

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered Status and Critical Habitat for the Giant Anole

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 Giant Anole (*Anolis roosevelti*) to be an Endangered Species and which would determine Critical Habitat for this species. This lizard occurs on Culebra Island, Commonwealth of Puerto Rico.

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.

Although originally described in 1931, very few specimens of this lizard are known to exist. There is considerable speculation among herpetologists as to its continued existence; searches by various individuals have failed to locate any of the lizards. However, this species is a canopy lizard, and inhabits an area extremely difficult to penetrate, especially by casual visitors. Herpetologists familiar with Culebra Island believe it may still exist on Mt. Resaca in small numbers. Unless definitely established to be extinct, protection should be afforded to both the lizard and its habitat.

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 Giant Anole are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Giant Anole is a rare lizard which may survive only in the canopy of mountain forest on Mt. Resaca. The fan-leaved palm is the tallest tree in such forest, and, as with the semi-moist forest in general, is quickly disappearing because of man's activities. Unless the remaining forest on the slopes of Mt. Resaca is preserved, the specialized habitat of this lizard is threatened with destruction.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable for this species.

(3) *Disease or predation.* Unknown.

(4) *The inadequacy of existing regulatory mechanisms.* There are no existing regulatory measures to protect this species.

(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 [E]ndangered species and [T]hreatened 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 the 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 Giant Anole and modification 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 Giant Anole found within the areas delineated below.

The areas delineated below (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species) do not necessarily include the entire Critical Habitat of the Giant Anole, 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 Giant Anole 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 letters to the Fish and Wildlife Service from Herb Raffaele and Noel Snyder, Critical Habitat for the Giant Anole 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. A circular area of land with a 1.4 kilometer radius, the center being the summit of Mt. Resaca on Culebra Island, Commonwealth of Puerto Rico.

EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking would 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

PROPOSED RULES

(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.

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 prop-

agation 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 interest 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) of the Giant Anole.

(2) The location of the reasons why any habitat of the Giant Anole 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 Giant Anole.

Final promulgation of the regulations on the Giant Anole 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.

§ 17.11 Endangered and threatened wildlife.

| Species | | Range | | | | Status | When listed | Special rules |
|--------------|--------------------------|------------|------------------------------|---|---|--------|-------------|---------------|
| Common name | Scientific name | Population | Known distribution | Portion of range where threatened or endangered | | | | |
| REPTILES | | | | | | | | |
| Anole, Giant | <i>Anolis roosevelti</i> | NA | Culebra Island, Puerto Rico. | Entire | E | | NA | |

It is further proposed to amend 50 CFR Part 17:

1. By amending the Table of Sections for Subpart I of Part 17 to read as follows:

Subpart I—Interagency Cooperation

Sec. 17.95 Critical habitat—fish and wildlife.

2. By adding new §17.95(c) (4) reading as follows:

§ 17.95 Critical habitat—fish and wildlife.

(c) Reptiles * * *

(4) Giant Anole. (a) The following area (exclusive of those existing man-made structures or settlements which are not necessary to the survival or recovery of the species) is Critical Habitat for the Giant Anole:

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, 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 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 April 7, 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 514, 1717 H Street, NW, Washington, D.C.

(Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884)

Dated: December 22, 1976.

LYNN A. GREENWALT,
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:

[1] A circular area of land with a 1.4 kilometer radius, the center being the summit of Mt. Resaca on Culebra Island, Commonwealth of Puerto Rico.
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[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered Status and Critical Habitat for the St. Croix Ground Lizard

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 St. Croix Ground Lizard