

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Gopher Tortoise (*Gopherus polyphemus*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines the western population of the gopher tortoise to be a threatened species. This population occurs from the Tombigbee and Mobile Rivers in Alabama west to southeastern Louisiana. The historic western gopher tortoise habitat has been reduced more than 80 percent by conversion to urban areas, croplands, and pasturelands. Certain forest management practices, such as prevention of fires and clear-cutting, have also reduced the quality of some remaining habitats. Taking of gopher tortoises has had a serious effect on some populations. All these problems are magnified by the turtle's fragmented range, the great length of time required for tortoises to reach sexual maturity, and by their low reproductive rate. This determination implements the protection provided by the Endangered Species Act of 1973 (Act), as amended.

DATES: The effective date of this rule is August 6, 1987.**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis B. Jordan at the above address (601/965-4900, FTS 490-4900).**SUPPLEMENTARY INFORMATION:****Background**

The gopher tortoise (*Gopherus polyphemus*) was described in 1802 F. M. Daudin. It is a large (shell 15-37 centimeters or 5.9-14.6 inches long) dark-brown to grayish-black terrestrial turtle with elephantine hind feet, shovellike forefeet, and a gular projection beneath the head of the yellowish, hingeless plastron or undershell (Ernst and Barbour 1972). It ranges along the coastal plain from South Carolina through Florida to southeastern Louisiana.

The gopher tortoise most often lives on well-drained sandy soils in

transitional (forest and grassy) areas (Ernst and Barbour 1972). It is commonly associated with a pine overstory and an open understory with a grass and forb groundcover and sunny areas for nesting (Landers 1980). The Service estimates that present ownership distribution of gopher tortoise habitat is approximately two-tenths in National Forest, one-tenth in other public ownership, three-tenths in forest industry, and four-tenths in other private ownership (USDA 1978a).

Conversion of gopher tortoise habitat to urban areas, croplands, and pasturelands along with adverse forest management practices has reduced the western portion of the historic range of the gopher tortoise by more than 80 percent. Fragmentation of the western range accentuates those impacts. Populations in marginal or degraded habitats generally need periodic but regular immigration of individuals from adjacent areas with "good" habitat (often referred to as the "rescue effect"). This fragmentation is primarily due to habitat conversion or loss and the natural distribution of these habitats. Many areas with degraded habitats no longer have adjacent populations in close enough proximity to supply individuals for immigration. With reduced or non-existent immigration, many populations are eventually lost.

Taking gopher tortoises for sale or use as food or pets has also had a serious effect on some populations. The seriousness of the loss of adult tortoises is magnified by the length of time required for tortoises to reach sexual maturity and their low reproductive rate. Current estimates of human predation and road mortality alone are at levels that could offset any annual addition to the population. Sightings of gopher tortoises have become rare in many areas and the ones sighted are much smaller than in the past (Diemer 1984).

The gopher tortoise was included in a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (Candidate List) (December 30, 1982: 47 FR 58454) as a species in Category 2. Category 2 included taxa for which information then in possession of the Service indicated that proposing to list the species was possibly appropriate, but for which available data were not judged sufficient to support a proposed rule. In 1983 the Service selected the gopher tortoise as a species of special emphasis, and developed a Regional Resource Plan for it. On July 18, 1984, Drs. Ren Lohofener and Lynne Lohmeier submitted a petition to list the western population of the gopher tortoise. The petition and accompanying status report were

accepted as providing substantial information that the requested action may be warranted. The report attached to the petition was sent out for expert review, together with a request for comments on the substantiality of its methods and conclusions, the petitioned action, and any other relevant data. Of the 17 responses received, 14 provided comments or additional information that supported the petitioned action. Two reviewers recommended against listing the western population separately, and one recommended adoption of harvest restrictions only. On July 26, 1985, the Service made a 12-month finding that the action requested by the petitioners was warranted but precluded by other listing actions. The proposed rule published on July 8, 1986 (51 FR 24723) constituted the next required petition finding. The status of the eastern population of the gopher tortoise is still under review by the Service and State conservation agencies.

Summary of Comments and Recommendations

In the July 8, 1986, proposed rule (51 FR 24723) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Biloxi Sun-Herald* on July 26, 1986, the *Bogalusa Daily News* on July 28, 1986, the *Hattiesburg American* on July 27, 1986, the *Laurel Leader-Call* on July 28, 1986, and *The Mobile Press/Register* on July 26, 1986, which invited general public comment. Comments were received from 16 parties. No public hearing was requested and none was held.

Fourteen parties supported the listing; these including Mississippi and Louisiana, conservation organizations, professional societies, college professors, and private individuals. The Alabama Department of Conservation and Natural Resources did not perceive an advantage in listing the gopher tortoise in Alabama. The Mississippi State Highway Department expressed opposition to the proposal, but made recommendations should this population be listed (see below). Many parties provided data further substantiating or clarifying the threats to the species.

Written comments obtained during the comment period are covered in the following discussion. Comments of similar content are grouped in a number of general issues. These issues and the

Service's response to each are discussed below.

Issue 1: Endangered status was recommended as opposed to threatened. **Response:** The Service believes the category of threatened more accurately describes the biological status of the species. It does not appear to face imminent extinction now, but is likely to become an endangered species in the foreseeable future if past trends continue.

Issue 2: Listing of the species over its entire range was recommended. **Response:** Although the same threats are impacting the species rangewide, there are insufficient data to support listing populations east of the Tombigbee and Mobile Rivers in Alabama. Eastern populations will remain in category 2 of the Candidate List until data show that these populations warrant listing, or that they should be dropped from consideration.

Issue 3: Designation of critical habitat was recommended. **Response:** Critical habitat was not proposed for the gopher tortoise due to the severity of the problem of taking. Section 4 of the Act requires designation of critical habitat concurrent with listing to the extent prudent and determinable. Because overcollecting threatens the western population of the gopher tortoise it is not prudent to designate critical habitat (see "Critical Habitat" section). The Service will provide more detailed distributional information to any Federal agency and others interested in protecting habitat.

Issue 4: Several commenters recommended certain management actions such as surveys, relocation, and the avoidance of clearcutting, planting of young pines, even-aged pine culture, timber land treatment, and Army maneuvers. **Response:** The Service will coordinate with agencies that have gopher tortoise populations and habitat to develop beneficial management techniques.

Issue 5: The U.S. Forest Service recommended a public education program to reduce the taking of gopher tortoises. **Response:** The Service acknowledges this recommendation and expects to include an objective for education in the recovery plan for this population.

Issue 6: The Mississippi State Highway Department (MSHD) recommended that the Final Rule exempt those projects that had cleared the NEPA process but had not yet been constructed. **Response:** Section 7 of the Act and its implementing regulations require Federal agencies to insure that any of their actions do not jeopardize the continued existence of an

endangered or threatened species. Exemptions can only be granted by the Endangered Species Committee under section 7(h); there is no provision in the Act that specifically allows for exemption of projects that have cleared NEPA requirements.

Issue 7: MSHD was concerned about the potential conflict between an estimated 6,000 road construction and maintenance projects that will take place over the next 20 years, and the gopher tortoise. The Highway Department's concern stemmed mostly from the lack of detailed maps of the gopher tortoise in the proposed rule. MSHD suggested that, if a detailed map of the tortoise's range and suitable habitat were revealed, only 6 projects would require a review (assumed to be a section 7 biological opinion). This was the basis for the Department's recommendation to designate critical habitat (see Issue 3). **Response:** Although the Service cannot predict how many projects will be affected by this listing, the Service agrees that many of these projects may not overlap the range of the gopher tortoise, and hence, would not require consultation. In addition, many of these projects, such as road maintenance, may not jeopardize the continued existence of the gopher tortoise or its habitat. Regarding the lack of detailed distribution maps in the proposed rule, the Service believes that the publication of such maps would be detrimental to this population (see Issue 3). However, the Service will provide detailed location and habitat needs information to MSHD and any other involved State or Federal agency.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the western population of the gopher tortoise should be classified as threatened. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the western population of the gopher tortoise (*Gopherus polyphemus*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. According to Lohofener and Lohmeier (1984), only 147,313 hectares (364,000 acres) of pine

forested uplands with sandy soils, that provide suitable habitat, remain within the western range of the gopher tortoise. This reflects a habitat loss of 82 percent, although an additional 94,907 hectares (234,000 acres) of pine forested uplands exist that could provide additional habitat if they were managed with the tortoise's well-being taken into account. However, an overall decline in forest area in these States is likely (USDA 1978c). There was a statewide longleaf/slash pine acreage reduction of 24 percent in Mississippi from 1967 to 1983 (USDA 1973a, 1978b, 1983a), 12 percent in Alabama from 1972 to 1982 (USDA 1973b, 1983b), and 18 percent in Louisiana from 1967 to 1980 (USDA 1965, 1975, 1980). Land use changes from forest to agriculture and growth of urban areas are responsible for most of this loss. In Mississippi over the next 30 years, according to the Land Use Center, Mississippi Cooperative Extension Service, cropland is expected to double and pastureland will increase by 40 percent. Much of the crop and pasture acreage will come from flat to gently sloping forestland. Within the tortoise's range, human population projections indicate an increase of approximately 50 percent in Mississippi from 1980 to 2000 (according to the Land Use Center, Mississippi Cooperative Extension Service). A 53 percent human population increase occurred in Louisiana from 1970 to 1980, with less than a 10 percent increase during the same period of time in Alabama (Lohofener and Lohmeier in press).

In addition, certain forest management practices are adversely modifying gopher tortoise habitat. The gopher tortoise requires an open forest floor with grasses and forbs for food and sunny areas for nesting (Landers 1980). Regular burning or thinning of trees is required to maintain this type of habitat. Private landowners may not manage their forest in a way that provides suitable gopher tortoise habitat. Development of thick underbrush and the closing of forest canopies (both due to lack of fires or thinning procedures), or clearcutting destroys food plants, inhibits nesting, and causes tortoises to relocate to the edge of roadsides and ditch banks, increasing their susceptibility to human predation and vehicle mortality. One year after timber removal in South Carolina, Wright (1982) found no hatchling gopher tortoises, a 66 percent loss of juveniles, and a 32 percent loss of adults. In another area that was site prepared and planted to pine 30 years ago, he found the smallest gopher tortoise population

of several areas he compared, and no hatchlings or juveniles.

Forest management on the DeSoto National Forest will probably be more compatible with the gopher tortoise than on private forests, but the National Forest is only 22 percent of the total western range (Lohofener and Lohmeier 1984; USDA 1984). The greatest problem for the gopher tortoise caused by typical forest management is probably the closed canopy of young pine stands. Alternative forest management schemes will ultimately determine the impact of forestry operations on the gopher tortoise. The effects of habitat loss and modification are magnified by the fragmented nature of the sand ridges within the western range of the gopher tortoise (Lohofener and Lohmeier 1984) (see discussion in the "Background" section on the effects of fragmentation). Other possible minor habitat modification may also result from training maneuvers of the U.S. Army in DeSoto National Forest. Although the plan on the DeSoto National Forest is to plant longleaf pine on suitable sites, which is beneficial to gopher tortoises, the amount of this vegetation type continues to decline (Means and Grow, 1985).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Gopher tortoises are collected for use or sale as food or as pets. Research in Florida has shown up to 20 percent of a colony has been taken at one time by "gopher pullers" (Taylor 1981), and Lohofener and Lohmeier (1984) have documented a 4.8 percent annual human predation rate in Mississippi. The impact of this activity is magnified by the taking of mostly adults, or the reproducing segment of the population. The number of tortoises taken for pets is unknown, although the New Orleans Nature Center reports about 20 tortoises per year turned in by residents.

C. Disease or predation. The gopher tortoise suffers a heavy natural predation loss of almost 97 percent through the first two years of life (Landers 1980; Wright 1982). There is additional predation on juveniles and adults from two years to maturity, but the magnitude is unknown. Deterioration of habitat, and subsequent movement of tortoises into marginal habitats near roads and ditches, probably increase tortoise mortality rates. When present in roadside habitats tortoises are killed by vehicles and individuals, are easier to collect, and are more susceptible to predation.

D. The inadequacy of existing regulatory mechanisms. The gopher

tortoise is on the Mississippi State List of Endangered Species, and is considered a game animal in Alabama with no open season. Both of these actions offer some protection against taking. Lacey Act provisions are also applicable for these two States. The U.S. Forest Service has recently issued a closure order for taking gopher tortoises within DeSoto National Forest. Federal listing will enhance these protection efforts and provide protection which does not presently exist in Louisiana in relation to taking. Federal listing could also result in increased consideration for tortoise habitat in management practices on Federal lands. Some modifications of forest management practices on the DeSoto National Forest in particular could be advantageous. Listing will also protect tortoise habitat on other areas where Federal funding or permits would be required (e.g., road construction).

E. Other natural or manmade factors affecting its continued existence. The previously discussed threats are accentuated by the length of time required for gopher tortoises to reach sexual maturity and their low reproductive rate. Females take 13 to 21 years to reach sexual maturity (19 to 21 years as far north as southwestern Georgia), and lay an average of only 5.8 eggs per clutch (Landers and McRae 1980; Landers *et al.* 1982; Lohofener and Lohmeier 1984). There is some evidence to indicate that all females may not nest every year (Lohofener and Lohmeier 1984; Wright 1982). Documented human predation and road mortality alone may already be at a level which would offset any annual recruitment to the population computed from these data. After subtracting all other mortality of juveniles and adults, such as that due to predators other than humans, or crushing of nests and juveniles during site preparation for tree planting, the likelihood of population decline is even greater. Declines of this nature are suggested in comparisons of recent status survey results. Auffenberg and Franz (1982) estimated a population density of 0.713 tortoises per hectare (.29 per acre) in Mississippi and 0.97 tortoises per hectare (.39 per acre) in Alabama in 1975, whereas Lohofener and Lohmeier (1984) estimated a density of 0.107 and 0.32 per hectare (.04 and .13 per acre) in those States, respectively, in the early 1980's. Lohofener and Lohmeier (1984) were also able to document only 11 active burrows in Louisiana in 1981, and only one remaining in 1984. Although these estimates may not be strictly comparable because of different

methodologies, there is an indicated decline in population densities ranging from 67 percent in Alabama to 91 percent in Louisiana.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the western population of the gopher tortoise as threatened. Even though the previously discussed threats are currently impacting the gopher tortoise, it may be some time before the species is in danger of extinction. Therefore, it seems more appropriate to list the gopher tortoise as threatened (defined as likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range) rather than endangered. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," the gopher tortoise is threatened by taking. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for the western population of the gopher tortoise at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Activities by Federal agencies (including funding) that modify habitat or change land use could affect the gopher tortoise. Such activities could include certain timber management practices of the Department of Agriculture, military training activities within the National Forest by the Department of Defense, and federally funded road projects. Only relatively minor precautionary constraints should be needed to avoid impacts associated with most federally sponsored activities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, 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 any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

On July 1, 1975, the gopher tortoise was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that export permits are required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mr. John J. Pulliam, III (see ADDRESSES section) at 601/965-4900, FTS 490-4900.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the 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. 94-359, 90 Stat. 911; Pub. L. 95-632, 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. Amend § 17.11(h) by adding the following, in alphabetical order under "Reptiles," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Common name	Species Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
REPTILES							
Tortoise gopher	<i>Gopherus polyphemus</i>	USA (AL, FL, GA, LA, MS, SC)	Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	T	281	NA	NA

Dated: June 18, 1987.
Susan Reece,
Assistant Secretary for Fish and Wildlife and Parks.
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