

**DEPARTMENT OF THE INTERIOR  
Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife  
and Plants; Final Rule To Remove the  
Florida Population of the Pine Barrens  
Treefrog From the List of Endangered  
and Threatened Wildlife and To  
Rescind Previously Determined  
Critical Habitat**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service makes a final determination to remove the Florida population of the Pine Barrens treefrog (*Hyla andersonii*) from the List of Endangered and Threatened Wildlife 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 eliminates all protection provided it by the Endangered Species Act of 1973, as amended.

**DATE:** This rule becomes effective on December 22, 1983.

**ADDRESS:** The complete file for this rule is available for public inspection by appointment during normal business hours at the Service's Regional Office, 75 Spring Street, SW., Room 1282, Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Mr. Marshall P. Jones, Endangered Species Staff Specialist, at the above address (404/221-3583 or FTS 8/242-3583).

**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 (*Hyla andersonii*) was an Endangered species, as provided for by the Endangered Species Act of 1973, as amended. After a thorough review and consideration of all the information available, the Service published a final rule on November 11, 1977 (42 FR 58754-58756), determining 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)(1) 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 at these sites was estimated at less than 500. Four other breeding groups, 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. At that time, other populations of the Pine Barrens treefrog were known from the Carolinas and New Jersey. The Service is reviewing the status of these populations on the basis of notices published in the *Federal Register* of August 2, 1977 (42 FR 39119-39120), and September 27, 1982 (47 FR 42387-42388).

In the spring of 1978, the Florida Game and Fresh Water Fish Commission began a project to assess habitat needs and distribution limits of the species. 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 1978 and 1979 revealed a number of new populations in Okaloosa, Walton, and Santa Rosa Counties. In consequence of the more extensive 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, entitled "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' known Florida distribution from seven Okaloosa County sites to a total of over 150 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.

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 sites in the Geneva-Escambia-Covington County area. The frogs at these Alabama sites were not covered by the 1977 rule which listed the Florida population as Endangered. However, knowledge of their existence does provide further evidence of the species' overall well-being in what is a much larger area than that originally known.

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 suggests that the Florida population is relatively secure for the immediate future. On September 15, 1982, the Service published a proposed rule in the *Federal Register* (47 FR 40673-40676) advising that this new status information was considered sufficient to permit removal of the Florida population from the List of Endangered and Threatened Wildlife and to rescind the designated Critical Habitat.

#### Summary of Comments and Recommendations

In the September 15, 1982, *Federal Register* proposed rule, all interested parties were invited to submit comments or suggestions which might contribute to the formulation of a final rule. Letters were sent to the States of Alabama and Florida, to county governments, and to Federal agencies and interested parties, soliciting their comments. Notifications were also published in local newspapers. Official comments were received from the Florida Game and Fresh Water Fish Commission and from Eglin Air Force Base. Comments were also received from four additional individuals or organizations.

Of the six written responses received by the Service on this proposal, five favored and one opposed the proposal action. Those respondents having direct knowledge of the species through recent survey work, including the Florida Game and Fresh Water Fish Commission, Eglin Air Force Base, and Dr. Robert H. Mount, Auburn University, concurred with the proposal. Dr. Roy W.

McDiarmid, Research Zoologist/Curator with the National Museum of Natural History, also concurred on the basis of the available data. The Florida Audubon Society, represented by Dr. Peter C. H. Pritchard, Vice President of Science and Research, guardedly concurred with the proposal on the condition that land use policies on Federal holdings continue to protect the species.

One private individual opposed the proposal on the basis that the species should be monitored for at least 10 years to ensure that its restoration is permanent. In the case of the Pine Barrens treefrog, however, it has not been a matter of restoring the species, but a matter of discovering unknown populations which, for the most part, have undoubtedly existed in the past.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all the available information, the Service has determined that the Florida population of the Pine Barrens treefrog (*Hyla andersonii*) should be removed from the List of Endangered and Threatened Wildlife, and that designated Critical Habitat for the species should be rescinded. This determination is based upon an evaluation of the five factors in section 4(a)(1) of the Act for determining whether a species is Endangered or Threatened. These factors and their application to the Florida population of the Pine Barrens treefrog are as follows:

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.* Recent data do not substantiate any significant 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, 4 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. Manmade 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, 1980b). 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 Air Force Base) that will presumably forestall extensive residential and industrial development.

In summary, it should be noted that while some losses of habitat will occur, such losses are not expected to be significant within the foreseeable future.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** This factor has apparently had no significant effect. Only the males can be easily located, and the number calling at any one site fluctuates erratically from night to night.

**C. Disease or predation.** Not applicable.

**D. The inadequacy of existing regulatory mechanisms.** The Florida Game and Fresh Water Fish Commission has regulatory authority to regulate collecting of the species. Removal of the prohibitions afforded by the Act would not likely have any effect since collecting is not considered to represent a significant threat. The State of Florida protects the species as a "species of special concern;" permits are required to collect the treefrog within that State.

**E. 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 geographical 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 that such areas are essential for the conservation of the species.

The data presented above in regard to section 4(a)(1) 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 are rescinded concurrent with the determination to remove this species from the List of Endangered and Threatened Wildlife.

#### Effects of the Final Rule

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all Endangered wildlife. These prohibitions no longer apply to the Florida population of the Pine Barrens treefrog. This rule eliminates the Federal prohibitions on such actions as taking, possessing, or selling in interstate or foreign commerce. Any Federal Endangered species permit requirements, as codified at 50 CFR 17.22 and 17.23, are also eliminated.

The protection afforded the Pine Barrens treefrog under section 7(a) of the Act is terminated. Section 7(a) requires Federal agencies to insure that actions 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. 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 attention is still given to the species.

#### National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this rule. 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 listing under the Endangered Species Act. *PLF v Andrus* 657 F.2d 829 (6th Cir. 1981).

#### Author

The primary author of this rule is Thomas W. Turnipseed, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1282, Atlanta, Georgia 30303.

#### References

- Means, D.B., and P.E. Moler. 1979. The Pine Barrens treefrog: fire seepage bogs, and management implications. In Odum, R.R., and L. Landers (eds.), Proceedings of the Rare and Endangered Wildlife Symposium, Georgia Dept. Nat. Res., Game & Fish Div., Tech. Bull. WL 4. pp. 77-83.
- Moler, P.E. 1980. The Florida population of the Pine Barrens treefrog (*Hyla andersonii*), a status review. Rept. to the U.S. Fish Wildl. Serv., Atlanta, Georgia. 44 pp.
- Moler, P.E. 1980b. Pine Barrens treefrog population. Study completion rept., Florida Endangered Species Project No. E-1, Study No. I-R (Available from the Florida Game & Fresh Water Fish Commission, Tallahassee, Florida).
- 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 species, Fish, Marine mammals, Plants (agriculture).

#### Regulations Promulgation

##### PART 17—[AMENDED]

Accordingly, Part 17, Subpart 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:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; and Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.).

**§ 17.11 [Amended]**

2. Amend § 17.11(b) by removing the Florida population of the Pine Barrens treefrog under Amphibians from the List of Endangered and Threatened Wildlife.

**§ 17.95 [Amended]**

3. Amend § 17.95(d), Amphibians, by removing the Critical Habitat for the Pine Barrens treefrog.

Dated: October 18, 1983.

**J. Craig Potter.**

*Acting Assistant Secretary for Fish and  
Wildlife and Parks.*

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