

CFR 17.21(c)(2)). It would also remain legal for employees or agents of the Service or the Florida Game and Fresh Water Fish Commission to remove or take *Felis concolor* that constituted a demonstrable but nonimmediate threat to human safety (see 50 CFR 17.21(c)(3)(iv)). Since in some cases it may be impossible to determine the subspecific identity of *Felis concolor*, without first capturing the animal for examination, a special rule (see § 17.40(h)(3) of the special rules below) has been added to these final regulations to allow a Service or State employee or designated agent to take *Felis concolor* in Florida by non-lethal means for identification purposes. Such knowledge is essential to the conservation and recovery of the endangered Florida panther. A clarification has also been added to § 17.40(h)(3) of the special rules (see Summary of Comments and Recommendations, and Special rules sections below) to clarify the disposition of *Felis concolor*, taken by a Service or State employee or designated agent, and known not to be a Florida panther or eastern cougar.

Section 7 of the Act, Interagency Cooperation, will continue to apply to the endangered Florida panther, but does not apply to animals protected by similarity of appearance.

#### Summary of Comments and Recommendations

In the August 27, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Subsequently, the period for public comment was reopened on October 10, 1990, and extended to November 16, 1990 (55 FR 41244), to allow for the publication of required newspaper notices. Notices inviting public comment were published in the following Florida newspapers: On September 30, 1990, in the Tampa Tribune, the Orlando Sentinel, the Miami Herald, the Jacksonville Times-Union, and the Pensacola News Journal; and on October 1, 1990, in the Tallahassee Democrat.

Twelve comment letters were received. The Florida Game and Fresh Water Fish Commission and seven conservation organizations unconditionally supported the proposal. Four letters representing comments from two private individuals and three conservation organizations expressed

qualified support and raised the following concerns:

**Comment:** The proposed rule allows for taking of *Felis concolor*, in Florida once it is determined that the animal does not represent *F.c. coryi*. This could lead to removal of the Everglades National Park (ENP) panthers, which are important to the survival of the Florida panther. Proper rulemaking procedures should be followed before "hybrid" animals lose their current protected status.

**Service Response:** *Felis concolor* known not to be *coryi* can currently be taken by Service or State-designated agents. This rule does not change that situation. The ENP panthers contain mitochondrial DNA derived from South or Central American *Felis concolor*, indicating past interbreeding with females from that area (O'Brien *et al.* 1990). The Service considers the ENP panthers to be protected under the Endangered Species Act and has no plans to remove them from the wild. Introgression of genes from ENP cats is likely to benefit the highly inbred Big Cypress population (O'Brien *et al.* 1990).

**Comment:** Take of free-living *Felis concolor*, in Florida should only be allowed for reasons of human safety. Such animals have the potential to strengthen the genetic structure of wild Florida panthers through interbreeding with them.

**Service Response:** The Service agrees that the Florida panther would benefit from the restoration of some of the genetic variability apparently lost due to small population size and consequent inbreeding. However, any attempt to reintroduce genetic variability into the Florida panther population should be done within a controlled way with known genetic stock, not by random escapes of captive animals of unknown origin.

**Comment:** The proposed rule should be extended to all areas within the historic range of the Florida panther. Anecdotal evidence indicates panther sightings outside Florida.

**Service Response:** The Service is unaware of recent confirmed Florida panther sightings outside Florida. If such evidence becomes available, and if subsequent conservation and recovery needs indicate that threatened by similarity of appearance regulations in other states would benefit the Florida panther, the Service will consider proposing additional rules.

**Comment:** It is not possible to accurately determine in the field whether or not the animal in question is a Florida panther, since genetic testing is required.

**Service Response:** In the case of escaped *Felis concolor*, the known origin of the animal will often indicate that it is not a Florida panther. If the identity of the animal is uncertain, a special rule has been added (see § 17.40(h)(3) of the special rules below) to allow non-lethal take of *Felis concolor* in Florida by Service or State employees or designated agents for the purpose of determining the identity of the animal. This is necessary for the conservation and recovery of the Florida panther in order to have control over potential interbreeding between Florida panthers and *Felis concolor* of other origins.

**Comment:** Take of *Felis concolor* determined not to be the Florida panther is an issue that must be addressed through rulemaking procedures. Questions involving animal rights must be properly addressed.

**Service Response:** The rules here promulgated by the Service have addressed the rulemaking requirements of the Endangered Species Act, the Administrative Procedure Act, and all other applicable legislation. The rules are authorized under the provisions of the Endangered Species Act and are not in violation of existing animal welfare legislation. Humane practices are followed by both the Service and the Florida Game and Fresh Water Fish Commission in handling all wildlife.

**Comment:** The Service should conduct thorough investigations of all cases in which *Felis concolor* are taken in defense of human life. This could be used as a justification for trophy hunting.

**Service Response:** The Service would investigate any such cases carefully. Taking for this reason must be reported to the Service within 5 days, and the specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service (see § 17.40(h) (4) and (5) of the special rules below). The use of free-living Florida *Felis concolor* taken in defense of human life for trophies will not be allowed by the Service.

**Comment:** All species (sic) of *Felis concolor* occurring in the historic range of the Florida panther should be listed as endangered by similarity of appearance. Taking of all species (sic) of *Felis concolor* should be permitted under an endangered species permit issued pursuant to 50 CFR 17.52.

**Service Response:** The Service believes that "threatened" status for *Felis concolor* provides adequate protection against inadvertent take of *Felis concolor coryi*. A higher designation would not substantially

threatened under the "Similarity of Appearance" provisions of the Act wherever they may occur in Florida. This action is necessary to protect the listed endangered Florida panther from illegal take. For the untrained eye, it is very difficult to distinguish individuals of Florida panthers from individuals of unlisted subspecies of *Felis concolor*. Unlisted species of cougars periodically occur in Florida either as escapees from captivity or are deliberate releases.

**EFFECTIVE DATES:** September 13, 1991.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32218.

**FOR FURTHER INFORMATION CONTACT:** David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the "Similarity of Appearance" provisions of section 4(e) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and associated regulations (50 CFR 17.50 and 17.51), species (or subspecies or other groups of wildlife) which are not considered to be endangered or threatened, may nevertheless be treated as such for the purpose of providing protection to a species (or subspecies or other groups of wildlife) that is biologically endangered or threatened. Under these "Similarity of Appearance" provisions the Service must find: (a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in identifying listed from unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate enforcement and further the purposes of the Act. This rule is consistent with all three of those provisions.

The Florida Game and Fresh Water Fish Commission (Commission) estimates that at least several hundred mountain lions are currently held in captivity in Florida. These animals are often of unknown origin, but most are probably from the western U.S. Occasionally, captive mountain lions accidentally escape or are deliberately released. According to the Commission's Division of Law Enforcement, 20 known escapes of mountain lions have occurred

in the last few years, and 48 mountain lions were seized in 1989, mostly due to illegal possession. There is a risk that Florida panthers will be killed under the assumption or justification that they are escaped mountain lions. There also is a need to protect mountain lions which are released experimentally in the course of recovery work for the Florida panther. In 1989, five Texas mountain lions were released in Osceola National Forest as surrogates to test the suitability of the habitat for Florida panthers. During the study, one cougar was known to have been, and another suspected to have been, shot and killed illegally. A mountain lion from a private zoo near Bonita Springs was illegally shot and killed within two days of its escape in March 1990.

Because it is almost impossible for the lay public to distinguish between the listed and unlisted subspecies of *Felis concolor*, it has been difficult or impossible to prosecute cases of illegal take. Therefore, in order to further the purposes of the Act in providing protection for the endangered Florida panther, the Service makes the following findings: (1) That enforcement personnel, as well as nearly all other persons, would be unable to routinely separate the listed Florida panther from unlisted subspecies of *Felis concolor*, (2) that the Florida panther is so endangered in the wild that the loss of a single animal through illegal take could seriously jeopardize the survival of the subspecies; and (3) that the take of any *Felis concolor*, in areas where the listed Florida panthers occur would be without regard for, or forehand knowledge of, the status of that particular individual of *Felis concolor*, and thus would pose direct and indirect threats to the endangered Florida panther.

On August 27, 1990 (55 CFR 34943) the Service published a proposal to determine, for law enforcement purposes, any free-living *Felis concolor*, not otherwise identifiable as a Florida panther (*Felis concolor coryi*) to be threatened under section 4(e), "Similarity of Appearance" provisions of the Act, wherever it may be found in the wild in Florida. Free-living *Felis concolor*, in Florida would be allowed to be taken under permit (50 CFR 17.52) or by an employee of the Service or State or a Service or State-designated agent when it has been established by the Service, in consultation with the State, that the animal in question is not a Florida panther (*Felis concolor coryi*). Notwithstanding this prohibition, it would remain legal for any party to take *Felis concolor*, in Florida in defense of his own life or the lives of others (see 50

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AB42**

**Endangered and Threatened Wildlife and Plants; Threatened Status under "Similarity of Appearance" Provisions for *Felis concolor* in Florida**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

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**SUMMARY:** The Florida panther (*Felis concolor coryi*) is listed as an endangered species under the Endangered Species Act (Act) of 1973, as amended. The Service now determines all other free-living *Felis concolor* (common names: mountain lion, cougar, puma, panther, etc.) to be

facilitate enforcement of the Endangered Species Act. Moreover, this suggested approach would not provide the flexibility needed to take *Felis concolor* determined to not be the Florida panther, particularly escapees known to represent other subspecies. Obtaining permits under § 17.52 requires written application to the Service; because of this delay, capture of escaped animals would be impractical or impossible.

**Comment:** The proposed special rules do not define take. Would take of *Felis concolor* known to not be Florida panthers or eastern cougars be non-lethal? If non-lethal, what would be the disposition of taken individuals?

**Service Response:** Take, as defined in section 3(18) of the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Take of *Felis concolor* known to not be the Florida panther or eastern cougar could be lethal or non-lethal, but except for cases of risk to human life, or other similar peril, such animals are usually anesthetized by darting rather than being killed. Disposition of animals taken by permit under § 17.52 or in defense of human life is at the discretion of the Service's Director. A clarification has been made (see § 17.40(h)(3) under the special rules below) to indicate that

*Felis concolor* taken by Service or State employees or designated agents in Florida, and known not to be Florida panthers or eastern cougars, shall be disposed of at the discretion of the Florida Game and Fresh Water Fish Commission with the concurrence of the Service.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

O'Brien S.J., M.E. Roelke, N. Yuhki, K.W. Richards, W.E. Johnson, W.L. Franklin, A.E. Anderson, O.L. Bass, Jr., R.C. Belden, and J.S. Martenson. 1990. Genetic introgression within the Florida panther *Felis concolor coryi*. National Geographic Res. 6(4):485-494.

**Author**

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**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation of part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

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(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:	.	.	.	.	.	.	.
Lion, mountain.....	<i>Felis concolor</i> (all subspecies except <i>coryi</i> ).	Canada to South America.....	U.S.A. (FL).....	T(S/A)	432	NA	17.40(h)

3. Section 17.40 is amended by adding paragraph (h) to read as follows:

**§ 17.40 Special rules—mammals.**

(h) Mountain lion (*Felis concolor*). (1) Except as allowed in paragraphs (h)(2), (h)(3), and (h)(4) of this section, no person shall take any free-living mountain lion (*Felis concolor*) in Florida.

(2) A mountain lion (*Felis concolor*) may be taken in this area under a valid threatened species permit issued pursuant to 50 CFR 17.52.

(3) A mountain lion (*Felis concolor*) may be taken in Florida by an employee or designated agent of the Service or the

Florida Game and Fresh Water Fish Commission for taxonomic identification or other reasons consistent with the conservation of the endangered Florida panther (*Felis concolor coryi*). When it has been established by the Service, in consultation with the State, that an animal in question is not a Florida panther (*Felis concolor coryi*) or an eastern cougar (*Felis concolor cougar*), such animals may be removed from the wild. The disposition of animals so taken shall be at the discretion of the Florida Game and Fresh Water Fish Commission, with the concurrence of the Fish and Wildlife Service.

(4) Take for reasons of human safety

is allowed as specified under 50 CFR 17.21(c)(2) and 17.21(c)(3)(iv).

(5) Any take pursuant to paragraph (h)(4) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, Virginia 22203, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

Dated: July 30, 1991.  
Richard N. Smith,  
Acting Director, Fish and Wildlife Service.  
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