

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) to be Endangered species, and identify Critical Habitat for the Virginia big-eared bat. This action is taken because these bats have declined seriously in recent years, mainly because of human disturbance of their caves. This rule would provide additional protection needed for these species.

**DATES:** Comments from the public must be received by January 31, 1978. Comments from the Governors of States involved with this action must be received by March 2, 1978.

**ADDRESSES:** Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Keith M. Schreiner, Associate Director for Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

**SUPPLEMENTARY INFORMATION:**

#### BACKGROUND

On October 15, 1976, the Director was petitioned by Dr. John S. Hall (Professor of Biology, Albright College, Reading, Pa. 19603) and Dr. Michael J. Harvey (Professor of Biology, Ecological Research Center, Memphis State University, Memphis, Tenn. 38152), to list the Virginia and Ozark big-eared bats as Endangered. On the basis of this petition and information subsequently received from the petitioners, Regional Offices of the Service, and other sources, the Director considers that this proposed rule-making is warranted.

#### SUMMARY OF FACTORS AFFECTING THE SPECIES

Section 4(a) of the Act states that the Secretary of the Interior may determine a species to be Endangered or Threatened because of any of five factors. These factors, and their application to the Virginia and Ozark big-eared bats, are listed below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Both of these bats long have been restricted to relatively small areas, and are dependent on a few specific kinds of caves for hibernation and reproductive activity. Both are highly intolerant of human presence, and will readily abandon their roosts when disturbed.

The Virginia big-eared bat still is found in three separate populations centered in eastern Kentucky, southwestern Virginia, and eastern West Virginia but many caves within this region have

[ 4310-55 ]

### DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[ 50 CFR Part 17 ]

### ENDANGERED AND THREATENED WILDLIFE AND PLANTS

#### Proposed Endangered Listing and Critical Habitat Determination for the Virginia and Ozark Big-eared Bats

AGENCY: Fish and Wildlife Service, Interior.

<sup>1</sup> See 42 FR 47569, September 21, 1977.

been abandoned. In the last 15 years at least five wintering colonies have disappeared in West Virginia. Only three nursery colony caves are known to remain in this State, and numbers therein have declined considerably because of repeated disturbance by spelunkers and vandals. There are still about 2,500 to 3,000 bats in West Virginia, but their dependence on the few remaining nursery caves makes the entire population subject to rapid extermination under the wrong conditions. A serious decline also has occurred in the single known nursery colony in Kentucky, which now contains fewer than 500 bats. In the Virginia population not more than a few hundred individuals survive.

The Ozark big-eared bat is in an even worse situation. It is now found in only a few caves in northwestern Arkansas, southwestern Missouri, and eastern Oklahoma. Recent estimates indicate that the total surviving population numbers only about 100 to 200 individuals.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Some of these bats have been killed for fun. Even well-meaning biologists and spelunkers, observing the bats for scientific or educational purposes, have caused disturbances and subsequent population reductions.

3. *Disease or predation.* Not known to be applicable.

4. *The inadequacy of existing regulatory mechanisms.* These bats and their habitat are not currently under direct protection by Federal regulations.

5. *Other natural or manmade factors affecting its continued existence.* None in addition to those discussed above.

#### CRITICAL HABITAT

Section 7 of the Act requires Federal agencies, and only Federal agencies, to insure that actions authorized, funded, or carried out by them do not adversely affect the Critical Habitat of Endangered or Threatened species. The petitioners have recommended that five caves in West Virginia and one cave in Kentucky be designated as Critical Habitat for the Virginia big-eared bat. These caves include the three nursery colonies that serve most of the remaining population, and three wintering colonies that are known to shelter a substantial number of bats. The Service considers that these areas qualify for proposal as Critical Habitat, pursuant to Section 7.

#### EFFECTS OF THE RULEMAKING

All prohibitions of 50 CFR 17.21 would apply to the Virginia and Ozark big-eared bats. 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 in interstate or foreign commerce these species. 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 for

scientific purposes or for the enhancement of propagation or survival would be available in accordance with 50 CFR 17.22. Economic hardship permits would be available under 50 CFR 17.23.

The effects of Critical Habitat determination involve primarily Federal agencies. In accordance with Section 7 of the Act, such agencies, and only such agencies, are required to insure that actions authorized, funded, or carried out by them do not adversely affect the Critical Habitat of Endangered or Threatened species. The proposed designation of Critical Habitat for the Virginia big-eared bat, as delineated below, points out areas where this responsibility would apply. This proposal would not automatically prohibit any particular action, and it is likely that many kinds of Federal actions involving the areas in question would not be expected to be detrimental to the bat.

#### NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C. 20240, and may be examined during regular business hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

#### PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted be as effective as possible in the conservation of the Virginia and Ozark big-eared bats. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party, on these proposed rules. Final promulgation of regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this proposal.

The primary author of this document is Ronald M. Nowak, Office of Endangered Species, 202-343-7814.

#### AUTHORITY

These amendments are issued under the authority of Sections 4 and 7 of the Endangered Species Act of 1973 (16 U.S.C. 1533, 1536).

#### REGULATIONS PROMULGATION

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

1. It is proposed to amend Section 17.11 by adding, in alphabetical order, the following to the List of Endangered and Threatened Wildlife and Plants:

§ 17.11 Endangered and threatened wildlife.

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Mammals:							
Bat, Ozark big-eared.....	<i>Plecotus townsendii ingens</i> .....	N/A	U.S.A. (Arkansas, Missouri, Oklahoma).	Entire.....	E	.....	N/A
Bat, Virginia big-eared.....	<i>Plecotus townsendii virginianus</i> .....	N/A	U.S.A. (Illinois, Indiana, Kentucky, Maryland, Ohio, Virginia, West Virginia).	.....do.....	E	.....	N/A

2. It is proposed to amend Section 17.95 by adding the following Critical Habitat description after the Critical Habitat description for the Indiana bat.

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

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**Virginia Big-eared Bat**  
(*Plecotus townsendii virginianus*)  
Kentucky. Stillhouse Cave, Lee County.  
West Virginia. Cave Mountain Cave, Hellhole Cave, Hoffman School Cave, and Sinnit Cave, each in Pendleton County; Cave Hollow Cave, Tucker County.

NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: November 18, 1977.

LYNN A. GREENWALT,  
Director,  
Fish and Wildlife Service.

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