

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Remove the Florida Population of the Pine Barrens treefrog (*Hyla andersonii*) from the List of Endangered and Threatened Wildlife and Plants and To Rescind Previously Determined Critical Habitat.****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed Rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to remove the Florida population of the Pine Barrens treefrog (*Hyla andersonii*) from the List of Endangered and Threatened Wildlife and Plants and to rescind the Critical Habitat that has been designated for this population. This action is being taken because recent evidence indicates that the species is much more widely distributed than originally known. Removal of this species from the List of Endangered and Threatened Wildlife and Plants would eliminate all protection provided by the Endangered Species Act of 1973, as amended.

**DATES:** Comments from the public must be received by November 15, 1982.

Comments from the Governor of Florida must be received by December 13, 1982.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex B. Montgomery, Endangered Species Senior Staff Specialist, Federal Assistance, U.S. Department of the Interior, 75 Spring Street, SW., Atlanta, Georgia 30303, 404/221-3583, FTS 242-3583.**ADDRESS:** Comments and materials concerning this proposal should be sent to the Regional Director (ARD/FA), U.S. Department of the Interior, Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303. Comments and materials will be available for public inspection in the Regional Office from 8:00 am to 3:00 pm daily.**SUPPLEMENTARY INFORMATION:****Background**

On April 5, 1977, the Service published a proposed rule in the *Federal Register* (42 FR 18109-18111) advising that sufficient evidence was on file to support a determination that the Florida population of the Pine Barrens treefrog was an Endangered species, as provided for by the Act. After a thorough review and consideration of all the information available, the Director determined and published a final rule on November 11, 1977, (42 FR 58754-58756) that the Florida population of the species was in danger of extinction throughout all or a significant portion of its range due to

one or more of the factors described in Section 4(a) of the Act. The Endangered determination was based primarily on factor number one, "the present or threatened destruction, modification, or curtailment of its habitat or range." At that time the only known existing breeding sites were limited to seven small areas in Okaloosa County.

The total number of individuals in these populations was estimated at less than 500. Four other populations, including the only ones known from Walton County, were reported to have been extirpated in the period following the frog's discovery in 1970. It appeared that without the protection afforded by the Endangered Species Act, the remaining Florida population would likely be lost. The final rule classifying the Florida population as Endangered and designating Critical Habitat became effective on December 8, 1977.

The closest other populations of the Pine Barrens treefrog are found in the Carolinas and in New Jersey. As a matter of information, the Service has reviewed the status of these populations on the basis of a notice published in the *Federal Register* of August 2, 1977 (42 FR 39119-39120), and determined that for the immediate future they do not require protection under the Act.

In the spring of 1978, the Florida Game and Fresh Water Fish Commission began a project to better assess habitat needs and distribution limits of the species within Florida. This work was conducted pursuant to an Endangered Species Cooperative Agreement between the Service and the State as authorized under Section 6 of the Endangered Species Act. Survey results for the 1978 breeding season revealed a number of new populations in Okaloosa, Walton, and Santa Rosa Counties. Surveys were continued in 1979 with many additional populations being identified. In consequence of the obvious widespread distribution of the species, the Service contracted with the Florida Game and Fresh Water Fish Commission in December 1979 (contract no. 14-16-004-79-145) to develop recommendations regarding possible reclassification of the species. The report subsequently transmitted to the Service in January 1980 titled "The Florida Population of the Pine Barrens treefrog (*Hyla andersonii*), A Status Review," recommended that the species be removed from the Federal List of Endangered and Threatened Wildlife.

The forenamed report was supplemented later in 1980 by the State's grant-in-aid final study report covering the period of May 1, 1978 to June 30, 1980 (Project No. E-1, Study No.

I-R). Data were presented which expanded the species' presently known Florida distribution from seven Okaloosa County sites to a total of 119 sites in Okaloosa, Walton, Santa Rosa, and Holmes Counties. Incidental investigations conducted in nearby Alabama areas revealed six other sites in Escambia and Covington Counties in that State.

To provide a more complete picture of the Florida-Alabama population as a whole, the Service contracted during 1980 for a thorough status survey in southern Alabama. This survey turned up an additional 16 populations in the Geneva-Escambia-Covington County area. The Alabama population was not covered by the 1977 rulemaking action which listed the Florida population as Endangered. However, knowledge of its existence does provide further evidence of the species' overall well-being in what is essentially a single Florida-Alabama population unit that is much larger than originally suspected.

Although the species appears to be limited to only four counties in Florida, it is of widespread occurrence within this area (Moler, 1981). A considerable amount of potential habitat within the Florida range has not been investigated, and results from the 1978-1980 survey indicate that much of this habitat is very likely to harbor the species. The large number of known and potential habitat sites suggest that the Florida population is relatively secure for the immediate future.

#### Summary Of Factors Affecting The Species

Section 4(a) of the Act (16 U.S.C. 1531 et. seq.) states: General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director. The Pine Barrens treefrog and its relation to these factors is as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* The final rule published in the *Federal Register* of November 11, 1977, indicated that development and land clearing for

agricultural use had destroyed four of the 11 known population sites within the seven year period following the species' discovery. The most recent data do not substantiate such a severe trend in habitat loss. Of the 112 new habitat sites surveyed by the Florida Game and Fresh Water Fish Commission between May 1978 and June 1980, four had been degraded to some degree by siltation or runoff, but still supported the frogs; and 15 of the localities were within or adjacent to clear-cut areas, but there was no immediate evidence of adverse effects to the frog population. Drainage of bogs for agricultural or silvicultural purposes does represent a potential threat, but to date such drainage has not been extensively practiced within the species' Florida range.

Some of the Pine Barrens treefrog's habitat has likely been lost through the creation of artificial lakes and ponds within bog areas utilized by the species. Man-made impoundments are common throughout the frog's Florida range, and new impoundments will likely continue to pose at least a minor threat.

The herb bog and shrub habitats required by the Pine Barrens treefrog are subclimax communities maintained by periodic fire. In total absence of fires these habitats are converted through plant succession to "mixed swamp" or "bayhead communities" (Means and Moler, 1979). Many of these subclimax communities have apparently disappeared during the last several centuries as the result of wildfires being suppressed or limited through human activity. However, Means and Moler (1979) suggest that in some cases other disturbance factors may be a suitable substitute for fire. They cite clear-cutting of surrounding uplands, such as may occur with the construction and maintenance of electric and gas transmission lines, as increasing groundwater seepage by reducing evapotranspiration, thus contributing to formation of herb bogs. Numerous population sites were found along such transmission lines during the Florida Game and Fresh Water Fish Commission's 1978-1980 survey of the species (Moler, 1981).

A review of the data indicates that the Florida population is apparently even larger and more secure than the New Jersey population which historically has been the best known enclave and long considered the stronghold of the species (Moler, 1980a,b). The Florida population has a further advantage in that many of the presently known breeding sites are located on large tracts of public land (Blackwater River State Forest and Eglin AFB) that will presumably forestall

extensive residential and industrial development.

In summary, it should be noted that while impacts from development, siltation, impoundments, and drainage, and from the less obvious process of plant succession arising from long periods of fire exclusion, will likely produce some loss of habitat, such losses are not expected to be significant within the foreseeable future.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This factor has apparently had no significant effect on the Pine Barrens treefrog population of Florida. Only the males can be conveniently located by their calling, and because the number calling at any one site fluctuates erratically from night to night, it is unlikely that anything short of very intense collecting could have an adverse impact.

3. *Disease or predation.* Not applicable to this species.

4. *The inadequacy of existing regulatory mechanisms.* The Florida Game and Fresh Water Fish Commission has regulatory authority to prohibit or regulate collecting of the species in Florida. Removal of the prohibitions afforded by the Endangered Species Act would not likely have any effect since collecting is not considered to represent a significant threat.

5. *Other natural or manmade factors affecting its continued existence.* None.

#### 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 data presented above in regard to Section 4(a) of the Act indicate that the Florida population of the Pine Barrens treefrog is biologically neither endangered nor threatened at this time. Accordingly, the need for Critical Habitat is negated and the areas previously designated in Okaloosa County will be rescinded should a final determination be made to remove this

species from the List of Endangered and Threatened Wildlife.

#### Effects of This Proposal If Published As A Final Rule

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:

All prohibitions pertaining to an Endangered species found in Section 9(a)(1) of the Act, as implemented by Section 17.21 of 50 CFR, would no longer apply. These include prohibitions on such things as taking, possessing, selling or offering for sale, exporting, and shipping in interstate or foreign commerce.

The protection afforded the Pine Barrens treefrog under Section 7(a) of the Act would also be eliminated. Section 7(a) requires Federal agencies to insure 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.

Survey work leading to the recommendation for delisting was made possible by partial funding under Section 6 of the Act. An attendant effect of delisting will be to lower the Federal funding priority under the grant program, thus reducing or eliminating additional funding to the State for biological studies on the Pine Barrens treefrog. However, in view of the currently known status of the Florida population neither the failure to conduct such studies nor the loss of protective measures under Sections 7 and 9 of the Act could be expected to have any appreciable effect upon the species. Furthermore, retention of the species in the category of "special concern" on the State of Florida list will help to insure that some attention is given to the species.

#### Information Collection and Recordkeeping Requirements

This rule will completely eliminate all recordkeeping and reporting requirements involving Federal, State, and private agencies and individuals which presently exist, including those involving permit requirements.

#### Economic Effects

This proposed rule merely recognizes the biological status of the Florida population of the Pine Barrens treefrog and will not have any significant effect. This stems from the fact that the proposed rule would have the effect of eliminating the restrictions and limitations of the ESA regarding public and private activities affecting this

species. Thus, any economic consequences which may have occurred as a result of Sections 7 and 9 of the ESA would be eliminated. As such, the Service has determined that this proposed rule is not major as defined by Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

#### National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Endangered Species Office, Richard B. Russell Building, Room 1245, 75 Spring Street, NW., Atlanta, Georgia, and may be examined from 8:00 am to 3:00 pm daily. A determination will be made at the time of the final rule as to whether this is a major Federal action which would significantly effect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969, implemented at 40 CFR Parts 1500-1508.

#### Public Comments Solicited

The Director 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:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
- (2) Additional information concerning the range and distribution of this species;
- (3) Current or planned activities in the subject areas.

Final promulgation of the regulations on the Pine Barrens treefrog will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

Also, the Service is requesting information on environmental and economic impacts and effects on small entities (including small businesses, small organizations and small governmental jurisdictions) that would result from the delisting of the Florida population of the Pine Barrens treefrog as an Endangered species, and information on possible alternatives to the delisting. This information will aid

the Service in complying with the requirements of the National Environmental Policy Act, Executive Order 12291 on Federal Regulation, and the Regulatory Flexibility Act, and in preparing any required analyses of effect.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposal is Mr. Thomas W. Turnipseed, Region 4 Endangered Species Office, Atlanta, Georgia 30303 (404/221-3583 or FTS 242-3583).

#### References

- Means, D. B., and P.E. Moler. 1979. The Pine Barrens treefrog; fire, seepage bogs, and management implications. *In* R.R. Odum and L. Landers (eds.), Proceedings of the Rare and Endangered Wildlife Symposium, GA Dept. of Nat. Res., Game & Fish Div., Tech. Bulletin. W.L. 4:77-83.
- Moler, P. E. 1980a. The Florida population of Pine Barrens treefrog (*Hyla andersonii*), a status review. Rept. to the U.S. Fish and Wildlife Service, Atlanta, GA. 44 pp.
- 1980b. Pine Barrens treefrog population. Study completion report. Florida Endangered Species Project No. E-1. Study No. I-R. Available from the Florida Game & Fresh Water Fish Commission, Tallahassee, FL.
- Moler, P. E. 1981. Notes on *Hyla andersonii* in Florida and Alabama. *J. Herpetol.* 15(4):441-444.

#### List of Subjects in 50 CFR Part 17

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

#### Regulations 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:

### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

#### § 17.11 [Amended]

1. It is proposed to amend § 17.11(h) by removing the entry for Pine Barrens treefrog, under "AMPHIBIANS," from the list of endangered and threatened wildlife.

#### § 17.95 [Amended]

2. Also, the Service proposes to amend § 17.95(d) by removing the Critical Habitat for the Pine Barrens treefrog.

Dated: August 19, 1982.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.