those plans within the annual specifications and management measures. Rebuilding plan contents are defined in the FMP and rely upon the Council's annual stock assessment and review process. Once the Council approves a new rebuilding plan, it would submit that plan for NMFS review and approval/disapproval, generally at the same time that it submits its annual specifications package for review and approval/disapproval. This process would ensure that rebuilding efforts are incorporated into fishery management measures as quickly and efficiently as practicable, and that they are consistent with management measures for other groundfish species.

Procedural matters developed in Amendment 12 for overfished species rebuilding plans provide the Council with direction for future activities, are not regulatory in nature, and so do not result in any change to regulations. However, Amendment 12 also announces that the Pacific Coast groundfish resource is fully utilized by domestic harvesting and processing interests and provides an opportunity for NMFS to update its regulations to recognize this fully utilized status.