

(Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the February 5, 1997 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

#### List of Subjects in 48 CFR Part 1552

Environmental protection,  
Government procurement.

Dated: December 30, 1997.

**Carol M. Browner,**  
*Administrator.*

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for part 1552 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

#### Section 1552.209-74 [Amended]

2. Section 1552.209-74 is amended by revising the date in the clause heading to read "(Dec 1997)".

3. Section 1552.209-74 is amended by revising the date in the clause heading for Alternate I to read "(Dec 1997)".

4. Section 1552.209-74 is amended by revising the date in the clause heading for Alternate II to read "(Dec 1997)".

5. Section 1552.209-74 is amended by revising the date in the clause heading for Alternate III to read "(Dec 1997)".

6. Section 1552.209-74 is amended by revising the date in the clause heading for Alternate IV to read "(Dec 1997)".

7. Section 1552.209-74 is amended by revising the date in the clause heading for Alternate VI to read "(Dec 1997)".

[FR Doc. 98-261 Filed 1-5-98; 9:16 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AD06

#### Endangered and Threatened Wildlife and Plants; Endangered Status for Brother's Island Tuatara

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

**ACTION:** Final Rule.

**SUMMARY:** The Service determines endangered status for the Brother's Island tuatara (*Sphenodon guntheri*), a reptile of New Zealand. Although already legally covered by an endangered classification, this species previously was considered part of the related and more widespread tuatara, *Sphenodon punctatus*. Both species are threatened by various factors, especially predation from introduced rats. This rule continues the protection of the Endangered Species Act of 1973, as amended (Act), for the Brother's Island tuatara.

**EFFECTIVE DATE:** February 6, 1998.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Express, messenger-delivered, and regular mail should be sent to the Office of Scientific Authority at this same address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, Chief, Office of Scientific Authority at the above address (phone 703-358-1708; FAX 703-358-2276).

#### SUPPLEMENTARY INFORMATION:

##### Background

Tuatara are a unique group of lizard like reptiles now restricted to New Zealand and represented by the single genus *Sphenodon*. Because of excessive human hunting and predation by introduced animals, especially rats, tuatara are now found only on various small island off the coast of the two main islands of New Zealand. For many years, the prevailing view among zoologists was that the living tuataras represented only the single species *Sphenodon punctatus*, and that was the

only species on the U.S. List of Endangered and Threatened Wildlife (June 2, 1970; 35 FR 8495).

A recent paper (Daugherty, C.H., A. Cree, J.M. Hay, and M.B. Thompson, 1990. "Neglected taxonomy and continuing extinctions of tuatara." *Nature*: 347:177-179) pointed out that, based on a morphological and genetic analysis, a second species, *S. guntheri*, survived on North Brother Island in Cook Strait. *S. guntheri* actually had been first described in 1877, but over time had come to be regarded as just a component of *S. punctatus*. The population of tuatara on North Brother Island was known at the time that *S. punctatus* was listed as endangered pursuant to the Act and was considered to be a population of *S. punctatus*. The recognition of *S. guntheri* as a distinct species may provide it with increased conservation attention, thereby helping to ensure its continued survival on the one small island from which it is known. This listing also will reduce the likelihood of someone assuming that the species is not protected and perhaps unintentionally illegally trading in the species.

The above technical paper explaining the status of *S. guntheri* was only recently brought to the attention of the U.S. Fish and Wildlife Service (Service) through the kindness of Ms. Cheri L. Hosley of Brownstown, Michigan. Subsequently, the Service contacted several authorities, who supported recognition of *S. guntheri* as a distinct species, and also the Government of New Zealand, which responded favorably. Finally, the World Conservation Union's 1996 IUCN Red List of Threatened Animals designates *S. guntheri* as a full species, with a classification of vulnerable.

The above information persuaded the Service of the need to distinguish *S. guntheri* as a separate species on the List of Endangered and Threatened Wildlife and to classify it as endangered, together with *S. punctatus*. A proposed rule to such effect was published in the **Federal Register** of January 26, 1995 (60 FR 5159-5162). All interested parties were requested to submit information that might contribute to development of a final decision. A cable was sent to the United States Embassy in New Zealand, requesting new data and comments of the Government of New Zealand, which again responded favorably. No other responses were received. It is emphasized that the reptiles included within the originally listed taxon *S. punctatus* (now divided into *S. punctatus* and *S. guntheri*) were already legally covered by an endangered species classification and will remain so

under this rule. This rule does not impact or otherwise change the status of either species and does not affect the kinds of activities that are permitted or prohibited. It is intended to eliminate confusion by bringing the listing status of the species into conformity with current taxonomy.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all scientific and commercial information available, the Service has determined that the Brother's Island tuatara should be classified as endangered. 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 endangered or threatened due to one or more of the following five factors described in Section 4(a)(1). These factors and their application to the Brother's Island tuatara (*Sphenodon guntheri*) are as follows (information from Daugherty *et al.* 199, as indicated above):

#### A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

*Sphenodon guntheri* is known only from North Brother Island in Cook Strait, New Zealand. The island has an area of only about 10 acres (4 hectares), and the tuatara population is restricted to only about 4.2 acres (1.7 hectares) of scrub habitat on top of the island. The population consists of fewer than 300 adults. Introduced rats, rabbits, goats, and other animals have damaged habitat of other tuatara populations and could potentially do the same on North Brother Island.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not currently known to be a problem. However, automation of the island lighthouse in 1990 led to departure of the resident keepers who had deterred illegal landings and poaching for 123 years. The very small tuatara population could thus be vulnerable to human hunting and harassment.

#### C. Disease or Predation

Predation by introduced rats, dogs, cats, and pigs have been severe problems for other tuatara populations. Deliberate or accidental introduction of even a few such animals on North Brother Island could be disastrous for the tiny tuatara population there. Departure of the lighthouse keepers and

failure to recognize *S. guntheri* as a unique species warranting special conservation attention could open the way for such a disaster.

#### D. The Inadequacy of Existing Regulatory Mechanisms

Although all tuataras have long received complete legal protection, there has been no recognition of separate, highly restricted species or subspecies, such as *S. guntheri*, that might require special protection and management to survive. The departure of the lighthouse keepers from North Brother Island in 1990 has made *S. guntheri* especially vulnerable in this regard.

#### E. Other Natural or Manmade Factors Affecting its Continued Existence

Small and restricted animal populations, especially if adversely affected through human activity, are highly susceptible to natural disasters and to reduction of genetic viability.

The decision to determine endangered status for the Brother's Island tuatara was based on an assessment of the best available scientific information, and of past, present, and probable future threats to this species. It occurs in very small numbers in a highly restricted range and is vulnerable to a variety of problems. If this reptile is not given appropriate recognition and protection, extinction will become more likely. Critical habitat is not being determined, as such designation is not applicable to foreign species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). 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 proposed Federal action may affect a listed species, the

responsible Federal agency must enter into formal consultation with the Service. No such activities are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of 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, 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 commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In addition, regulations on general permit procedures and on the importation, exportation, and transportation of wildlife are codified at 50 CFR parts 13 and 14.

#### National Environmental Policy Act

The 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, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

#### Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to

contain no information collection requirements.

Author: The primary author of this rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (phone 703-358-1708).

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

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for "Tuatara" under REPTILES and adding an entry for "Tuatara, Brother's Island" 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						
* REPTILES	*	*	*	*	*		*
* Tuatara .....	* <i>Sphenodon punctatus</i> .	* New Zealand .....	* Entire .....	* E	* 3. _	* NA	* NA
* Tuatara, Brother's Island.	* <i>Sphenodon guntheri</i>	* New Zealand (N. Brother Is.).	* Entire .....	* E	* 3. _	* NA	* NA
* 	* 	* 	* 	* 	* 		* 

Dated: October 30, 1997.  
**Jamie Rappaport Clark,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 98-246 Filed 1-6-98; 8:45 am]  
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