The present or threatened destruction, modification, or curtailment of its habitat or range. The Pine Barrens Treefrog is now known to exist as seven small populations in Okaloosa County, Florida. Four other populations, including those in Walton County, may be extirpated since the frog’s discovery in 1970. These losses were due to development and land clearing for agricultural use. These Florida populations are isolated by over 750 kilometers from the nearest Pine Barrens Treefrog populations in South Carolina, are unique in their color pattern, mating calls, and body proportions. At present, their relationship with other isolated populations of the Pine Barrens Treefrog in North Carolina, South Carolina, and New Jersey, remains unclear. Unless measures are taken soon to protect the remaining seven populations which include less than 500 individuals, a unique member of the Florida Gulf Coast herpetofauna may be extirpated.

2. Overutilization for commercial, sporting, scientific, or educational purposes. The location of these populations is not generally known to the public, and there is no evidence of overutilization at present. If, however, the populations were to be discovered by collectors, serious reduction of the populations might occur.

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

4. The inadequacy of existing regulatory mechanisms. Populations of the Pine Barrens Treefrog are protected by the Florida Game and Fresh Water Fish Commission against taking, possession, and transport of specimens. Addition to the Endangered and Threatened Wildlife list would provide additional discouragement to collectors, especially as regards prohibitions against interstate commerce.

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

CRITICAL HABITAT

Section 7 of the Act, entitled “Interagency 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 program 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 result in the destruction or modification of the Critical Habitat of the Pine Barrens Treefrog in Florida.

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 ensure that activities authorized, funded, or carried out by them do not result in the destruction or modification of the Critical Habitat of the Pine Barrens Treefrog in Florida.

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.

PROPOSED RULES

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 these 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 cause another to commit, or to permit to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.
PROPOSED RULES

(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 import and the person making the shipment is subject to the provisions of this section, whether or not it has entered the country for customs purposes.

(c) Take. 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 waters shall be all waters seaward of the territorial sea of the United States, except waters officially recognized 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: (1) Aid a sick, injured or orphaned specimen; or
(2) Dispose of a dead specimen; or
(3) Salvage a dead specimen which may be useful for scientific purposes.

(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 humane means.

(3) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing within 30 days to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 1983, Washington, D.C. 20003, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing within 30 days to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 1983, Washington, D.C. 20003, 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: (1) 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 to another State; or (iv) the holding of the specimen in captivity for a period of more than 30 consecutive days.

(d) Possession and other acts with unlawfully taken wildlife. (1) It is unlawful to possess, sell, deliver, carry, transport, ship, or export 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 portion of 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 transferring 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, deliver, carry, transport, ship, or export any endangered wildlife which was taken in violation of the Act as necessary in performing their official duties.

(3) 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.

(1) 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.

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 or Threatened Species are available to persons conducting 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 Florida 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 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 Pine Barrens Treefrog in Florida;
(2) The location and of reasons why any habitat of the Pine Barrens Treefrog in Florida should or should not be determined to be "Critical Habitat" as provided for by Section 3 of the Act;
(3) Additional information concerning the range and distribution of the Pine Barrens Treefrog in Florida.

Final promulgation of the regulations on the Pine Barrens Treefrog in Florida 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, 1012 K Street NW., 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 the 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 3, 1977, will be considered. Comments and materials received will be available for public inspection during normal business hours at the Service's Office in Room 516, 1717 H 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.


LYNTH A. GREENWALD,
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(1)(b) by adding in alphabetical order the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Known distribution</th>
<th>Range</th>
<th>Status When listed</th>
<th>Special rules</th>
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</thead>
<tbody>
<tr>
<td>Amphibian</td>
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<tr>
<td>Treefrog, pine barrens</td>
<td>*</td>
<td>Hyla andersoni</td>
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Florida, Entire........... E NA.
It is further proposed to amend 50 CFR Part 17

1. By adding new § 17.95(d) (2) reading as follows:

§ 17.95  Critical habitat—fish and wildlife.

(d) * * *(2) Pine Barrens Treefrog (Florida population) (a) 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 Florida population of the Pine Barrens treefrog (Hyla andersonii):

I. NW 1/4 Section 38 T4NR23W Okaloosa Co.
II. NE 1/4 Section 27 T4NR22W Okaloosa Co.
III. SW 1/4 Section 26 T4NR23W Okaloosa Co.
IV. NW 1/4 Section 34 T4NR23W Okaloosa Co.
V. NW 1/4 Section 32 T4NR22W Okaloosa Co.
VI. NW 1/4 Section 12 T4NR22W Okaloosa Co.
VII. NE 1/4 Section 11 T4NR22W Okaloosa Co.

PROPOSED RULES

COUNCIL ON ENVIRONMENTAL QUALITY

[40 CFR Part 1500 ]

PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS: GUIDELINES

Request for Comments

APRIL 1, 1977.

AGENCY: Council on Environmental Quality

ACTION: Request for Comment on Guideline Change

SUMMARY: This document proposes to clarify CEQ’S Guidelines to indicate that the environmental impact statement process applies to agency proposals for legislation, but inviting comment as to whether agency comments or reports on Congressional proposals should be required statements. This proposal is intended to avoid ambiguity and possible misinterpretation of when an environmental impact statement is required. The need for the rule has been made evident by the filing of a lawsuit on the subject.


ADDRESSES: Comments to Nicholas C. Yost, General Counsel, Council on Environmental Quality; 722 Jackson Place, NW., Washington, D.C. 20004.

CONTACT: Nicholas C. Yost; 202-382-6123.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Council on Environmental Quality intends to revise § 1500.5(a) (1) of its Guidelines for the Preparation of Environmental Impact Statements. Written comments and recommendations should be submitted to the General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, D.C. 20004. All comments and recommendations received on or before May 5, 1977 will be considered.

On March 21, 1977 an action was commenced in the United States District Court for the District of Columbia, Wingfield v. OMB, No. 77-0489, alleging, inter alia, that section 102(2)(C) of the National Environmental Policy Act requires agencies to prepare environmental impact statements on agency comments on proposed legislation pending in Congress. The plaintiffs rely in part on § 1500.5(a) (1) of the Council’s Guidelines for the Preparation of Environmental Impact Statements in support of their claim.

The Council did not intend that § 1500.5(a) (1) be interpreted to require that agencies prepare EISs when they comment on legislation initiated by and pending before Congress. Indeed, neither NEPA nor this provision of the Guidelines has been interpreted to this effect in the past, and no EISs have ever been prepared in connection with Federal agency comments on Congressional proposal. In order to avoid any ambiguity and/or possible misinterpretation of this paragraph, however, the Council proposes to amend it.

The proposed revision would clarify the Guidelines to indicate that the EIS process applies to agency proposals for legislation, but not to agency comments or reports on Congressional proposals. In the latter situation, individual members of Congress or Congressional committees can request such information as they may need to assist them. The preparation of environmental impact statements on agency reports on Congressionally initiated legislation has not been found to be useful to the public or to agencies or Congressional decisionmaking. Moreover, legislation proposed by members of Congress frequently lies dormant or is modified so frequently that no real opportunity arises for the EIS process to work effectively. In contrast, when agencies develop legislative proposals, EIS procedures apply because there is an opportunity for agencies to study and incorporate environmental concerns in their planning and decisionmaking. Indeed, agencies are required to prepare EISs on agency comments on Congressionally initiated legislation.

The Council is considering alternative approaches to resolving the current ambiguity. Approaches we are considering include are not limited to the following:

The first approach would be to delete entirely any reference to agency reports on Congressionally initiated legislation. A second approach would be to apply the EIS process in those circumstances when agency involvement in the Congressional development of a legislative proposal is so extensive that the agency is in effect a co-proponent of the proposed legislation. In the latter situation, an EIS may be necessary. The Council solicits comments and recommendations on these alternatives.

NICHOLAS C. YOST,
Acting General Counsel.

[FR Doc.77-10213 Filed 4-4-77; 8:45 am]