

**BEFORE THE UNITED STATES
FISH AND WILDLIFE SERVICE**

In re: Petition For Rule to *

List the Lacy Elimia *

(*Elimia crenatella*) as *

Threatened under the Endangered *

Species Act and to Designate *

Critical Habitat for the *

Lacy Elimia. *

**FORMAL PETITION TO LIST THE LACY ELIMIA
AS A THREATENED SPECIES**

and

TO DESIGNATE CRITICAL HABITAT

Come now The Coosa-Tallapoosa Project, the Biodiversity Legal Foundation, and the Alabama Wilderness Alliance, pursuant to 16 U.S.C. § 1533(b)(7) and 50 C.F.R. §§ 424.14(a) & (b), and formally petition the United States Fish and Wildlife Service to promulgate a rule listing the Lacy Elimia (*Elimia crenatella*) as a threatened species under the Endangered Species Act (ESA). Petitioners also request that critical habitat for the Lacy Elimia be designated simultaneously with the listing of the snail as threatened.

According to a recent status review by the Fish and Wildlife Service and conducted by Paul Hartfield, sent to interested parties on August 23, 1994, the Lacy Elimia was recommended for threatened status. An earlier status review survey by the Fish and Wildlife Service, also done by Mr. Hartfield, showed that 62 species of snail in the Coosa River are critically imperiled. Hartfield, "Status Review of Aquatic Snails in the Coosa River, Alabama," U.S. Fish and Wildlife Service (Aug. 24, 1993). For the Lacy Elimia (*Elimia crenatella*), that survey concluded that listing as an endangered species is appropriate.

As stated by the world's leading expert on biodiversity and extinction, Dr. E.O. Wilson of Harvard University:

"The United States has the largest freshwater mollusk fauna in the world, especially rich in mussels and gill-breathing snails. These species have long been in a steep decline from the damming of rivers, pollution, and the introduction of alien mollusk and other aquatic animals. ... [I]mpoundment and pollution have combined to extinguish two genera and 30 species of gill-breathing snails in the Tennessee and nearby Coosa rivers." Wilson, *The Diversity of Life*, 256-57 (Belknap Press of Harvard Univ. 1992).

It is recognized by internationally-acclaimed authors and experts such as Dr. Wilson that the Coosa River Basin was once home to a world-class snail fauna and that those snails are in rapid decline and in danger of extinction, and many species have already gone extinct. Under the ESA, the Fish and Wildlife Service must take action to halt and reverse this decline; this intolerable degradation of our environment cannot continue. Legally, the Service is mandated to stop it.

In determining whether to list a species as threatened or endangered, the Secretary must look at five factors listed in § 4. Those five factors are:

"(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

"(B) overutilization for commercial, recreational, scientific, or educational purposes;

"(C) disease or predation;

"(D) the inadequacy of existing regulatory mechanisms; or

"(E) other natural or manmade factors affecting its continued existence."
16 U.S.C. § 1533(a)(1), and 50 C.F.R. § 424.11(c).

From two of the Service's own Status Reviews, it is clear that three of these five factors require listing of the Lacy Elimia. As stated in the 1993 Status Review for factors A, D, and E: (A) "Habitat modification, sedimentation, and water quality degradation are the primary causes for the decline of the Coosa River drainage snail fauna, and continue to threaten several species."

(D) "Existing laws are inadequate to protect these species." (E) For several of these species, isolation of the know populations "may result in genetic drift with each population becoming unique and vulnerable to environmental disturbance."

The Lacy Elimia is a unique species found only in the Coosa River basin in Alabama. Unfortunately, the Lacy Elimia is near extinction and requires swift protection in order to preserve and recover the species. The petitioners are organizations and people with a keen interest in the health and vitality of Alabama's rivers, aquatic ecosystems and unique species.

As shown by the reviews by the Fish and Wildlife Service, all available scientific data on the Lacy Elimia conclusively indicates that the snail is in extreme danger of extinction such that it warrants protection under the ESA as a listed threatened species. Only three populations of the snail are known, and only one of those is currently healthy. Listing of the species under the ESA is legally mandated, and such listing should begin immediately.

As for critical habitat for the Lacy Elimia, such areas are determinable at this time; it only exists in three known stream segments. The ESA states that the Secretary "to the maximum extent prudent and determinable--shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat." 16 U.S.C. § 1533(a)(3)(A). The designation of critical habitat must "coincide with the final listing decision absent extraordinary circumstances." *Northern Spotted Owl v. Lujan*, 758 F. Supp. 621, 626 (W.D. Wash. 1991). The Fish and Wildlife Service "must define the critical habitat to the maximum extent possible and to the best of its ability now using all information presently available." *Colorado Wildlife Federation v. Turner*, 23 ELR 20402, No. 92-F-884 (D. Colo. Oct. 27, 1992).

The Lacy Elimia now occurs only in Cheaha Creek, a tributary of Choccolocco Creek, and Emauhee and Weewoka Creeks, tributaries of Tallaseehatchee Creek. All these waterways are in Talladega and Clay Counties, Alabama.

As this species is a snail and all present populations are known from just three streams, critical habitat consists of those streams that still support the snail. Designation of critical habitat can be easily described by setting forth these waterways, which are all public waters of the State of Alabama and are surrounded in significant parts by the Talladega National Forest.

In accordance with 50 C.F.R. § 424.14(b)(2), the petitioners set forth the following:

(i) The administrative measures recommended are the listing of the Lacy Elimia (*Elimia crenatella*) as a threatened species under the ESA and the designation of critical habitat for the snail as those occupied segments of Cheaha, Emauhee and Weewoka Creeks.

(ii) The distribution of the Lacy Elimia is now confined to two known populations in Cheaha Creek, a tributary of Choccolocco Creek, and Emauhee and Weewoka Creeks, tributaries of Tallaseehatchee Creek. The status reviews show that the Lacy Elimia was once abundant in the Coosa River itself and in many of its tributaries; the fact that it is now found in only two populations in three tributaries shows a disastrous decline in population. Further, only the Cheaha Creek population seems to be viable as only a single individual was found in Emauhee Creek and only a small population was found in Weewoka Creek. As stated in the 1993 status review, the Lacy Elimia has suffered "irreversible loss of all known main stem Coosa River habitat" and "extirpation of two of the four known tributary populations." The report also points out that there is "vulnerability of extant populations to continuing threats." Significant PCB contamination has been recently discovered in Choccolocco Creek, which is the stream below all remaining

populations of the Lacy Elimia. Because only one population of the snail is now viable, a single similar instance of contamination or an accidental event such as a spill from a road could wipe out the species' chance for survival. A single severe drought could extinguish the species as well. Without legal protection and a recovery plan, it is unlikely that the Lacy Elimia will recover on its own, and the species could vanish at any time due entirely to accident or happenstance.

(iii) According to the status review reports, the status of the Lacy Elimia is extremely precarious, and the snail is clearly in danger of extinction.

(iv) The status reviews and their data are already in the control of the Fish and Wildlife Service. The Service's own employee, Paul Hartfield, has been responsible for collecting this data; no data contradicting the Service's own data is known. The petitioners have already provided the Service with a newspaper article describing the PCB contamination in Choccolocco Creek, where the Lacy Elimia was once abundant but is now nonexistent.

The addresses of the petitioners are as follows:

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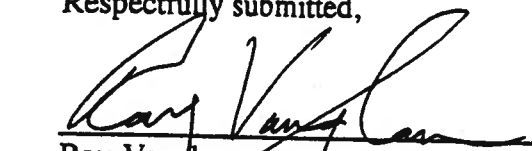
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In sum, all available scientific data on the Lacy Elimia confirm that it is a threatened species and merits protection under the ESA. We look forward to hearing from you and to

working with the Fish and Wildlife Service to expeditiously list and protect the Lacy Elimia

Dated: August 31, 1995.

Respectfully submitted,



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cc: Jackson Field Office
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