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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2018-0074; 4500030113]

RIN 1018-BD43

Endangered and Threatened Wildlife and Plants; Section 4(d) Rule for Trispot Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose a rule under section 4(d) of the Endangered Species Act of 1973 (Act), as amended, for the trispot darter (*Etheostoma trisella*), a fish from Alabama, Georgia, and Tennessee. This rule would provide measures necessary and advisable to conserve the species, which we list as a threatened species under the Act in a separate rulemaking published in today's *Federal Register*.

DATES: We will accept comments 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: You may submit comments 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-2018-0074, 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-2018-0074, 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).

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; facsimile 251–441–6222. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On October 4, 2017, we published a proposed rule in the *Federal Register* (82 FR 46183) to list the trispot darter as a threatened species under the Act (16 U.S.C. 1531 *et*

seq.). Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species, as well as information on the trispot darter's taxonomy, habitat, life history, historical and current distribution, population estimates, and status, and a summary of factors affecting the species. In addition, a thorough review of the taxonomy, life history, and ecology of the trispot darter is presented in the species status assessment (SSA) report, available on <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0074.

Elsewhere in today's *Federal Register*, we publish (1) a final rule to list the trispot darter as a threatened species under the Act ("final listing rule"), and (2) a proposed rule to designate critical habitat for the trispot darter under the Act.

Background

The trispot darter is a freshwater fish found in the Coosa River System, above the fall line in the Ridge and Valley ecoregion of Alabama, Georgia, and Tennessee. This fish has a historical range from the middle to upper Coosa River Basin with recorded collections in tributaries to the Oostanaula, the mainstem Coosa, the Conasauga, and the Coosawattee Rivers, and their tributaries. Currently, the trispot darter is known to occur in Little Canoe Creek and tributaries (Coosa River), Ballplay Creek tributaries (Coosa River), Conasauga River and tributaries, and Coosawattee River and one tributary.

The trispot darter is a small-bodied, benthic fish ranging in size from 1.3 to 1.6 inches (in) (3.3 to 4.1 centimeters (cm)) as an adult. The darter has three prominent black dorsal saddles, a pale undersurface, and a dark bar below the eye. Scattered dark blotches exist on the fins' rays. During breeding season, males are a reddish-orange color and have green marks along their sides and a red band through their spiny dorsal fin.

The trispot darter 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 river margins and lower reaches of tributaries with slower velocities. Trispot darters are associated with detritus, logs, and stands of water willow, and the substrate 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. In late fall (approximately late November through early December), the species shifts its habitat preference and begins movement toward spawning areas; this is most likely stimulated by precipitation, but temperature changes and decreasing daylight hours may also provide cues to begin migration. The fish move from the main channels into tributaries, 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 in (30 cm) or less); moderate leaf litter covering mixed cobble, gravel, sand, and clay; a deep layer of soft silt over clay; and emergent vegetation. Trispot darters predominantly feed on mayfly nymphs and midge larvae and pupae.

A multitude of natural and anthropogenic factors that affect aquatic systems may impact the status of this species. The largest threat to the future viability of the trispot darters is habitat degradation from stressors that influence four habitat elements: water quality, water quantity, instream habitat, and habitat connectivity. All of these factors are exacerbated by the effects of climate change. These stressors include hydrologic alteration, sedimentation, loss of connectivity, loss of riparian vegetation, and

contaminants entering the water system due to agricultural activities (such as excessive poultry litter and livestock entering streams) and urbanization within the watershed.

Provisions of Section 4(d) of the Act

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. Under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit, by regulation with respect to any threatened species of fish or wildlife, any act prohibited under section 9(a)(1) of the Act. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.31, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

For any threatened species, the Service may develop a protective regulation that is specific to the conservation needs of that species. The courts have recognized the extent of the Secretary's discretion to develop prohibitions, as well as exclusions from those prohibitions, that are appropriate for the conservation of a threatened species. For example, the Secretary may decide not to prohibit take, or to put in place only limited take prohibitions (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis

60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the protective regulation for a threatened species need not address all the threats to the species. As noted by Congress when the Act was initially enacted, once an animal is listed as a threatened species, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to prohibit both taking and importation but allow the transportation of such species, as long as the measures will serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act.

Proposed 4(d) Rule for the Trispot Darter

Under this proposed section 4(d) rule, all prohibitions and provisions of section 9(a)(1) would apply to the trispot darter, except the following actions would not be prohibited:

- (1) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species.
- (2) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known trispot darter spawning habitat, that take place between May 1 and December 31 to avoid the time period when the trispot darter will be found within such habitat. These projects can be accomplished using a

variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Second- to third-order headwater streams reconstructed in this way would offer suitable habitats for the trispot darter and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species' for spawning, rearing, growth, feeding, migration, and other normal behaviors.

(3) Streambank stabilization projects that utilize bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These bioengineering methods must not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures, but rip-rap, rock baskets, or gabion structures could be used in conjunction with the bioengineering methods.

(4) Silviculture practices and forest management activities that:

(a) Implement highest-standard best management practices, particularly for Streamside Management Zones, stream crossings, and forest roads;

(b) Comply with forest practice guidelines related to water quality standards, or comply with Sustainable Forestry Initiative/Forest Stewardship Council/American Tree Farm System certification standards for both forest management and responsible fiber sourcing;

(c) Remove logging debris or any other large material placed within natural or artificial wet weather conveyances or ephemeral, intermittent, or perennial stream channels; and

(d) When silviculture practices and forest management activities involve trispot darter spawning habitat, are carried out between May 1 and December 31 to avoid the time period when the trispot darter will be found within spawning habitat.

(5) Development or other activities where transportation corridors cross streams that:

(a) Include the installation of structures engineered to allow organism passage at stream crossings, with specific consideration for fish passage; and

(b) Are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within spawning habitat, if such habitat is affected by the activity.

(6) Activities carried out under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture; or similar projects throughout the range of the trispot darter that may be created in the future that:

(a) Do not alter habitats known to be used by the trispot darter beyond the fish's tolerances; and

(b) Are performed between May 1 and December 31 to avoid the time period

when the trispot darter will be found within its spawning habitat, if such habitat is affected by the activity.

Although these management activities may result in some minimal level of harm or temporary disturbance to the trispot darter, overall, these activities benefit the subspecies by contributing to conservation and recovery.

Across the species' range, instream habitats have been degraded physically by sedimentation, direct channel disturbance, pollution, and loss of connectivity. The activities proposed in this rule would correct some of these problems, creating more favorable habitat conditions for the species. These provisions are necessary and advisable because the species needs active conservation to improve the quality of its habitat and, absent protections, the species is likely to become in danger of extinction in the foreseeable future. These provisions can encourage cooperation by landowners and other affected parties in implementing conservation measures. This would allow for use of the land while at the same time ensuring the preservation of suitable habitat and minimizing impact on the species.

Under our regulations at 50 CFR 17.32, we may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. A permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) or consultation requirements under section 7 of the

Act, or the ability of the Service to enter into partnerships for the management and protection of the trispot darter.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition of a species through listing it results in public awareness, and leads Federal, State, Tribal, and local agencies; private organizations; and individuals to undertake conservation. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. Information about the protection required by Federal agencies, and the prohibitions against certain activities, and recovery planning and implementation and interagency consultation, are discussed in the proposed listing rule (82 FR 46183; October 4, 2017) and the final listing rule (published elsewhere in today's *Federal Register*).

Information Requested

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed 4(d) rule. We will consider all comments and information we receive during our preparation of a final 4(d) rule. Accordingly, our final decision may differ from this proposal based on specific public comments or any other new information that may become available.

We particularly seek comments concerning:

(1) Information concerning the appropriateness and scope of a 4(d) rule for the trispot darter. We are particularly interested in input from agriculture or forestry experts regarding forest management, restoration practices, water conservation, or related activities, along with the value of certified forestry and agricultural practices and of best management practices, that would be appropriately addressed through a 4(d) rule for the trispot darter.

(2) Additional provisions the Service may wish to consider for a 4(d) rule in order to manage and conserve the trispot darter.

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.

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**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

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 Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA 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 proposed 4(d) rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must 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 (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. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that, if adopted as proposed, this rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Elsewhere in today’s *Federal Register*, we published the final determination to list the trispot darter as a threatened species. That rule becomes effective 30 days after the date of publication. As a result, the trispot darter will be covered by the full protections of the Act, including the full section 9 prohibitions that make it illegal for any person subject to the jurisdiction of the United States to take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. This proposed 4(d) rule states that all prohibitions in the Act’s section 9(a)(1) would apply to the trispot darter, except regulated activities that are conducted consistent with

the conservation needs of the species as laid out above. This would result in a less restrictive regulation under the Act, as it pertains to the trispot darter, than would otherwise exist. For the above reasons, we certify that, if adopted as proposed, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a final regulatory flexibility analysis is not required.

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.

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

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.) is not required.

Energy Supply, Distribution or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, or use. For reasons discussed within this proposed rule, we believe that the rule would not have any effect on energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Takings—Executive Order 12630

In accordance with Executive Order 12630, this proposed rule would not have

significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this proposed 4(d) rule would, with limited exceptions, maintain the regulatory status quo regarding activities currently allowed under the Endangered Species Act. A takings implication assessment is not required.

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.

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 a 4(d) rule in accordance with the provisions of the Act. To assist the public in understanding the conservation needs of the species, the proposed rule identifies the prohibitions and exceptions to those prohibitions that are necessary and advisable to the conservation of the species.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed 4(d) rule does not have significant Federalism effects. A federalism summary impact statement is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government.

Government-to-Government Relationships 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 proposed rule.

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.

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

We intend to undertake an environmental assessment of this action under the authority of the National Environmental Policy Act of 1969. We will notify the public of the availability of the draft environmental assessment for this proposal when it is complete.

Authors

The primary authors of this proposed rule are the staff members of the Species Assessment Team and the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, for the reasons just described, 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 § 17.44 by revising paragraph (q) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(q) Trispot darter (*Etheostoma trisella*).

(1) *Prohibitions.* Except as noted in paragraph (q)(2) of this section, all prohibitions and provisions of section 9(a)(1) of the Act apply to the trispot darter.

(2) *Exceptions from prohibitions.* Incidental take of the trispot darter will not be considered a violation of section 9 of the Act if the take results from any of the following activities:

(i) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species.

(ii) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods,

but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(iii) Streambank stabilization projects that utilize bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(iv) Silviculture practices and forest management activities that:

(A) Implement highest-standard best management practices, particularly for Streamside Management Zones, stream crossings, and forest roads; and

(B) Comply with forest practice guidelines related to water quality standards, or comply with Sustainable Forestry Initiative/Forest Stewardship Council/American Tree Farm System certification standards for both forest management and responsible fiber sourcing.

(v) Transportation projects that provide for fish passage at stream crossings; and
(vi) Projects carried out in the species' range under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture.

* * * * *

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

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