

Known only from the vicinity of Antelope Springs and Buckhorn Springs, the range of this species covers only 9300 square meters. Like other endemics of the desert Southwest, this toad is threatened primarily by man's need for water, on which it must rely.

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 black toad are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The stream channels at Buckhorn Spring are periodically recanalized to provide water for livestock and irrigation. When stream modification occurs after oviposition, the marsh area dries before the tadpoles metamorphose to miniature toads, and recruitment to the adult population is seriously affected. In the past, livestock has been permitted to graze in the marshlands, thus resulting in some habitat destruction; this practice has been stopped by officials at Deep Springs College.

The lowering of water tables in the vicinity of Antelope and Buckhorn Springs by pumping could seriously alter the limited habitat of the black toad.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Because of its restricted range and attractive coloration, the black toad has been a favorite of amphibian collectors. Between 1962 and 1971, the easternmost toad area of Buckhorn Springs, the area most accessible to collectors, experienced a noticeable decline in numbers of adults, ostensibly because of overcollecting. Deep Springs College now restricts access to the Buckhorn Springs toad areas; the Antelope Springs population is still readily accessible to collectors.

3. *Disease or predation.* Not applicable for this species.

4. *The inadequacy of existing regulatory mechanisms.* This species is protected by the state of California against take, possession, and sale. Addition to the Endangered and Threatened Wildlife list would provide additional discouragement to collectors.

5. *Other natural or manmade factors affecting its continued existence.* None.

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 re-

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Threatened Status and Critical Habitat for the Black Toad

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 black toad (*Bufo exsul*) to be a Threatened Species and which would determine Critical Habitat for that species. This species occurs only in Deep Springs Valley, Inyo County, California.

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.

The black toad is endemic to Deep Springs Valley, Inyo County, California.

sult in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term Critical Habitat was published by 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 black toad 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 black toad found within the areas delineated below.

Until the promulgation of section 7 regulations, 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 action which is considered likely to affect Critical Habitat within the delineated areas. Consultation pursuant to section 7 should be carried out using the procedures contained in the "Guidelines to Assist the Federal Agencies in Complying with section 7 of the Endangered Species Act of 1973" which have been made available to the Federal agencies by the Service.

CRITICAL HABITAT DETERMINATION

Based upon literature reviews, Critical Habitat for the black toad includes the following areas (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species):

- I. Section 4 T8SR36E Inyo County
- II. Section 5 T8SR36E Inyo County
- III. Section 8 T8SR36E Inyo County
- IV. Section 9 T8SR36E Inyo County
- V. SW $\frac{1}{4}$ Section 3 T8SR36E Inyo County
- VI. NW $\frac{1}{4}$ Section 16 T8SR36E Inyo County
- VII. Section 13 T7SR35E Inyo County

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 already 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.

(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.

"(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 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."

Regulations published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412) provided 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 California 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 aspect of these proposed rules are hereby solicited. Comment particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the black toad;

(2) The location of and reasons why any habitat of the black toad 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 black toad.

Final promulgation of the regulations on the black toad 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

