

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reproposal of Critical Habitat for Two Species of Turtles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reproposal of Critical Habitat for the Illinois mud turtle and Beaver Dam slope population of the desert tortoise.

SUMMARY: The Service repropo- ses Critical Habitat for the Illinois mud turtle (*Kinosternon flavescens spooneri*) and Beaver Dam slope population of the desert tortoise (*Gopherus agassizii*). Endangered status and Critical Habitat were originally proposed for these species on July 6, 1978 (43 FR 29152-29154) and August 23, 1978 (43 FR 37662-37665) respectively.

The Critical Habitat portion of these proposals was withdrawn by the Service on March 6, 1979 (44 FR 12382-84) because of the procedural and substantive changes in prior law made by the Endangered Species Act Amendments of 1978. The proposed rule comports with these requirements.

DATES: Comments on this proposed rule must be submitted by February 5, 1980. Public meetings on this proposal will be held January 31, 1980 at 7 p.m. at the Holiday Inn, Muscatine, Iowa, January 10, 1980 at 8 p.m. at the Hilton Inn in St. George, Utah, and January 30, 1980 at 7 p.m. at the Sheraton Inn, 3090 Stevens Dr., Springfield Illinois at 7 p.m.

DATES: Comments on this proposed rule must be submitted by February 5, 1980. Public hearings on this proposal will be held January 31, 1980 in Iowa, January 10, 1980 in Utah and January 30, 1980 in Illinois.

ADDRESSES: Interested persons or organizations are requested to submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rulemaking are available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia 22201. The time and place of the public meetings on this proposal are presented in the table below.

FOR FURTHER INFORMATION CONTACT: For further information on the original proposals, as well as on this supplement, contact Mr. John L. Spinks,

Jr., Chief, Office of Endangered Species (703/254-2771).

SUPPLEMENTARY INFORMATION:**Background**

The Illinois mud turtle and the Beaver Dam slope population of the desert tortoise were proposed as Endangered with Critical Habitat on July 6, 1978 and August 23, 1978, respectively. Before final action could be taken on these proposals, however, Congress passed the Endangered Species Act Amendments of 1978, which substantially modified the procedures the Service must follow when designating Critical Habitat. The present rulemaking will bring the Critical Habitat proposal into conformity with the amendments.

The Illinois mud turtle was described in 1951 and is presently known to occur in a few scattered localities in Missouri, Illinois and Iowa. Total population estimates are not available although several scientists informally place the number at fewer than 650. The status of this subspecies is at present extremely precarious although a study currently in progress has managed to relocate several populations previously reported. The Illinois mud turtle had been reported from Missouri and was thought to be extinct. However, researchers in Missouri have located what appears to be a small population in Clark County.

Detailed summaries of the present knowledge surrounding the present and past distribution of this subspecies are available and studies underway, largely through the efforts of Monsanto, Inc. and Iowa-Illinois Gas and Electric, have yielded new information on the biology of the turtle. However, no information has been received to date which would modify the summary of status of the subspecies as published in the original proposal.

On August 8, 1977, the U.S. Fish and Wildlife Service was petitioned by Dr. Glenn R. Stewart on behalf of the Desert Tortoise Council to list the Utah desert tortoise population as Endangered under provisions of the Endangered Species Act of 1973. Included in the petition was a recommendation for Critical Habitat. The main threats to this unique population include competition from grazing animals, overgrazed habitat, and problems with collection of individuals.

After careful review of the petition by the Office of Endangered Species, the Director of the Service notified the Desert Tortoise Council on August 30, 1977, that the petition did indeed qualify as formal petition.

On August 23, 1978, the Fish Wildlife Service published a proposal to list this

unique population as Endangered and included a 35 square mile area of Bureau of Land Management administered land in southwestern Utah as Critical Habitat.

Summary of Factors Affecting the Species

Illinois mud turtle—As previously stated, the Illinois mud turtle is presently known to occur in limited areas in Iowa, Illinois, and Missouri. It seems well documented that the turtle was much more widely distributed; studies by researchers in universities, the Illinois Department of Conservation, and that currently being sponsored by Monsanto and Iowa-Illinois Gas and Electric Co. (I-IGE), have confined the absence of the turtle in areas where it was previously encountered and in areas where it might be expected to occur based on habitat types.

The major threats to the Illinois mud turtle include destruction or modification of habitat, including ponds, wetlands and adjacent nesting sites, collection of individuals, predation, and pollution of water sites. Examples of activities that could be detrimental to the environment of this species and lead to further reduction of its range include:

1. Fluctuation of water levels in ponds or wetlands,
 2. Development or modification of land adjoining such ponds or wetlands thus leading to increased siltation or pollution of the water source,
 3. Draining of ponds or wetlands known to contain this species,
- Dumping of pollutants directly into ponds or wetlands,
- Increased disturbance to nesting areas adjacent to ponds by humans and their pets, and
6. Collection and harassment by people.

Beaver Dam slope population of the desert tortoise—This unique population of the desert tortoise is primarily Endangered through habitat modification by grazing animals (competition and actual destruction of feed plants, shelter and overwintering sites, and trampling). Other factors which have contributed to the status of the population include overcollection of individuals for sale to tourists, predation, and habitat modification caused by the use of off road vehicles. Examples of activities that could be detrimental to the environment of this population and lead to further reduction of its viability include:

1. The allowance of unregulated grazing by domestic animals,
2. Development which would destroy burrows and overwintering sites,

3. The unregulated use of off road vehicles in the area, and

4. Collection and harassment by people.

Comments on Critical Habitat

An extensive study sponsored by Monsanto and I-IGE has yielded additional information on the distribution of the Illinois mud turtle on Big Sand Mound in Iowa. As a result of receiving this information, the Service now believes that certain modifications should be made to the Critical Habitat area as originally published in the Federal Register of July 6, 1978 (43 FR 37662-37665). Accordingly, Critical Habitat is hereby repropoed as follows:

Illinois. Mason County. A circular area with a one mile radius, the center being a point on Sand Ridge Road one mile west of its junction with Cactus Drive; Iowa, Muscatine and Louisa Counties.—(1) SW¼ Section 34 T76N R2W, (2) an area including Spring Lake and the shores of Spring Lake including Monsanto Bay, in Sections 33 and 34 T76N R2W; this boundary should extend approximately 100 meters inland on the south shore as shown on the accompanying map but not inland elsewhere around the lake (3) W½ Section 3 T75N R2W, (4) E¼ Section 4 T75N R2W, (5) a rectangular area beginning at the intersection of Sections 33 and 34 T76N R2W and extending north 1200 feet, thence west 800 feet, thence south 1200 feet, thence east 800 feet back to the intersection of Sections 33 and 34 T76N R2W and Sections 3 and 4 T76N R2W.

To date, no biological information has been received by the Service which would cause a change to be made at this time of the boundaries proposed as Critical Habitat for the Beaver Dam slope population of the desert tortoise. (See the Federal Register of August 23, 1978 (43 FR 37662-37665) for details of the original proposal).

A detailed summary of comments received to both the original proposals for listing these species, as well as this reproposal of Critical Habitat, will appear at the time of final rulemaking.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such

areas are essential for the conservation of the species.

The Service believes that certain ponds and adjacent land areas within the geographical area occupied by the Illinois mud turtle, as well as desert areas inhabited by the Beaver Dam slope population of the desert tortoise, should be designated as Critical Habitat. Both species occupy a limited range and are highly susceptible to changes in their habitat. Because physical or chemical changes in the waters and land areas occupied by the Illinois mud turtle may result in extinction, designation of Critical Habitat is essential for this turtle's conservation. Likewise, because changes in the plant community, as well as the physical destruction or alteration of burrows and over-wintering sites, may result in the tortoise's extinction designation of Critical Habitat is essential to conservation efforts. The physical and biological features of these habitats are such as to require special management considerations and protection.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant in the foreseeable future. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action (see below).

The Service will prepare a final impact analysis prior to the time of final rulemaking, and will use this document as the basis for its decision as to whether or not to exclude any area from Critical Habitat for either the Illinois mud turtle or the Beaver Dam slope population of the desert tortoise.

Effect of this Proposal if Published as a Final Rule

Section 7(a) of the Act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal 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 Endangered species and Threatened species listed pursuant to Section 7 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence

of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to Subsection (h) of Section 7 of the Endangered Species Act Amendments of 1978.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out, do not jeopardize the continued existence of the Illinois mud turtle or the Beaver Dam slope population of the desert tortoise, but also to insure that their actions do not result in the destruction or adverse modification of these Critical Habitats which have been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for these species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act.

1. With regard to the Illinois mud turtle, a major threat to the continued existence of this species is the adverse modification of the water quality and levels of the ponds on which it depends. Any significant alteration of the water levels, as by groundwater pumping, or reduction in water quality which would reduce or eliminate vegetation and aquatic prey items of this turtle could adversely modify Critical Habitat. Siltation resulting from land clearing adjacent to ponds or wetlands or pollution of the groundwater could eliminate vegetation and aquatic invertebrates.

2. Because the Illinois mud turtle uses wetlands and ponds, the draining of wetlands and ponds within the Critical Habitat could adversely affect the species.

3. Shoreline modification, filling, and dredging for beaches, dikes, real estate development or similar types of activity could be considered to adversely affect Critical Habitat since they could affect water quality, levels of shoreline, and nesting, hibernation and estivation sites for the species.

4. With regard to the Beaver Dam

slope population of the desert tortoise, overgrazing of the habitat could be expected to adversely modify Critical Habitat since cows trample burrows, may trample young tortoises, destroy cover sites, and compete for food items, especially during the spring and early summer.

5. The driving of off road vehicles through the habitat could eliminate burrows, overwintering sites, and cover

as well as destroy browse and directly kill or injure tortoises.

Public Meetings

The Service hereby announces that public meetings will be held on this proposed rule. The public is invited to attend these meetings and to present opinions and information on the proposal. Specific information relating to the public meetings are set out below:

Place	Date	Time	Subject
1. Holiday Inn, Muscatine, Iowa.....	Jan. 31, 1980	7 p.m.	Illinois mud turtle.
2. Hilton Inn, St. George, Utah.....	Jan. 10, 1980	8 p.m.	Beaver Dam slope population of the desert tortoise.
3. Sheraton Inn, Springfield, Ill.....	Jan. 30, 1980	7 p.m.	Illinois mud turtle

Public Comments Solicited

The Director intends that the rules finally adopted be as accurate and effective as possible in the conservation of the Illinois mud turtle and Beaver Dam slope population of the desert tortoise. Therefore, any comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of this proposed rule are solicited. The Service particularly requests comments on the following:

1. Biological and other relevant data concerning any threat (or lack thereof) to these species;
2. Additional information concerning the range and the distribution of the species;
3. Current or planned activities in the subject areas;
4. The probable impacts on such activities if the area is designated as Critical Habitat; and
5. The foreseeable economic and other impacts of the Critical Habitat designation.

National Environmental Policy Act

A draft environmental assessment has been prepared and is on file in the Service's Washington Office Endangered Species. The assessment will be the basis for a decision as to whether this determination 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.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a

regulatory analysis under Executive Act 12044 and 43 CFR Part 14.

Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

§ 17.95 [Amended]

1. It is proposed that § 17.95(c), Reptiles, be amended by adding Critical Habitat of the Illinois mud turtle after that of the Plymouth red-bellied turtle as follows:

Illinois Mud Turtle

(*Kinosternon flavescens spooneri*)

Illinois. Mason County. A circular area with a one mile radius, the center being a point on Sand Ridge Road one mile west of its junction with Cactus Drive; Iowa, Muscatine and Louisa Counties, (1) SW ¼ Section 34 T76N R2W, (2) an area including Spring Lake and the shores of Spring Lake, including Monsanto Bay, in Section 33 and 34 T76N R2W; this boundary should extend approximately 100 meters inland on the south shore as shown on the accompanying map but not inland elsewhere around the lake, (3) W ½ Section 3 T75N R2W, (4) E ½ Section 4 T75N R2W, (5) a rectangular area beginning at the intersection of Sections 33 and 34 T76N R2W and Sections 3 and 4 T75N R2W and extending north 1200 feet, thence west 800 feet, thence south 1200 feet, thence east 800 feet back to the intersection of Section 33 and 34 T76N R2W and Section 3 and 4 T75N R2W.

§ 17.95 [Amended]

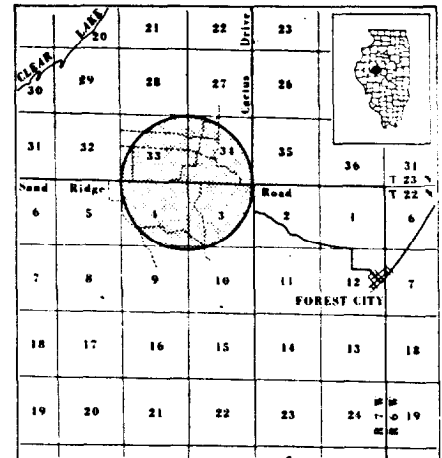
2. Section 17.95(c), Reptiles, is further proposed to be amended by adding Critical Habitat of the Beaver Dam slope population of the desert tortoise after that of the Illinois mud turtle as follows:

Beaver Dam Slope Population of the Desert Tortoise

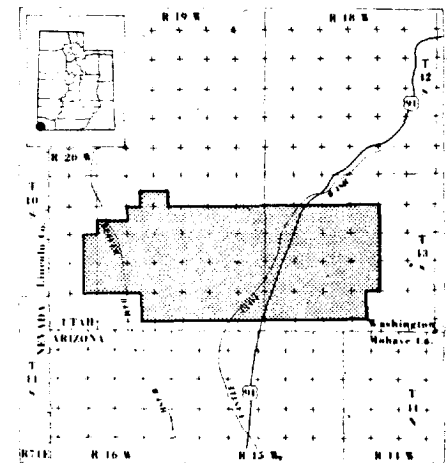
(*Gopherus agassizii*)

Utah. Washington County. E ½ Sections 13 and 24, T43S R20W; S ½ Section 7, all of Sections 8 through 28, E ½ Section 29, SE ¼ Section 5, SW ¼ Section 4, T43S R19W; all of Sections 7 through 10, 15 through 22, 28 through 30, and W ½ Section 27, T43S R18W.

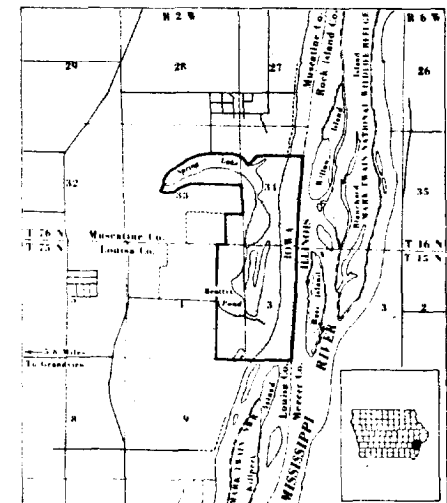
Illinois Mud Turtle (Mason County, Ill.)



Desert Tortoise Beaver Dam Slope Population



Illinois Mud Turtle (Louisa and Muscatine Counties, Iowa)



Dated: November 8, 1979.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

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