Endangered Species Act. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of Appeals that held that the preparation of NEPA documentation was not required as a matter of law for Section 4(a) actions. Pacific Legal Foundation v. Andrus, 687 F.2d 629 (6th Cir. 1981).

References


Author

List of Subjects in 50 CFR Part 17
Endangered and threatened wildlife, fish, marine mammals, plants (agriculture).

Regulation Promulgation
PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

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


§ 17.11 [Amended]

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

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Historic range</th>
<th>Vertebrate population where endangered or threatened</th>
<th>Status</th>
<th>Critical habitat</th>
<th>Special rule</th>
</tr>
</thead>
</table>

G. Ray Arnott, Assistant Secretary for Fish and Wildlife and Parks.

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing of Two Spanish Reptiles and the Delisting of the Indian Flap-Shelled Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines that the Hierro giant lizard (Gallotia simonyi simonyi) is an endangered species and the Ibiza wall lizard (Podarcis pityusensis) is a threatened species under provisions of the Endangered Species Act of 1973, as amended. The threats believed to affect these lizards involve habitat destruction, predation by domestic and feral animals, and overcollection. Both species live on islands under Spanish jurisdiction and there is no commercial trade in them within the United States. This rule implements the protection of the Endangered Species Act of 1973, as amended, with regard to these species. In addition, the Service delists the Indian flap-shelled turtle (Lissomyys punctata punctata) from provisions of the Act. This turtle is neither endangered nor threatened; indeed, it may be one of the most abundant turtles in India and Sri Lanka.

DATE: This rule becomes effective on March 30, 1984.

ADDRESSES: Questions concerning this action should be addressed to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection, by appointment, during normal business hours at the Service’s Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.
FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1980, the Service published a notice of review in the Federal Register (45 FR 54685-54686) to the effect that a review of the status of the 18 species of foreign reptiles would be conducted to determine whether enough information existed to list them as endangered or threatened species under provision of the Endangered Species Act of 1973, as amended. The Heirogo giant lizard was included on that notice, and based on information received that the lizard was extinct, the Service initially decided no further action was warranted. When the Service subsequently proposed 17 foreign reptiles to be added to the list of endangered and threatened species (January 26, 1983; 48 FR 2562-2566), comments were received concerning Gallotia simonyi simonyi. Subsequently, on September 7, 1983. (48 FR 40404), the Service proposed that the Heirogo giant lizard be listed as endangered, the Ibiza wall lizard be listed as threatened, and the Indian flap-shelled turtle be delisted entirely.

On February 7, 1983, Dr. Brian Groombridge of the International Union for the Conservation of Nature (IUCN), Cambridge, England, noted that Gallotia simonyi simonyi was not considered extinct. Included was a copy of an article by Martinez (1982). The information presented below is based on that contained in Martinez (1982); additional information may be found in Honegger (1978).

The Heirogo giant lizard is a large species (up to 70 cm from snout to tip of tail) found only in 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 refugium, as about half of the estimated total population of 200 lizards in 1979 were juveniles. Martinez (1982) considered the lizard's status is "critical and the danger of extinction is strong." A stone-breaking plant was 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) cites 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 amphibia (Honegger, 1989-81). 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 2593) 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 G. 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. Martinez and Costa (1982) estimated that only 12 would remain valid after a thorough taxonomic study. Martinez 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. Martinez and Costa (1982) provide a review of 32 of the subspecies and their status on their often 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, Lissymys punctata punctata, is one of the softshell turtles, males usually less than 11 inches and females less than 13 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 (1931).

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) gives background information on the complexities of previous arrangements.

The Indian flap-shelled turtle was listed as endangered on June 14, 1976 (41 FR 24052-24057), and this document should be consulted for the circumstances surrounding the listing. The listing was apparently based on successful recommendations by Bangladesh that the species be included on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). As a result of its inclusion on Appendix I of CITES, the Service subsequently listed the species as endangered.

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 recently conducted to determine if supporting evidence justified its current 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 the Act. For instance, Dr. E. O. Moll, chairman of the IUCN Freshwater Turtle Specialist Group, who is presently conducting turtle studies in India, stated:

The species is seemingly the most common and widespread turtle in India. As for the subspecies, it is frequently seen in the Calcutta market suggesting that it is still...
easily attainable. How it ever made Appendix I a big mystery.

Dr. Brian Groombridge of the IUCN stated:

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 concluded 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 Comments and Recommendations

In the September 7, 1983, Federal Register (48 FR 40404–40407), the Service proposed to list the Ibiza wall lizard as a threatened species, the Hierro giant lizard as an endangered species, and to delist the Indian flap-shelled turtle, under provisions of the Act. A total of three comments were received during the public comment period.

Dr. Robert Webb concurred that *Lissemys punctata* is "abundant and widespread," and is neither biologically endangered nor threatened. Dr. Webb also noted the taxonomic confusion mentioned in the proposed rule and suggested that only *Lissemys punctata* actually be mentioned in the final rule. The Service is cognizant of nomenclatural problems surrounding this taxon (see discussion in "Background"). However, this final rule can only address the delisting of a species as it appears on the list and as codified in § 17.11; as such, this final rule will result in delisting *Lissemys p. punctata* as the name was used in 1976. This effectively removes *Lissemys punctata* from the Federal list without getting involved in the nomenclatural background of the flap-shelled turtles of the Indian subcontinent.

Stephen Busack reviewed the protection given the Spanish lizards and noted that non-citizens may be granted research permits. He also noted that importation into the U.S. would be prohibited under provisions of the Lacey Act without proper Spanish permits and that listing would not grant the habitat protection which these species need to survive. Mr. Busack therefore believes that listing should not be pursued since it is an intellectual exercise with no practical application.

The Service notes that whether a species will immediately benefit from Federal listing is not a criterion of listing. To be listed under provisions of the Act, only the biological basis for status determinations may be considered, as specified in Section 4(a)(1). Mr. Busack does not question the biological basis for listing or offer data contrary to that in the proposal. Hence, the Service believes that listing the Hierro giant lizard and Ibiza wall lizard is indeed justified.

Sections 8(a), (b), and (c) of the Act authorize the Secretary of the Interior, in part, to provide financial assistance, to encourage foreign programs, and to provide assistance in the form of personnel or training of personnel, in order to promote the conservation of listed species that are not native to the United States. Under this provision, the Service has assisted cooperative research activities on listed species in a number of localities, including Mexico and Ecuador. Without listing, such activities would be much less likely to occur. It should not therefore be automatically assumed that simply because a species is foreign and not in trade that the U.S. cannot promote its conservation. With listing, it is possible that a conservation program for the Spanish lizards, featuring habitat protection, could be developed in cooperation with authorities in Spain. The Service believes that the biological data warrant listing as proposed.

The last comment was from Juan-Pablo Martinez Rica who authored two data warrant listing as proposed.

The Service thanks the three individuals who responded to the proposed rule.

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; presently under revision to accommodate the 1982 amendments) state that the Secretary of the Interior shall determine whether any species is an endangered or 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 listed 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, Martinez (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 animal except for strict conservation purposes could adversely affect the species. (C) Gulls may prey on this lizard, but the overall effect to its status remains unknown. (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 the Convention on International Trade in Endangered Species of Wild Fauna and Flora. (E) Goats 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 Martinez and Costa (1982). (B) 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 scientists occurred as early as the 1950's when specimens from remote islands brought premium price (see below). In the 1960's, Martinez and Costa (1982) noted 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, particularly on Hierro." The Service believes that the biological data warrant listing as proposed.
sometimes several hundred animals being taken from one locality." As late as 1979, more than 100 P. p. malaquorum 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 prohibited the 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) Hybridization has been a threat to many individual subspecies of Podarcis pityusensis. For instance, Martinez and Costa (1982) indicate that the subspecies miguensis, subformenterae, algae, sabinae, and greuvi 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 uninhabited 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 are:

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.

Available Conservation Measures

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 Hispano giant lizard and Ibizan 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 person 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 of 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 listing under CITES, however, and all restrictions regarding trade into and from the United States with reference to Appendix I species will remain in effect.

Literature Cited


Honegger, R.E. 1980-81. List of amphibians and reptiles either known or thought to have become extinct since 1600. Biof. Conserv. 19:141-158.


National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) 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).

Author


List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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


2. Section 17.11(h) is hereby amended by adding, in alphabetical order, the following to the list of reptiles:

§ 17.11 Endangered and threatened wildlife.

(h) * * * * *
### Table of Species

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
<th>Historic range</th>
<th>Vertebrate population whose endangered or threatened</th>
<th>Status</th>
<th>When listed</th>
<th>Critical habitat</th>
<th>Special rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lizard, Hiero giant</td>
<td>Gallotia simonyi simonyi</td>
<td>Spain (Canary Islands)</td>
<td>*</td>
<td>E</td>
<td>142</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Lizard, Ibiza wall</td>
<td>Podarcis pityusensis</td>
<td>Spain (Baleian Islands)</td>
<td>*</td>
<td>T</td>
<td>142</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

3. Section 17.11(h) is further amended by removing the entry for the Indian flap-shelled turtle, under “Reptiles,” from the List of Endangered and Threatened Wildlife.


G. Ray Arnett,
Assistant Secretary for Fish and Wildlife and Parks.