an undue hardship upon the owner in the case of sudden, unforeseen events or be likely to result in an increased risk of default. Examples of restrictions that could work an undue hardship include, but are not limited to, requirements for sale in lieu of leasing or renting of the property if the owner-occupant becomes the guardian or custodian of a minor child who must reside with the owner-occupant in the death or incapacity of the child's parents and restrictions that do not permit persons younger than the specified age who inherit the property either to rent or lease such property to a qualified occupant. The enforcement of an age restriction which would authorize the eviction of owners who adopt or give birth to a child is not considered an undue hardship. The veteran is fully informed and consents in writing to the age restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis; (38 U.S.C. 1819(g))
(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter; (9) Violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach; (10) Any other covenant, condition, restriction, or limitation approved by the Administrator in the particular case. Such approval shall be a condition precedent to the guaranty of the loan.

The sale price of a property under any of the restrictions of paragraph (b)(6) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner, plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Administrator. The veteran must be fully informed and consent in writing to the deed restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis; (38 U.S.C. 1819(g))
(7) A recorded restriction on title limits the sale, lease, or occupancy, of a dwelling to person based on age, including prohibitions against the permanent occupancy of the dwelling by children. The Administration may refuse to approve a property with such a restriction if its operation would work
The Hierron giant lizard is a large species (up to 70 cm from snout to tip of tail) found only in the the Canary Islands. It is nearly black with gray patches on the sides of the adults, and is entirely herbivorous. Although believed extinct until 1975, the lizard survives on a steep rocky arid cliff. Reproduction is occurring on this refuge, as about half of the estimated total population of 200 lizards in 1975 were juveniles. Rica (1982) considers the lizard's status as "critical and the danger of extinction is strong." A stone-breaking plant has been proposed to be built on the cliff which would directly impact the lizard and adversely affect its plant food sources. In addition, goats which graze the area could be competing with the lizard for the young plant leaves on which it depends. Honegger (1978) sites two scientists (A. Salvador and J. Mellado) as stating that collection of specimens has contributed to the decline of this species. Much of the data contained in the above references was collected in the mid 1970's, and it is unlikely the status of the species has improved. In 1980, R. Honegger told personnel of the Service that he believed the lizard to be extinct although he did not include it in his worldwide list of extinct reptiles and amphibians (Honegger, 1980-81). Until such time as it can be proved otherwise, the lizard should be considered Endangered. Dr. Groombridge states: "You now quote a communication from R. Honegger (48 FR 2563) to the effect that the lizard is extinct. This appears to be incorrect." He continues: "Since the estimated population is around 200 individuals, and there is a threat of habitat disturbance, I would strongly suggest the taxon requires Endangered listing. It is considered a top priority for action and research by the Conservation Committee of the Societas Europaea Herpetologica. We are at present hoping to delay the construction of a planned road near the hillside where C. s. simonyi lives until an impact report can be prepared." Thus, concerns about the species' extinction appear to have been, fortunately, premature.

The Ibiza wall lizard (Podarcis pityusensis) is a small lizard found in the Balearic Islands, mainly around Ibiza and Formentera, and in some parts of Mallorca, in the Mediterranean Sea. Because of the large number of small islands, considerable evolutionary divergence has occurred, and there are 35 described subspecies. Rica and Costa (1982) estimate that only 12 would remain valid after a through taxonomic study.

Rica and Costa (1982) have assessed the status of the Ibiza wall lizard on some 70 small islands around Ibiza and Formentera. Lizards were found on 43, and only 10 sites had substantial populations. The vast majority of the lizard populations have been impacted due to one or a combination of the following reasons: predation by gulls (a minor problem), collection for scientific and commercial purposes, the human-mediated hybridization of various subspecies (lizards were transported by fishermen between islands and released), habitat alteration and destruction, and direct killing by poisoning. Rica and Costa (1982) provide a review of 32 of the subspecies and their status on their-open small island habitats. These authors stress the need for adequate protective measures for the conservation of remaining populations.

Neither of the above two species is involved in commercial trade to the United States.

The Indian flap-shelled turtle, Lissemys punctata punctata, is one of the softshell turtles, males usually less than 6 inches and females less than 11 inches. It has a somewhat domed shell and is mostly a uniform brown color but may have scattered dark markings. Observations on the population of one particular drying lake in India are provided by Auffenberg (1981).

Following the taxonomic arrangement of Webb (1982), two subspecies are recognized in India: L. p. punctata from southern and central India and Sri Lanka and L. p. andersoni from northern India, Pakistan, Nepal, Bangladesh, and Burma. While L. p. punctata is listed under provisions of the Endangered Species Act of 1973, the range under "Known distribution" includes areas where this subspecies is not known to occur. It is unclear from reviewing the administrative record which subspecies (or both?) was included in the original listing; the taxonomic history provided by Webb (1982) provides background as to the complexities of previous arrangements.

The Indian flap-shelled turtle was listed as Endangered on June 14, 1976 (41 FR 24062-24067), and this document should be consulted for the circumstances surrounding the listing. The listing was apparently based on recommendations by Bangladesh that the species be included on Appendix I of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). As part of the Service's continual efforts to ensure that the biological status is reflected in the status of species protected by the Act, a literature review was conducted to determine if supporting evidence justified its present...
Endangered status. No such supporting data could be found. The Service then contacted a number of scientists to determine what field data might support the listing. The unanimous consensus was that there is no justification for listing under either the Act of CITES. For instance, Dr. E. O. Moll, chairman of the IUCN Freshwater Turtle Specialist Group, who is presently conducting turtle studies in India, states: “The species is seemingly the most common and widespread turtle in India. As for the subspecies, it is frequently seen in the Calcutta markets suggesting that it is still easily attainable. How it ever made Appendix I is a big mystery.”

Dr. Brian Groombridge of the IUCN states: “Certainly Lissemys p. punctata (correctly named L. p. andersoni) is generally considered the commonest aquatic turtle in India, and it should not be listed on CITES nor on the U.S. list.”

After carefully considering the status of L. p. punctata, the Service concludes that this species is neither Endangered nor Threatened as defined by the Act, and that there is no justification for retaining it on the U.S. list of Endangered and Threatened wildlife.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) state that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. This authority has been delegated to the Assistant Secretary for Fish and Wildlife and Parks. These factors are as follows:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;
(B) Overutilization for commercial, recreational, scientific, or educational purposes;
(C) Disease or predation;
(D) The inadequacy of existing regulatory mechanisms; or
(E) Other natural or manmade factors affecting its continued existence.

The reptiles proposed for listing as Endangered and Threatened species relate to these factors as follows (letters refer to factors above):

Hierro giant lizard—(A) While the Hierro giant lizard is found on a rather steep cliff, there is a threat from a stone-breaking operation that could destroy or otherwise adversely modify the only known habitat of this species. In addition to direct habitat alteration, Rica (1982) believes that dust from such a stone-working operation could adversely impact the plants on which this herbivorous lizard depends; (B) Several European scientists have indicated that overcollection has contributed to the precarious status of this species. Certainly, removal of any animals except for strict conservation purposes could adversely affect the species; (C) Gulls may prey on juvenile lizards, but the overall effect to its status remains unknown; (D) Royal Decree 3181/1980 protests nearly all Spanish reptiles and amphibians from hunting, capturing, trafficking, or exportation. The efficacy of this law has yet to be determined. In any case, there is no habitat protection, nor is the lizard covered under the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; (E) Costs may be competing with the lizard for food, especially young shoots and leaves.

Ibiza wall lizard—(A) On numerous islands inhabited by this species, humans are altering the environment during the course of building and development for the tourist industry. Some islands have been modified by dynamiting to ease perceived navigation problems whereas others have served as targets for military bombardment. The threats of habitat alteration and destruction are serious, depending on the particular island, and have been documented by Rica and Costa (1982). The problems of habitat alteration are particularly apparent on Espalmador, Ratas, and Torretas; (B) This appears to have been a major factor in the status of this species. Collecting by local fishermen for scientific purposes occurred as early as the 1950’s when specimens from remote island brought premium prices (see below). In the 1960’s Rica and Costa (1982) note that large numbers of lizards were removed for commercial pet shops, especially in Holland and Germany. They state that, “captures made for commercial purposes were very large, sometimes several hundred animals being taken from one locality.” As late as 1979, more than 100 P. p. malaguerrorum were exported from Ibiza. Such trade is detrimental to the survival of the lizard; (C) Predation by gulls, rats, and feral cats may be affecting the survival of this species, depending on population involved; (D) Royal Decree 3181/1980 protects nearly all Spanish reptiles and amphibians from hunting, capturing, trafficking, or exportation. The efficacy of this law has yet to be determined. In any case, there is no habitat protection, nor is the lizard covered under the appendices to Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (E) Hybridization has been a threat to many individual subspecies of Podarcis pityusensis. For instance, Rica and Costa (1982) indicate that the subspecies miquelensis, subfurmentacea, aligea, sabinae, and gruelli may now be extinct due to hybridization. Various lizards were introduced onto islands where they did not naturally occur by fishermen who hoped to obtain money from collectors by producing lizards from remote areas; in some cases this resulted in the colonization of unhabited islands whereas in others, the new lizards hybridized with a resident population.

With regard to the Indian flap-shelled turtle, the same factors used to list a species are discussed in terms of the species’ delisting. These factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range—There is a large amount of available habitat for this species on the Indian subcontinent and Sri Lanka. There is no evidence of the destruction, modification or curtailment of this species’ habitat or range such as to justify a listing of Endangered under provisions of the Act. Indeed, herpetologists familiar with the turtles of this region believe that Lissemys punctata may be the most abundant freshwater turtle in India.

B. Overutilization for commercial, recreational, scientific, or educational purposes—This species is widely used as food in India and is still abundant in local markets. There is no evidence of overexploitation.

C. Disease or predation—Not known to be a problem with this species.

D. The inadequacy of existing regulatory mechanisms—This species is listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The lack of regulations regarding this species is not a factor in its present status.

E. Other natural or manmade factors affecting its continued existence—Not applicable.

Effects of the Proposal if Published as Final Rule

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 and threatened species. These regulations are found at §§ 17.21 and 17.31 of Title 50, and are summarized below.

With respect to the Hierro giant lizard and Ibiza wall lizard, all prohibitions of Section 9(A)(1) of the Act as
implemented by 50 CFR 17.21 and 17.31, would apply. These prohibitions, in part, would make it illegal for any persons subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Endangered and Threatened species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, the enhancement or propagation or survival of the species, and economic hardship.

With regard to the Indian flap-shelled turtle, all such prohibitions as described above, which are presently in effect for this species, would be terminated. This proposal does not affect its Appendix I status and critical habitat rules.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours (7:45-4:15 pm). A determination will be made at the time of a final rule 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 (implemented at 40 CFR Parts 1500-1508).

Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—AMENDED

Accordingly, it is proposed that Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations be amended as follows:

1. The authority citation for Part 17 reads as follows:


2. It is proposed to amend §17.11(h) by adding, in alphabetical order, the following to the list of reptiles:

   §17.11 Endangered and threatened wildlife.

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