

The critical factor determining presence of populations appears to be dense bromeliad growth, which in turn seems to be dependent on heavy dew produced by orographic uplift of air striking the mountain range. The species is found only in water-containing bromeliads of the genera *Vriesea*, *Hohenbergia* and *Guzmania*. Inhabited bromeliads have usually been found in clusters. A low incidence of golden coquis in isolated bromeliads suggests that dispersal distances are short.

BACKGROUND

Section 4(a) of the Act states:

General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under each of the five criteria of section 4(a) of the Act. These factors, and their application to the golden coqui are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Within the range of the golden coqui, there is great demand for high elevation land because temperatures are moderate and rainfall is much lower than at most other comparable elevations. The presence of dirt roads and the suitability of the land for pasture have promoted development to the summits well ahead of pavement construction.

The habitat is generally somewhat xeric and susceptible to fire damage. One scrub area searched in 1973 had golden coquis in bromeliads on the ground, in low trees, and on some large boulders. Re-examination in 1975, after a fire, revealed that only the bromeliads and their inhabitants on the boulders survived. Most of the known habitat is privately owned except for a small fraction which is primarily highway right of way. The conflict between uncontrolled human development and the continued existence of the golden coqui is clear.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* The golden coqui has only recently been discovered and is currently known only to a few individuals; however, its unique reproductive adaptation and attractive coloration are likely to create a large demand for specimens for scientific, educational and display purposes. Similarly, bright colored frogs from the tropics, *Amphedus auratus* from Trinidad and *Atelopus varius zeteki* from Panama, have suffered from extensive

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Threatened Status and Critical Habitat for the Golden Coqui

The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a proposed rulemaking pursuant to sections 4 and 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543, 87 Stat. 884; hereinafter the Act), which would determine the golden coqui (*Eleutherodactylus jasperi*), a small, live-bearing frog recently discovered on Puerto Rico, to be a Threatened Species and which would determine Critical Habitat for that species.

The golden coqui is known only from a semicircular area, 10 km. in radius south of Cayey, Puerto Rico. The elevational range is from 700 to 850 meters.

collecting pressure because of their attractiveness.

3. *Disease or predation.* Unknown.

4. *The inadequacy of existing regulatory mechanisms.* There currently exist no regulations pertaining to the protection and conservation of this species.

5. *Other natural or manmade factors affecting its continued existence.* The specialized, ciliate bromeliad-dwelling mode of existence employed by this species coupled with its low reproductive rate, apparent inability to disperse, and limited range have created a naturally precarious status.

CRITICAL HABITAT

Section 7 of the Act, entitled "Inter-agency Cooperation", states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical.

An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765).

The areas delineated below do not necessarily include the entire Critical Habitat of the golden coqui, and modifications to Critical Habitat descriptions may be proposed in the future. In accordance with section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the Critical Habitat of the golden coqui found within the areas delineated below.

Until the issuance of additional guidelines, all Federal departments and agencies should, in accordance with section 7 of the Act, consult with the Secretary of the Interior with respect to any actions which might reasonably be expected to affect Critical Habitat within the delineated areas.

CRITICAL HABITAT DETERMINATION

The following area (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species) is proposed as Critical Habitat for the golden coqui (*Rhombodactylus jasperii*). This proposal is based primarily on data supplied by George E. Drewry.

(1) Cerro Avispo—elevations above 700 meters on the south and southeast slope of the mountain from the northern junction of Highway 715 and an unnumbered dirt road southeast and southwest along

Highway 715 to the southern junction with the same unnumbered dirt road and Highway 715, north and northeast along the unnumbered dirt road just below the south-east facing crest of Cerro Avispo to its junction with Highway 715.

(2) Monte el Gato—entire summit above 700 meters from the junction of Highway 715 and the 700 meter contour interval west along Highway 715 to the junction of Highway 715 and an unnumbered road, north and northeast along this road to where it crosses the 700 meter contour interval, and east along the 700 meter contour interval to where it crosses Highway 715.

(3) Sierra de Cayey—elevations above 700 meters, southeast from the junction of Highways 738 and 15 along Highway 15 to a point 5 kilometer south of Benchmark 684.5, northeast from this point in a line to a point on Highway 7741 two kilometers south of the junction of Highways 738 and 7741, north and northwest along Highway 7741 to its junction with Highway 738, and northwest from the junction of Highways 7741 and 738 along Highway 738 to its junction with Highway 15.

Refer to 7.5 minute U.S.G.S. Topographical Map, Cayey, Puerto Rico, 1972.

EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below. Endangered Species regulations published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered Species. All of those prohibitions and exceptions also apply to any Threatened Species unless a Special Rule pertaining to that Threatened Species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered Species, are found at § 17.21 of Title 50 and, for the convenience of the reader, are reprinted below:

§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes,

may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

- (i) Aid a sick, injured or orphaned specimen; or
- (ii) Dispose of a dead specimen; or
- (iii) Salvage a dead specimen which may be useful for scientific study; or
- (iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner, the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of or salvaged in accordance with directions from the Service.

(5) Notwithstanding paragraph (c) (1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d) (1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

The determination set forth in these Proposed Rules and the proposal of Crit-

ical Habitat also would make the Golden Coqui eligible for the consideration provided by section 7 of the Act.

The Director is preparing, in consultation with the affected agencies, guidelines for Federal agencies for the application of section 7 of the Act. In the future, regulations will be published regarding section 7. Proposed regulations were issued on January 26, 1977 (42 FR 4868).

Regulations published in 50 CFR Part 17 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the Act, the Director will notify the Governor of Puerto Rico with respect to this proposal and request his comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective in the conservation of any Endangered or Threatened species as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the Golden Coqui;
- (2) The location of and reasons why any habitat of the Golden Coqui should or should not be determined to be "Critical Habitat" as provided for by section 7 of the Act;
- (3) Additional information concerning the range and distribution of the Golden Coqui.

Final promulgation of the regulations on the Golden Coqui will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An Environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street, N.W., Washington, D.C. 20240, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the

meaning of section 102(2) (C) of the National Environmental Policy Act of 1969.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments and other documents, preferably in triplicate, to Director (FWS/WPO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. All relevant comments and materials received no later than June 6, 1977, will be considered. Comments and materials received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1612 K Street NW, Washington, D.C.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973.

(16 U.S.C. 1531-1543; 87 Stat. 884.)

This proposed rulemaking was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species.

Dated: March 8, 1977.

GALEN L. BUTERBAUGH,
Acting Director,
Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

It is proposed to amend § 17.11 by adding in alphabetical order the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

Species		Population	Range		Status	When listed	Special rules
Common name	Scientific name		Known distribution	Portion of range where threatened or endangered			
AMPHIBIANS							
Coqui, golden.	<i>Eleutherodactylus jasperi</i>	NA	Puerto Rico.	Entire.....	T	NA.

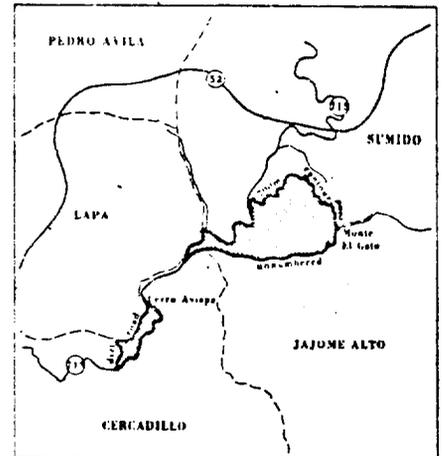
It is further proposed to amend 50 CFR Part 17: By amending proposed Subpart 1 of Part 17 (41 FR 55729; December 22, 1976) by adding new § 17.95 (d) (1) reading as follows:

§ 17.95 Critical habitat—fish and wildlife.

(d) *Amphibians*—(1) *Golden Coqui*. (i) The following area (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species) is Critical Habitat for the Golden Coqui (*Eleutherodactylus jasperi*):

(A) Cerro Avispa—elevations above 700 meters on the south and southeastern slope of the mountain: from the northern junction of Highway 715 and an unnumbered dirt road southeast and southwest along Highway 715 to the southern junction with the same unnumbered dirt road and Highway 715, north and northeast along the unnumbered dirt road just below the southeast facing crest of Cerro Avispa to its junction with Highway 715.

(B) Monte el Gato—entire summit above 700 meters: from the junction of Highway 715 and the 700 meter contour interval west along Highway 715 to the junction of Highway 715 and an unnumbered road, north and northeast along this road to where it crosses the 700 meter contour interval, and east along the 700 meter contour interval to where it crosses Highway 715.



PROPOSED CRITICAL HABITAT FOR THE GOLDEN COQUI IN CERRO AND MONTE EL GATO.

(C) Sierra de Cayey—elevations above 700 meters: southeast from the junction of Highways 738 and 15 along Highway 15 to a point .5 kilometer south of Benchmark 684.5, northeast from this point in a line to a point on Highway 7741 two kilometers south of the junction of Highways 738 and 7741, north and northwest along Highway 7741 to its junction with Highway 738, and northwest from the junction of Highways 7741 and 738 along Highway 738 to its junction with Highway 15. Refer to 7.5 minute U.S.G.S. Topographical Map, Cayey, Puerto Rico, 1972.



PROPOSED CRITICAL HABITAT FOR THE GOLDEN
COQUI IN SIERRA DE CAYEY

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[FR Doc.77-9917 Filed 4-4-77; 8:45 am]