

Forestry Information Summary on Federal T&E Species

Species: **Atlantic Pigtoe** (a freshwater mussel), *Fusconaia masoni*

Federal Listing Status: Threatened.

Effective Date: December 16, 2021.

Federal Register Notice: Vol.86, No.218, [p.64000-64053](https://www.federalregister.gov/documents/2021/11/16/64400-64053). Published Nov.16, 2021.

Affected River Basins: Yadkin, Cape Fear, Neuse, Roanoke and Tar.

(See index map on page 3, and more maps in the *Federal Register* or online map viewer.)

Habitat Type: In-stream, aquatic habitat.

Stressors: Sedimentation; Flow obstruction; Disconnection of stream channel; High temperatures.

Affected NCFS Districts: D3, D4, D5, D6, D10, D11.

USF&WS Raleigh Field Office Phone Number: 919-856-4520.

Regulatory Requirements

- This aquatic species is protected under the Endangered Species Act (ESA).
- There is a “4(d)-Rule” for forestry activities. That rule includes requirements for forestry operations to remain exempt from permitting in the event of an “incidental take”.
- The forestry requirements of the 4(d)-Rule are outlined on the next page. These requirements are similar to what is already required by the North Carolina FPGs and the DWR Riparian Buffer Rules, but there are some minor differences.
- **The 4(d)-Rule requirements apply to any waterway that is occupied by the Atlantic Pigtoe, even if that waterway is not designated as “Critical Habitat”.**
- Abundant use of appropriate BMPs should help to protect this species and its habitat, to support compliance with the ESA.

Critical Habitat Designation

- Multiple large streams are designated as Critical Habitat. See the index/locator map on page 3.
- This USF&WS website link has detailed maps of Critical Habitat. You can download GIS shape-files or use the “online mapper”: <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>.
- This species may occur outside of their designated Critical Habitat.

Forest Protection / Fire Control Operations Considerations:

The NCFS and USFS operate under the authority of a fireline discharge permit with the USACE:

- Permit Condition: *“No activity is authorized under this general permit which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species.....or which will directly or indirectly destroy or adversely modify the critical habitat of such species.”*

If working along with these Critical Habitat waterways, be sure to avoid & minimize sedimentation impacts to the water. Promptly rehab the firelines. Consider using the waterway as a natural firebreak; fire will often cause less impact to a stream than sedimentation from a plowline.

***DISCLAIMER:** This information summary is only intended for awareness and education purposes. This is not a full description of all applicable regulations and does not constitute legal advice. Consult with the U.S. Fish and Wildlife Service for clarifications regarding how a forestry activity can comply with the Endangered Species Act: www.fws.gov/raleigh.*

Forest Management Operations Considerations:

- Section 404 of the Clean Water Act includes [15 federally-required BMPs](#) for roads and skid trails in wetlands and waters of the U.S. (including stream crossings), and one of those BMPs says:
“The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species.”
- When preparing forestry plans, it is recommended to reference the Critical Habitat map viewer and make the landowner aware if their tract contains or adjoins Critical Habitat, to raise the level of awareness and reinforce the importance of protecting water quality.

The Forestry 4(d)-Rule for Atlantic Pigtoe

50 CFR 17.45, (a) Atlantic Pigtoe...

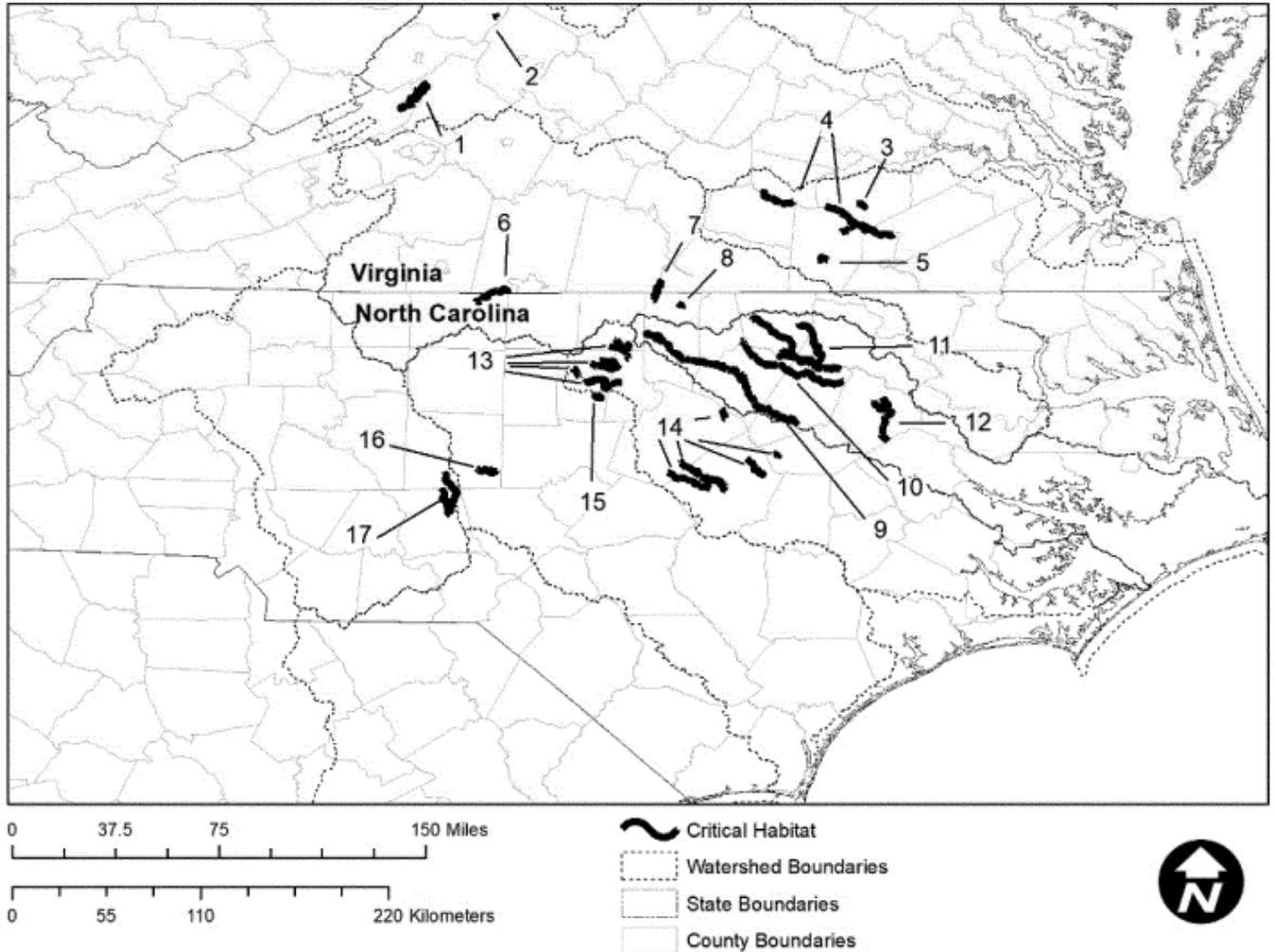
(3) Exceptions from prohibitions for specific types of incidental take. The following entities and activities that cause take that is incidental to an otherwise lawful activity are not in violation of the prohibitions:...

...(iv) Forestry-related activities, including silvicultural practices, forest management work, and fire control tactics, that implement State-approved best management practices. **In order for this exception to apply to forestry-related activities, these best management practices must achieve all of the following:**

- (A) Establish a streamside management zone alongside the margins of each waterway.
- (B) Restrain visible sedimentation caused by the forestry-related activity from entering the waterway.
- (C) Maintain native groundcover within the streamside management zone of the waterway, and promptly reestablish native groundcover if disturbed.
- (D) Limit installation of vehicle or equipment crossings of the waterway to only where necessary for the forestry-related activity. Such crossings shall:
 - (1) Have erosion and sedimentation control measures installed to divert surface runoff away and restrain visible sediment from entering the waterway;
 - (2) Allow for movement of aquatic organisms within the waterway; and
 - (3) Have native groundcover applied and maintained through completion of the forestry-related activity.
- (E) Prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the waterway.
- (F) Prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the waterway.
- (G) Prohibit obstruction and impediment of the flow of water within the waterway that is caused by direct deposition of debris or soil by the forestry-related activity.
- (H) Maintain shade over the waterway similar to that observed prior to the forestry-related activity.
- (I) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

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Index Map of Critical Habitat Units for Atlantic Pigtoe



For a detailed map viewer, visit: <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>.

(Select the “online mapper”, or you can download GIS shapefiles)