

Neuse River Compliance Association®

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May 19, 2017

U.S. Fish and Wildlife
Department of the Interior
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041 - 3803

Docket No. FWS-R4-ES-2017-0017

Reference: Comments on Proposed Rule by Fish and Wildlife Service; Threatened Species Status for Yellow Lance.

To whom it may concern:

On behalf of the Neuse River Compliance Association (NRCA) we respectfully submit the following comment regarding the Yellow Lance referenced above.

The NRCA members are comprised of local governments and other major owners of wastewater treatment facilities (see attached member list) in the Neuse River Basin. In 1998, the Neuse River was declared nutrient sensitive waters and the Neuse Management Strategy was adopted with an overall goal of a 30% reduction in total nitrogen loading to the Neuse Estuary. Our members have continued to improve water quality in the Neuse River and its estuary by reducing their nitrogen discharge as a group well over 70% since 1995.

The "Species Status Assessment Report for the Yellow Lance" identifies the Neuse River basin as an area of species habitation. However, the SSA Report establishes that the habitat of the Yellow Lance within the Neuse River Basin is limited to specific areas of the middle Neuse River Basin. The headwaters of the Neuse River are within the Corps of Engineers impoundment known as Falls Lake. That 750 square mile part of the basin has no history of occupation by the Yellow Lance and it does not provide the habitat associated with the species as set forth in the SSA Report. Likewise, there is no evidence of the species in Contentnea Creek, a major tributary of the Neuse River, and thus part of the full basin. Finally, there is no evidence of the species east of the City of Goldsboro extending to the interface between the Neuse River and the area known as the Neuse Estuary or Pamlico Sound.

Many members of the association operate facilities in those parts of the Neuse River Basin where there is no evidence of Yellow Lance occupation or even suitable riverine habitat. The association supports protection of the species but only to areas that are indicative of its habitat. Those habitats include the following tributaries: Swift Creek, Middle Creek, Mill Creek, and Little River (upper and lower). The report does not identify any other tributaries in the Neuse Basin and should not designate those areas for this species. Accordingly, the rule to designate the species as endangered should clearly identify that review

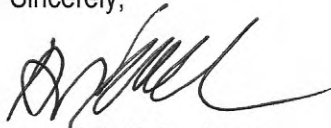
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for the protection of the species is not required in the areas of the basin with no history or showing of the species. Otherwise, important and expensive review processes will be added to the activities of those local governments which trigger an ESA review due to the identification of the entire basin as being with the range of the species.

The Association acknowledges that the Service will at some later time establish critical habitat designations for the Yellow Lance. However, in the intervening time, the rule to protect the species should narrow the scope of the required ESA reviews to avoid large segments of the Neuse River Basin that have no history of affording habitat for the species. Otherwise, the rule will be unnecessarily burdensome and inconsistent with the principles established by the current administration for rule actions.

Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. McLawhorn', written in a cursive style.

Daniel F. McLawhorn
Chairman

Enclosure

Cc: NRCA Board

Additional Comments by the Neuse River Compliance Association

Based on a technical memorandum prepared by a national consulting firm to review the findings of this assessment for the Yellow Lance (at the request of an association member) we support the concerns raised in noting significant issues related to definitions, assumptions, characterizations, analysis, and conclusions for the Yellow Lance. The NRCA comments that this proposed listing should be withdrawn until the substantial problems with its supporting assessment are addressed. The following summary of the impediments to the listing based on this assessment demonstrate that the proposed listing should be withdrawn:

"Review of the FR/SSA revealed significant issues relative to definitions, assumptions, characterization, analysis, and conclusions for the yellow lance. The methodologies used to assess and evaluate the current and future status of the yellow lance are inconsistent with scientific literature. The methodologies are also inconsistent with USFWS and National Marine Fisheries Service (NMFS) guidance and policy (Interagency Policy on Information Standards under the ESA, 59 FR 34271, Federal Register 1994).

The definition used for population in the document is inconsistent with the definition of population that is widely used and recognized in the field of population ecology. The FR/SSA uses a definition of population that is incorrect, which carries over into the characterization and analyses of the yellow lance at the population level for the assessment of the species. Additionally, inconsistencies are present throughout the document relative to resiliency, redundancy, and representation for the yellow lance. The FR/SSA has not provided an accurate assessment of the status of the species on which to base a decision for listing as threatened.

The data analyzed for the FR/SSA are poorly identified and appear to represent a narrow selection of the available data. For example, recent survey data is not included in the assessment. The FR/SSA also fails to identify the sources of data used to evaluate the historical and current population status and occurrence. The document does not provide sufficient detail on the surveys included in the assessment to allow the public to fully comment on the Federal Register listing.

The FR/SSA presents evaluations of conditions, trends, and effects that are oversimplified and at a higher level than is appropriate for determining whether or not to list a species as threatened under the ESA. The species percent decline is evaluated based on incomplete data and watershed occupancy rather than individual occurrences and number of individuals. The habitat condition criteria evaluated for the yellow lance are insufficiently screened to focus on the conditions that pose a limitation or threat to the species. The FR/SSA also used indirect indicators of potential risk rather than direct evidence of the conditions present. Additionally, potentially beneficial environmental factors are not discussed in the habitat condition assessment. The FR/SSA analysis also weighed the species assessment towards factors that may restrict future expansion of the species' distribution rather than factors that pose a direct threat to the survival of existing or future mussels.

1. Per ESA guidance and policy, the evaluation of future conditions must be based on the assessment of the historical and current conditions of the species with respect to the

factors influencing the viability of the species. The methodology, basis of evaluation, and sources used to evaluate the future condition of the species in the FR/SSA do not meet the requirements for federal listing, as follows: The FR/SSA presents conflicting statements regarding stressors that affect the species.

2. The future condition analysis in the FR/SSA should consider all eight viability factors and not only the impacts of urbanization.
3. The FR/SSA relies heavily on the SLEUTH open access model to predict impacts of urbanization but fails to consider the uncertainty associated with assumptions with this model.
4. The future conditions evaluation fails to consider the net positive impact of current and future National Pollutant Discharge Elimination System (NPDES) stormwater programs, Department of Transportation (DOT) design standards, agricultural practices, land controls, riparian buffers and land conservation areas, and applicable water quality criteria to protect designated uses of waters.
5. The USFWS did not consider the use of other recent rigorously peer-reviewed modeling tools to assess the impact of urbanization and climate change on the future condition of the yellow lance, of which one tool is specific to the Neuse River and Tar Pamlico River basins.
6. If the USFWS intends to use climate change as a significant factor in the future conditions analysis, then a more robust evaluation of the direct linkages between climate change and the factors influencing viability should be provided.

In summary, the FR/SSA does not meet the information standards of the Interagency Policy on Information Standards adopted by the USFWS and NMFS. The FR/SSA evaluates a subset of the available data, fails to perform in-depth analysis of the data that is evaluated, presents inaccurate analyses and conclusions based on the evaluated subset of data, and provides a limited view of the potential future scenarios relative to the viability of the species. Under the ESA and associated federal policies and guidelines, the FR/SSA does not provide sufficient scientific and technical information to support decision-making relative to the proposed listing of the yellow lance.”

Neuse River Compliance Association Membership

Town of Apex, N.C.
Town of Benson, N.C.
Town of Cary, N.C.
Town of Clayton, N.C.
Contentnea Metropolitan Sewer District, Grifton, N.C.
Town of Farmville, N.C.
Dupont-Kinston, Kinston, N.C.
City of Goldsboro, N.C.
Town of Havelock, N.C.
Johnston County, N.C.
Craven County, N.C.
Town of LaGrange, N.C.
City of New Bern, N.C.
Duke Energy - Progress
City of Raleigh, N.C.
City of Wilson, N.C.
City of Kinston, N.C.
Aqua, North Carolina
South Granville Water and Sewer Authority, Butner, N.C.
Marine Corp Air Station - Cherry Point, Havelock, N.C.
Utilities, Inc., Charlotte, N.C.
CWS Systems, Charlotte, N.C.