

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Proposal To Remove the Brown Pelican in Southeastern United States From List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove the brown pelican (*Pelecanus occidentalis*) from the list of Endangered and Threatened Wildlife in Alabama, Florida, Georgia, South Carolina, North Carolina, and points northward along the Atlantic coast. The brown pelican is currently listed as Endangered throughout its entire range, which includes, in addition to the area affected by this proposal, Mississippi, Louisiana, Texas, California, Mexico, Central and South America, and the West Indies. This proposed change in status is based on evidence that, due to its large and stable population numbers and productivity, the species is no longer Endangered or Threatened in the subject area. The Service is requesting information from the public on the delisting of the brown pelican in this area.

DATES: Comments from affected States and the public must be received by January 9, 1984. Requests for public hearings must be received by December 27, 1983.

ADDRESSES: Comments and data should be sent to Mr. Dennis B. Jordan, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 3185, Jackson, Mississippi 39213-7685. Comments and materials will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 3185, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213-7685 (601/960-4900).

SUPPLEMENTARY INFORMATION

Background

The brown pelican is one of two species of pelicans in North America; the other is the white pelican (*Pelecanus erythrorhynchos*). The brown pelican weighs up to 8 pounds (4 kg) and may have a wingspan of 7 feet (2 m). It feeds

almost entirely on fishes captured by plunge diving in coastal waters. Brown pelicans are rarely found away from salt water and do not normally venture more than 20 miles (32 km) out to sea.

Within the area affected by this action, pelicans nest on coastal islands in North Carolina, South Carolina, Florida, and Alabama. Islands chosen as rookery sites are usually 5 acres or less in size, and generally of very recent origin, being mangrove islands, natural sand spits or dredge spoil sites. Elevation of these islands is essentially at or only a few feet above sea level. The dune islands, in particular, are subject to erosion and flooding by storm and spring tides, and they are constantly shifting position.

In Florida, most brown pelicans nest 2-25 feet (roughly 1-10 meters) above the high tide line on islands composed of black (statewide) and red (west coast) mangroves. Brown pelicans have also been observed nesting in white mangrove, Australia pines, red cedars, live oaks, redbay, and seagrape.

In North and South Carolina, pelicans nest almost without exception on the ground, on low sand islands of natural or artificial origin. Nesting is concentrated on the highest portion of these islands (rarely more than 6 feet above mean high tide), which are often characterized by a panicgrass-cordgrass association. Nesting also occurs in seashore saltgrass, pigweed, and other characteristic beach and dune species. The elevation of the area appears to be a more essential feature governing nest site selection than the specific vegetation present, although the two factors are in many cases related.

This proposed rule specifically addresses the eastern subspecies of the brown pelican (*Pelecanus occidentalis carolinensis*) in a portion of its range: U.S. Atlantic Coast, Florida, and Alabama (subspecies range is coastal areas of Atlantic Ocean, Gulf of Mexico, and Caribbean Sea). In the United States, large numbers of this subspecies historically nested on small coastal islands in Texas, Louisiana, Florida, and South Carolina; some nesting also occurred in North Carolina. There were no verified reports of nesting in Mississippi, Alabama, Georgia, or the States north of North Carolina until 1983, when four pairs were found trying to nest on a spoil island in Mobile Bay, Alabama.

Between 1957 and 1961, the brown pelican disappeared as a nesting species on the Louisiana coast and seriously declined on the Texas coast. Prior to this decline, the brown pelican population in these two States may have numbered about 50,000 individuals (King *et al.*,

1977). Of the several species of coastal breeding birds along the Louisiana and Texas coasts, only the brown pelican was known to suffer so severely. There was no adequate explanation for this population crash, but the severity of the decline, which affected all age groups, suggested the involvement of a highly toxic agent. Subsequent research has implicated the organochlorine pesticide endrin as the probable causative substance (Blus, Cromartie, *et al.*, 1979).

Around the same time (late 1960's, early 1970's), brown pelican populations in South Carolina showed some evidence of decreased reproduction, primarily resulting from eggshell thinning (Blus, Cromartie, *et al.*, 1979). This decrease in reproduction was similar to, although less severe than, the concomitant situation in California, where thin-shelled eggs and other complications had resulted in a complete reproductive failure of brown pelicans (Anderson and Hickey, 1979). This impairment of reproduction has been attributed primarily to the organochlorine pesticide DDT and its principal metabolite DDE. These substances, which are not easily broken down, accumulate in the tissues of species at the top of the foodchain, such as the brown pelican. DDE interferes with calcium deposition during shell formation, resulting in the production of thin-shelled eggs that are easily crushed during incubation (Peakall, 1975).

In summary, organochlorine pesticide pollution apparently contributed to the endangerment of the brown pelican via two mechanism—direct toxicity (affects all age classes) and impaired reproduction (reduces recruitment into the population). As a result of the observed population declines, the threat of increased declines from contaminated food supplies, and the unknown population status of the species in other areas, the brown pelican was listed as Endangered throughout its U.S. range on October 13, 1970 (35 FR 16047), and in its foreign range on June 2, 1970 (35 FR 8495).

Since the time of listing, the Environmental Protection Agency has placed a ban on the use of DDT in the United States (37 FR 13369-13376, July 7, 1972) and has sharply curtailed the use of endrin. As a result, the environmental residue levels of these persistent compounds have steadily decreased in most areas. There has also been a corresponding increase in the eggshell thickness and reproductive success of brown pelicans as well as of many other avian predators, including bald eagles and peregrine falcons. Pesticide residue levels in brown pelican eggs in the area

affected have steadily decreased since they were first measured in 1969 (Blus, Cromartie, *et al.*, 1979; Blus, Lamont, and Neely, 1979; Schreiber, 1980).

Breeding population censuses of the eastern brown pelican, conducted annually since the late 1960's, now indicate stable or increasing breeding populations in many areas, as indicated below:

Number of nests of brown pelicans counted:

| Year | Florida | South Carolina | North Carolina | Louisiana | Texas | Total |
|------|---------|----------------|----------------|-----------|--------|--------|
| 1968 | 8936 | NS | NS | 0 | 2 | |
| 1969 | 6133 | 1266 | NS | 0 | 5 | |
| 1970 | 7690 | 1116 | NS | 0 | 8 | |
| 1971 | 5923 | 1469 | NS | 13 | 3 | |
| 1972 | 7990 | 1415 | NS | 28 | 9 | |
| 1973 | 6010 | 1646 | NS | 50 | 6 | |
| 1974 | 6090 | 1670 | NS | 83 | 7 | |
| 1975 | 5950 | 2400 | NS | 62 | 11 | |
| 1978 | 5491 | 2540 | 75 | 38 | 11 | 8,155 |
| 1977 | 6532 | 3376 | 82 | 91 | 17 | 10,098 |
| 1978 | 7760 | 3353 | 172 | 125 | 25 | 11,455 |
| 1979 | 8942 | 4236 | 426 | 173 | 37 | 13,814 |
| 1980 | 8095 | 5346 | 425 | 244 | 51 | 14,161 |
| 1981 | 8125 | 5705 | 658 | 300+ | 56 | 14,844 |
| 1982 | 8546 | 6653 | 600+ | 300+ | ca 100 | 16,199 |
| 1983 | 6980 | 4919 | 1250 | NA | NA | NA |

¹ Birds transplanted from Florida 1968-1980 and their offspring.
NS No: surveyed adequately.
NA Not available.

In Florida, over the past 16 years, brown pelicans have nested on a total of 46 colony sites located throughout the State's coastal areas. The westernmost known breeding site in the State is near Panama City.

In contrast to the situation in Florida, South Carolina brown pelicans breed on only two sites. The average number of nests is currently (1980-83) above the reported historical level of 5,000.

The decline in the number of nests counted in Florida and South Carolina in 1983 is believed due to an unusually late nesting season in Florida and the partial loss of one of the two sites in South Carolina (to be discussed further below). Such fluctuations in annual numbers are to be expected.

The explosive increase of brown pelicans in North Carolina is believed to be related to the expansion of the South Carolina population. North Carolina is at the northern periphery of the brown pelican's breeding range and, as such, populations may be expected to fluctuate more dramatically than they would in more centrally-located breeding areas. The fact that some North Carolina brown pelicans nest on recently-created dredge spoil islands may also have contributed to the birds' increase in the State. Brown pelicans currently use 3 to 7 colony sites in 2 disjunct North Carolina coastal areas.

The 1983 breeding population expansion into Alabama is considered further evidence of the healthy state of this pelican population. In the coming

years, additional new colonies may be expected to appear in these States. The pelican regularly occurs as far north as the mouth of the Chesapeake Bay, although numbers and timing (usually late summer) are dependent largely upon water temperatures and prey availability. Some years this post-breeding wandering occurs as far north as New Jersey.

In Florida and the Carolinas, pelican nesting populations are presently at or above historical levels. Furthermore, the average current fledgling rate is greater than or equal to the level of 1.0 young per nest considered necessary to maintain a stable population. Based on these data, the Eastern Brown Pelican Recovery Team has recommended that the pelican be removed from the List of Endangered and Threatened Wildlife in these and adjacent portions of its range covered by this proposed rule. The team had suggested the pelican be delisted from Mississippi to Florida and the Atlantic Coast. The Service has selected the Alabama-Mississippi border as a convenient boundary for the following two principal reasons: (1) pelicans from Louisiana would be protected when they wander into the coastal waters that separate that State and Mississippi, and (2) the boundary of Mississippi and Alabama offers little pelican habitat such that few pelicans would be expected there and law enforcement would be simplified as a consequence.

The brown pelican does wander after the nesting season. Bandings have shown that marked pelicans from the Carolinas may wander after nesting as far north as Virginia and Maryland, occasionally further. Birds from Florida may wander north to Georgia and the Carolinas on the Atlantic Coast and north and west to Alabama from Florida westcoast colonies. The 1983 nesting in Alabama is thought to be evidence of the expanding Florida population into an area not known to have had any nesting brown pelicans in the past. The above are the reasons for the inclusion of all Atlantic Coast areas as being part of the range of the species being selected for delisting at this time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the Service's listing regulations (50 CFR Part 424; under revision to accommodate 1982 amendments) set forth procedures for listing, reclassifying, or removing species. 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.

The regulations of § 424.11(d) further state that:

The factors for removing a species from the lists are those in paragraph (b) of this section. The data to support such removal must be the best scientific and commercial data available to the Director to substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

(1) *Extinction.* Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly insure that the species is in fact extinct.

(2) *Recovery of the species.* The principal goal of the Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if the evidence shows that it is no longer Endangered or Threatened.

(3) *Original data for reclassification in error.* Subsequent investigations may produce data that show that the best scientific or commercial data available at the time that the species was listed were in error.

The findings are summarized herein under each of the five criteria of the Act. These factors, and their application to the brown pelican, are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Brown pelicans generally nest on small (usually less than 5 acres) coastal islands, either on the ground or in shrubs or trees (U.S. Fish and Wildlife Service, 1980).

1. In Florida, most nesting occurs on mangrove islands. Due to coastal development, this type of habitat has decreased somewhat since the turn of the century, but the total number of acres of mangroves now seems to have stabilized, at least in southern Florida. Mangrove habitat in Florida is actively protected by State permitting authorities.

While there are several traditional, large rookeries in Florida, there are many smaller breeding sites that may shift from year to year. Availability of appropriate and widely distributed nesting island is apparently not a problem in Florida.

Approximately 40 percent of the brown pelican breeding population in Florida currently nests on National Wildlife Refuges. Another 5 percent uses National Park Service land for breeding purposes. Some 8 percent of the remaining breeders in Florida nest on National Audubon Society land, owned or leased by other conservation organizations (Florida Game and

freshwater Fish Commission, 1982). Thus, over 50 percent of Florida's brown pelicans nest on sites that are managed for the primary purpose of promoting and maintaining their reproductive success.

2. *North Carolina.* Up until 1982, brown pelicans in North Carolina used three to five colony sites in two disjunct coastal areas. In 1983, brown pelicans were observed nesting on two additional, more northerly colony sites.

The three longest-standing brown pelican colony sites in the State are currently being acquired by the National Audubon Society.

These colonies will continue to be protected and monitored regardless of the brown pelican's future classification status.

During late winter of 1983, the U.S. Army Corps of Engineers, in cooperation with the State of North Carolina and the U.S. Fish and Wildlife Service, successfully rebuilt one severely eroded brown pelican nesting island using dredge spoil material. This effort was motivated in part by the brown pelican's Endangered status.

3. *South Carolina.* Unlike the situation in Florida, pelicans in this State nest in only two colony sites which are not widely distributed. One is located on Cape Romain National Wildlife Refuge, and the other has been on one of several islands some 50-60 miles south of the refuge. Pelicans nesting within the refuge boundaries have been, and will continue to be protected and monitored whatever their status.

The more southerly brown pelican nesting site has shifted periodically, as the various islands used for nesting have eroded or been washed away. The most recent shift occurred after Hurricane David destroyed the existing pelican colony island, Deveaux Bank, in 1979. From 1980 to the present time, pelicans in the area have nested on Bird Key at the mouth of the Stono River.

This island was dedicated as a State sanctuary in 1982. In 1983, however, tidal erosion caused nest flooding and greatly reduced pelican reproductive success. This creates a temporary problem for South Carolina's brown pelican population, since it is believed that all appropriate brown pelican nesting sites in the State are currently occupied (Cely and Wilkinson, 1980). The South Carolina Department of Wildlife and Marine Resources is currently coordinating the effort to stabilize Bird Key with dredge spoil material, as was done in a similar situation in North Carolina. The probability of successful completion of this action is contingent upon the willing

cooperation among State and Federal agencies.

4. *Alabama.* In July of 1983, four brown pelican nests were discovered on a spoil island in Mobile Bay, Alabama, that had been created by the U.S. Army Corps of Engineers. The Corps erected warning signs and has been carefully monitoring the progress of these nests.

5. *Other States.* As indicated above, pelicans in Georgia, Virginia, and States further north are from the nesting colonies in Florida and the Carolinas. Habitats in these coastal areas appear to be adequate to meet the future needs of the species.

In summary, a large percentage of the brown pelican's nesting habitat in the area affected by this proposed rule is protected from human intrusion and development. Furthermore, the availability of nesting habitat, on a range-wide basis, is not limiting to brown pelicans. This proposed action, if finalized, would likely result in a decreased concern for the maintenance and protection of brown pelican nesting habitat in some localized situations. However, it is believed that any resulting loss of nesting habitat would be minor, relative to the subspecies' overall needs.

B. *Utilization for commercial, recreational, scientific, or educational purposes.* Since the pelicans' plight has been widely publicized, some human intrusion into their nesting areas, both by scientists and the general public, has increased. While some researchers believe that such disturbance has had little effect, recent studies have indicated human disturbance can significantly decrease brown pelican productivity, by causing the adults to flush, resulting in egg breakage, thermal stress and increased predation on eggs and nestlings (Schreiber, 1979; Anderson and Keith, 1980). Access to brown pelican colonies is limited generally to scientific investigators and resource managers on federally-owned rookeries as well as those designated as sanctuaries.

Protection of other rookeries from human intrusion will be left up to States or individuals, if this proposed rule is made final. Losses from such intrusions have never been significant, however. Pelicans will remain protected from injury or taking by the Migratory Bird Treaty Act of 1918. No other Federal laws are needed in the view of the Service to ensure the continued protection from take of this species in these States. Present State laws would continue to protect the species from take in those States affected under this rule. The pelican is not in trade and is not listed under the Convention on

International Trade in Endangered Species.

C. *Disease or predation.* Brown pelicans generally choose rookery sites that are free of mammalian predators that could attack eggs or young. Gulls, fish crows, and other avian predators occasionally destroy unguarded pelican nests, but if brown pelicans are undisturbed, at least one member of the breeding pair usually remains close to the nest, to protect eggs and vulnerable nestlings. In the absence of other disturbing factors, egg and nest predation does not impose a significant limitation on brown pelican reproduction. There is no significant predation on adult brown pelicans.

Like all other species of wildlife, brown pelicans are susceptible to certain diseases and parasitic infections. For example, a foot-rot disease of unknown origin has been observed in brown pelicans on the east coast of Florida. In Texas, where brown pelican numbers are still very low, reproduction was adversely affected by a tick infestation in 1981. Brown pelicans are known to host other parasites, including mites and liver flukes. However, disease and parasites normally pose no significant problems for a healthy brown pelican population.

D. *Absence of existing regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat.* In addition to the Endangered Species Act, the brown pelican is protected from taking by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). Brown pelican habitat is given protective consideration by the Fish and Wildlife Coordination Act (through consultation) (16 U.S.C. 661 *et seq.*), the Estuary Protection Act (16 U.S.C. 1221 *et seq.*), Section 10 of the Rivers and Harbors Acts (33 U.S.C. 401 *et seq.*) and Sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1521 *et seq.*), as amended by the Clean Water Act (91 Stat. 1566). In addition, continuing pelican research or monitoring programs might be conducted using funds provided, in part, through the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669) and the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901). Funds may also still be available to the States under Section 6 of the Endangered Species Act, as State-listed species or State-candidates as well as federally listed species qualify for study funding. The pelican is listed as Endangered under the State laws of all the affected States except Florida, where it is presently listed as Threatened. State status might be changed following any final action by

the Service. The above regulations and laws, if enforced and/or funded, will provide adequate protection for the brown pelican and its habitat in the event that this proposal is made final, and the existing protection under the Endangered Species Act is thus removed.

E. Other natural or manmade factors affecting its continued existence.

1. *Natural factors.* Brown pelican reproductive success is strongly influenced by the weather at the time of breeding. High winds or waters can destroy or inundate nests; untimely cold snaps may contribute to the death of eggs or nestlings, and periodic food shortages may result in decreased nesting and/or fewer young reared (Schreiber, 1979). Therefore, brown pelican productivity normally fluctuates considerably from year to year and place to place. A complete local reproductive failure in one season in one locality is not an uncommon occurrence and no cause for immediate alarm, if the brown pelican population is at safe levels overall and the causes are largely natural fluctuations of their environment. The pelican is a long-lived species that has evolved with this "boom or bust" reproductive strategy.

Thus, brown pelicans may switch breeding sites from year to year, especially in Florida, where the breeding population is widely distributed. Therefore, abandonment of one or several rookeries is no indication of an overall declining population. Examples of localized population declines and reproductive failures are numerous. Brown pelican populations have apparently been declining in the Florida Keys recently and may be declining on the southwest coast of Florida as well. One colony of Florida's east coast is known to have experienced a 100 percent reproductive failure in 1982. Despite these localized problems, however, pelicans have increased in other areas, and the total population of brown pelicans in the State has remained relatively stable (see table of nest counts above). This situation emphasizes the necessity, particularly in Florida, for statewide monitoring around the time of peak nesting to determine overall population trends.

In summary, natural factors may adversely affect brown pelican reproduction on a short-term localized basis, but in and of themselves, pose no threat to the continued existence of the species.

2. *Man-related factors.—a.*

Environmental contamination (except from oil and gas development). As stated above, susceptibility to pesticides was the primary factor

contributing to the original endangerment of the brown pelican. Due to environmental regulations promulgated over the past decade, the threat of organochlorine pesticide pollution has been greatly reduced, and the residues of those persistent compounds in brown pelican eggs have shown a steady decrease. The effects on brown pelicans from environmental contaminants other than the organochlorines are not thoroughly known; however, there are indications that some localized contaminant-related problems still exist for this highly susceptible species. A small (about 10 birds) recent pelican die-off in Florida, for example, is believed to be possibly related to the herbicides used on U.S. Air Force Base. In North Carolina, proposed large-scale farming operations may increase by a small amount the input of environmental contaminants into estuarine areas where brown pelicans feed.

As is the case with oil and gas development (see below) the present threat of environmental contaminants to the continued existence of the brown pelican is expressed as a potential and speculative, rather than actual, threat. The original decline of the brown pelican was not detected until the species was in serious trouble. Continued monitoring of a representative sample of pelican colonies should alert conservation authorities to any incipient problems in time to avert another decline of similar magnitude. The Service expects a major proportion of these colonies to be surveyed regularly at Federal, State, and private parks and refuges by biologists regardless of the species' classification, if any, under the Act.

b. *Commercial fishing activity.* Throughout much of its range, the diet of the eastern brown pelican is composed largely of Atlantic and Gulf menhaden. The menhaden fisheries are the largest in North America, comprising between 24 percent and 43 percent of the total U.S. fishery landings over the past decade.

There does not appear to be a conflict between pelican conservation and the menhaden fishery in the area of this proposed rule, since the portion of the Atlantic menhaden fishery that occurs within the range of the Atlantic coast pelican population is compatible with peak historical pelican numbers. There is virtually no commercial menhaden fishing in peninsular Florida.

c. *Recreational fishing activity.* Every year, a number of brown pelicans become hooked or entangled in monofilament line or caught by baited hooks, resulting in injury and some

mortality. Although no overall records have been kept, it appears that in Florida, where the majority of recreational fishery-related pelican problems occur, only about 500 pelicans per year are injured or killed in such incidents. This level of injury or mortality is not a significant threat to the species given the fact that there are over 30,000 birds in Florida. Furthermore, this impact is largely accidental; therefore, this rule is not anticipated to have any effect on its occurrence. This problem is probably more effectively dealt with through educational, rather than legal, channels.

d. *Coastal oil and gas development.*

Any oil and gas development could increase the likelihood of introducing some hydrocarbon pollutants into the marine environment. Demonstrated adverse effects of oil on avian species include decreased hatchability of eggs, direct toxicity and stress from oil ingested during feeding or preening, and feather fouling, resulting in decreased insulation and possible drowning (Holmes and Cronshaw, 1977). Brown pelicans breeding in North and South Carolina could be vulnerable to oil spills, because of their concentration on small areas during the breeding season.

Outer Continental Shelf (OCS) oil and gas leasing in the area of this proposed rule is in its infancy, and it is difficult even to speculate on the area's potential. The Minerals Management Service's (MMS) 1982 5-year OCS oil and gas leasing schedule proposes 6 sales within the area addressed by this proposed rule (East Gulf of Mexico and South Atlantic). Two of these sales have been held on schedule. Response has been moderate. To date, only 6 exploratory wells have been drilled in the South Atlantic area, and 25 wells in the East Gulf area. None of these wells has been productive. Interest in offshore leases has generally been confined to tracts 100 miles or more from the coastline.

Of the States in the proposed rule area in which brown pelican nest, only Florida and Alabama (one active well each) have any current oil and gas development in State waters. To date, only Alabama coastal area has shown any promise of productivity, and this has been for gas, rather than oil production. The States on North Carolina, South Carolina, and Florida, in particular, are very concerned about the potential adverse environmental effects of oil and gas development in coastal areas and are not encouraging oil and gas leasing in State waters. Florida recently passed a law prohibiting drilling in all bays, estuaries, rivers, and

within 1 mile of the coastline. Florida and North Carolina are currently conducting studies to determine whether, and what type of leasing should be allowed in State waters. The Florida Department of Environmental Regulation also has strict requirements for state-of-the-art equipment to prevent blowouts and spills and to protect the environment, should they occur.

Federal laws regulating offshore oil and gas operations have also become more stringent within the past decade. The oil content of water produced from offshore operational discharges is limited by effluent guidelines promulgated by EPA, which are enforced by National Pollution Discharge Elimination System permits. The U.S. Geological Survey is responsible for day-to-day inspection and monitoring of Outer Continental Shelf (OCS) oil and gas operations and monitoring hydrocarbon discharges resulting from such operations. Additionally, an Environmental Impact Statement must be prepared for all MMS OCS lease sales.

In summary, the possibility of oil spills impacting brown pelican nesting colonies in the area of this proposed rule is minimal and speculative due to: (1) The relatively great distance offshore of current and projected future OCS leases, (2) the general reluctance of the States involved to lease tracts in State waters, (3) the stringent regulations (both State and Federal) governing drilling operational procedures and equipment, and (4) the general lack of interest in this part of the coastline as a potential oil-producing region.

Future Conservation Measures

Biological data indicate that the brown pelican is not currently Endangered or Threatened in the area covered by this rule. However, in order to ensure maintenance of this non-endangered status, the Service will work to establish a Federal/State/private monitoring program for the brown pelican as a high priority item. The Service envisions the monitoring programs as including:

(1). Annual breeding censuses (nest counts) at the time of peak nesting. These counts should be made in the same way each year by all participating agencies, in order to detect long-term and overall population trends.

(2). On-site inspections of representative brown pelican rookeries, to check for broken or thin-shelled eggs, or large numbers of sick or dead birds. If any of the above are found, specimens should be obtained for diagnosis and tissue analysis.

In addition, brown pelican management should include public exclusion from rookeries during the nesting season, and, where possible, an organized banding effort to follow post-fledging movements and mortality.

National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service does not prepare Environmental Assessment for Section 4(a) actions. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of Appeals, which held that the preparation of NEPA documentation was not required as a matter of law for Section 4(a) actions under the Endangered Species Act. *PLF v. Andrus* 657 F.2d 829 (6th Cir. 1981).

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A more complete list of references is on file in its Jackson, Mississippi Office, as well as various letters, administrative reports, and other documents not referenced here. These are available for inspection along with the rest of the administrative record as indicated under the "Addresses Section" in this document.

Critical Habitat

Critical Habitat for the brown pelican was not designated at the time of listing and has not been since designated. Therefore, this proposed rule, if finalized, will have no effect on Critical Habitat for this species.

Available Conservation Measures

In addition to the effects discussed above, the effects of this proposal if published as a final rule include, but would not necessarily be limited to, those mentioned below:

The prohibitions pertaining to an Endangered species found in Section 9(a)(1) of the Act, as implemented at § 17.21, would no longer apply in the area covered by this rule. These include prohibitions on taking, possessing, selling or offering for sale, exporting, and shipping in interstate or foreign commerce. The protection afforded the brown pelican under Section 7(a) of the Act would also be eliminated in the area covered by this rule. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize listed species or result in the destruction or adverse modification of designated Critical Habitat. Any economic consequences that may have occurred as a result of Sections 7 and 9 of the Act would be eliminated in the area covered by the rule. All prohibitions and provisions set forth in the Act would still apply to the brown pelican in those portions of its range not specifically addressed by this rule. The brown pelican would also receive protection under other Federal and State laws like the Migratory Bird Treaty Act.

Survey work leading to the recommendation for delisting was made possible by partial funding through grants-in-aid to qualifying States under Section 6 of the Act. An attendant effect of delisting may be to lower the Federal funding priority under the grant program. However, the Service strongly

recommends and solicits the participation of the affected States in carrying out continued monitoring of brown pelican reproductive success, should this proposal be finalized. Since the Service can provide funding under Section 6 for conservation programs for State listed species, the Service intends to give the pelican continued consideration for any available Section 6 monies for such study.

Information Collection and Recordkeeping Requirements

This rule will eliminate all recordkeeping and reporting requirements that presently exist under the Act involving Federal, State, and private agencies and individuals, including those involving permit requirements, in the area covered by this rule.

Public Comments Solicited

The Service intends that the rules finally adopted will be accurate and as effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- A. Biological or other relevant data concerning any threat (or) the lack thereof) to *Pelecanus occidentalis* in the southeastern United States;
- B. Additional information concerning the range and distribution of this species;
- C. Current or planned activities in the subject areas;
- D. Suggestions concerning the necessity and sufficiency of the

management program outlined above; and

E. Possible alternatives to this proposed rule. Final promulgation of the regulations for the brown pelican will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to Mr. Dennis B. Jordan, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 3185, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213-7685 (601/960-4900).

Author

The primary author of this proposal is Ms. Judy Jacobs, Jackson Endangered Species Field Station, Jackson Mall Office Center, Suite 3185, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213-7685 (601/960-4900). Extensive revisions of the text of this proposal were made in the Regional Office,

Atlanta, and the Washington Office of the Service, primarily in the latter office.

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

PART 17—(AMENDED)

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-832, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.11(h) by revising the entry for the brown pelican under "Birds" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|----------------------|---------------------------------|---|--|--------|-------------|------------------|---------------|
| Common name | Scientific name | | | | | | |
| Pelican, brown | <i>Pelecanus occidentalis</i> . | U.S.A. (Carolinias to TX, CA), West Indies, Central and South America, coastal. | Entire—except U.S. Atlantic coast, FL and AL. | E..... | 2, 3, — | NA..... | NA..... |

Dated: October 6, 1983.

J. Craig Potter,
Acting Assistant Secretary for Fish and Wildlife and Parks.

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