

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing of Virginia and Ozark Big-Eared Bats as Endangered Species, and Critical Habitat Determination

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) to be Endangered species, and determines five caves in West Virginia to be Critical Habitat for the Virginia big-eared bat. These bats have declined seriously in recent years, mainly because of human disturbance of their caves. This rule will extend to these bats the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1976, the Service was petitioned by Dr. John S. Hall (Professor of Biology, Albright College, Reading, Pennsylvania 19603) and Dr. Michael J. Harvey (Professor of Biology, Ecological Research Center, Memphis State University, Memphis, Tennessee 38152) to list the Virginia and Ozark big-eared bats as Endangered.

On the basis of that petition, and information subsequently received from the petitioners, regional offices of the Service, and other sources, the Virginia and Ozark big-eared bats were proposed for listing as Endangered on December 2, 1977 (42 FR 61290-61292). That proposal included designation of five caves in West Virginia and one in Kentucky as Critical Habitat for the Virginia big-eared bat but none for the Ozark big-eared bat. Before final action could be taken on the proposal, however, Congress passed the Endangered Species Act Amendments of 1978, which substantially modified the procedures the Service must follow when designating Critical Habitat. In order to bring the Critical Habitat part

of the proposal into conformity with the Amendments, the Service repropoed Critical Habitat for the Virginia big-eared bat on August 30, 1979 (44 FR 51144-51145).

The reproposal of critical habitat provided for a public comment period extending until November 1, 1979. In addition, the Endangered Species Act requires that the Governor be allowed 90 days in which to respond to the proposal, unless he agrees to a shorter period. At the request of the Service, in order to facilitate issuance of the final rule prior to the deadline of December 2, 1979, now imposed by the Endangered Species Act, the Governor of West Virginia kindly agreed to waive the 90 day requirement, and provided a favorable response on October 23, 1979.

Summary of Comments and Recommendations

A total of 25 written comments was received in response to the original proposal of December 2, 1977. Of the responses, none flatly opposed the proposal, and 21 indicated support. The supporting respondents included the Governor of Oklahoma, Governor of Arkansas, Director of the Missouri Department of Conservation, Director of the Illinois Department of Conservation, Commissioner of the Kentucky Department of Natural Resources, Governor of West Virginia, Associate Deputy Chief of the U.S. Forest Service, Administrator of the U.S. Soil Conservation Service, and Chairman of the Chiroptera Group of the Survival Services Commission of the International Union for Conservation of Nature and Natural Resources.

Officials of the Departments of Natural Resources of Indiana, Ohio, and Maryland observed that the proposal of December 2, 1977, had included their States within the known distribution of the Virginia big-eared bat, when in fact there were no specific records of the species from these States. The Service was aware of the lack of records, but considered it advisable to mention the three States because of their proximity and the possibility that the species could occasionally appear therein. In this final rule the three States have been deleted from the known distribution, but the Service emphasizes that should a Virginia big-eared bat be found in Indiana, Ohio, or Maryland, it would be protected by the Endangered Species Act of 1973.

The Director of the Missouri Department of Conservation, and other respondents, suggested the designation of Critical Habitat for the Ozark as well as the Virginia big-eared bat. Although the Service did not subsequently

propose Critical Habitat for this species for the reasons set out below, it requests additional pertinent data and will designate Critical Habitat later if the evidence warrants. In a letter dated January 3, 1978, the Commissioner of the Kentucky Department of Fish and Wildlife Resources, while supporting the listing of the Virginia big-eared bat, suggested that it would be advisable not to designate Stillhouse Cave in Lee County, Kentucky as Critical Habitat. This suggestion was based on the view that designating that cave as Critical Habitat would call attention to it, resulting in increased public use and disturbances to the bats. The Commission also noted that the present owners of the cave were insuring protection of the bats. The Service agreed with this suggestion and did not include Stillhouse Cave in the reproposal of Critical Habitat.

In response to the reproposal of Critical Habitat of August 30, 1979, there were 13 written comments and one statement at a public hearing held by the Service in Elkins, West Virginia on October 11, 1979. The 12 supporting respondents included the Governor of West Virginia and several biologists and speleologists, some of whom provided valuable data and suggestions for additional Critical Habitat or protective measures. The Director of the Kentucky Nature Preserves Commission, and two other persons, advocated that Stillhouse Cave in Lee County, Kentucky, which had been dropped from the reproposal, be designated as Critical Habitat. The Kentucky Nature Preserves Commission also suggested that other caves within the Cave Hollow System in Lee County, Kentucky be designated as Critical Habitat. The Service will review the data and propose further Critical Habitat within the near future, if the evidence warrants. In the meantime, the Service is unaware of any impending activity that would be detrimental to Stillhouse Cave and there is no indication that there will be any disadvantage to the bats therein because a Critical Habitat designation is not now being made.

Mr. Fred C. Western, Vice President of the Germany Valley Limestone Company, which has a quarrying operation in the vicinity of Hellhole Cave in Pendleton County, West Virginia, expressed opposition to the designation of this cave as Critical Habitat. Mr. Western's reason was that such designation could have a long term effect on the quarrying operation, but he also stated that the operation was not detrimental to the bats and that future expansion of the quarry would occur

away from the cave. A subsequent meeting between Mr. Western and Service personnel indicated that there apparently had been a misunderstanding regarding the meaning of a Critical habitat designation, that there was no known conflict between the quarrying operation and the interests of the bats, and that any future problems could be easily resolved. The Service also notes that Hellhole Cave has already been designated Critical Habitat for the Indiana bat, another Endangered species, and the requirements of both species are equivalent.

Conclusion

After review and consideration of all available information, the Service has determined that the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) are endangered species as defined by the Endangered Species Act of 1973. Section 4(a) of the Act states that the Secretary of the Interior shall 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 been abandoned. In the last 18 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. The declining status of this bat has been recognized by State conservation biologists, Academicians, and spelunkers.

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

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 protection of Federal laws. State protective laws have not been successful in preventing the decline of these species.

5. *Other natural or manmade factors affecting its continued existence.*

None in addition to those discussed above.

Critical Habitat

Subsection 4(a)(1) of the Act states:

At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

As explained above in the Summary of Comments, the Service is not now designating one of the originally proposed Critical Habitat sites for the Virginia big-eared bat. Designation of Stillhouse cave would call public attention to it, resulting in increased public use and disturbances of the bats. The present owners of this cave have also acted to protect the bats.

The Service also believes that it would not be prudent to specify any Critical Habitat for the Ozark big-eared bat at this time. Critical Habitat was not specified for this bat either in this original proposal of December 2, 1977 or the reproposal of August 30, 1979. This bat is exceptionally rare and the few survivors are not known to make periodic use of any particular cave for hibernation or maternity purposes, appearing at entirely different sites in subsequent years. As a result, designation of any particular area may not have been beneficial to this species. However, the Service will continue to review the scientific evidence and will

propose Critical Habitat in the future if warranted.

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 by the Secretary that such areas are essential for the conservation of the species.

The Service has concluded that five caves in West Virginia should be designated as Critical Habitat for the Virginia big-eared bat. Because of precise conditions of physical structure, temperature, and humidity, these caves are suitable for use by the species as sites for hibernation and reproduction. The species has a limited range and is highly susceptible to changes in its habitat. Even minor disturbance or physical changes in the caves occupied may result in extinction. Therefore, these caves are essential for its conservation. The physical and biological features of its habitat are such as to require special management considerations and protection.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are insignificant for the foreseeable future.

Effect 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.

Section 7(a) of the Act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of section 7 of the Endangered Species Act Amendments of 1978.

Provisions for Interagency Cooperation were published in the Federal Register on January 4, 1978 (43 FR 870-876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued requires Federal agencies to satisfy these statutory and regulatory obligations with respect to the Virginia and Ozark big-eared bats. These agencies now are required not only to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of these species, but also to insure that their actions do not result in the destruction or adverse

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modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the Virginia big-eared bat.

1. Any action which would substantially alter the physical structure, temperature, humidity, or air flow of the designated caves could adversely modify Critical Habitat, since the Virginia big-eared bat depends on the maintenance of precise conditions in these caves which it must use for hibernating sites in the winter and for nurseries in the summer.

2. Any action which would result in disturbance of the bats in their hibernating or nursery caves would adversely affect Critical Habitat since the species is highly intolerant of human disturbance. Such activity might include blasting or construction in or near the designated caves, or increasing human access to the caves.

Effect Internationally

The Service will review the status of the Virginia and Ozark big-eared bats to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and

Flora for placement upon the appropriate appendix to that Convention, and whether they should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. (703/235-1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Act 12044 and 43 CFR Part 14.

Regulation Promulgation

Accordingly, Part 17, Subparts B and I, Title 50 of the Code of Federal Regulations are amended as set forth below:

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

Species	Range	Status	When listed	Special rules			
Common name	Scientific name	Population	Known distribution	Portion endangered			
Mammals:							
Bat, Ozark big-eared.....	<i>Plecotus town-sendii ingers</i>	NA	USA (Arkansas, Missouri, Oklahoma)	Entire.....	E	NA
Bat, Virginia big-eared.....	<i>Plecotus town-sendii virginianus</i>	NA	USA (Illinois, Kentucky, Virginia, Virginia)	West Entire.....	E	

2. Section 17.95(a) is amended by adding the following Critical Habitat description after the Indiana bat description for the Indiana bat:

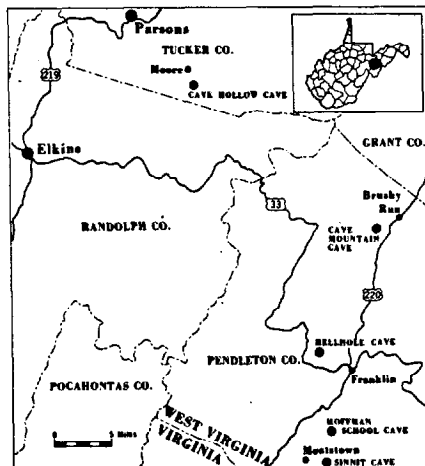
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(a) *Mammals.*

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Virginia Big-eared Bat
(*Plecotus townsendii virginianus*)

West Virginia. Cave Mountain Cave, Hellhole Cave, Hoffman School Cave, and Sinnit Cave, each in Pendleton County; Cave Hollow Cave, Tucker County.

VIRGINIA BIG-EARED BAT
Pendleton and Tucker Counties, WEST VIRGINIA



Dated: November 26, 1979.
Roberty E. Gilmore,
Acting Director, Fish and Wildlife Service.
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