

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered Status for the Yellow-Shouldered Blackbird

The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a proposed rulemaking, pursuant to Sections 4 and 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543, 87 Stat. 884; hereinafter the Act), which would determine the Yellow-shouldered Blackbird (*Agelaius xanthomus*) to be an Endangered Species and which would determine Critical Habitat for that species. This species occurs on Puerto Rico and Mona Island.

BACKGROUND

Section 4(a) of the Act 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 man-made factors affecting its continued existence.

This authority has been delegated to the Director.

On June 1, 1975, the Service entered into a contract with the North Carolina Foundation for Mental Health, Inc., Raleigh, North Carolina, to investigate the status of the Yellow-shouldered Blackbird. A final report dated December 12, 1975, contained information indicating that the Yellow-shouldered Blackbird proposed herein was Endangered as provided for by the Act.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the Yellow-shouldered Blackbird are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Yellow-shouldered Blackbird nests and roosts in the coastal mangrove ecosystem, particularly on small off-shore cays. The natural integrity of this ecosystem within the species' range is rapidly altered or lost through development.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable for this species.

3. *Disease or predation.* This is probably the most significant factor contributing to the current plight of the species.

The Shiny Cowbird (*Molothrus bonariensis*) invaded Puerto Rico from other antillean islands to the southeast in 1955. In 1957, it parasitized 74% of Yellow-shouldered Blackbird nests significantly lowering nesting success. Only 25% of parasitized nests produced any young, whereas 50% of unparasitized nests were productive.

Three introduced nest predators, the Black Rat (*Rattus rattus*), Norway Rat (*Rattus norvegicus*), and the Mongoose (*Herpestes javanicus*), destroy Yellow-shouldered Blackbird nests. As a result the blackbirds usually choose predator-free nest sites such as small mangrove islands and cactus or palm leaves.

Fowl Pox currently infects about 19% of the adult population.

In southwest Puerto Rico, the site of the major blackbird population, the annual adult mortality rate is about 31%, where annual production of adults is only about 10%, a low figure which may be largely attributed to nest parasites and predators. At these rates the bird may be expected to become extirpated there in about 5 years.

4. *The inadequacy of existing regulatory mechanisms.* There currently exists no regulations pertaining to the protection and conservation of this species.

5. *Other natural or man-made factors affecting its continued existence.* The use of broad spectrum rat poisons, such as alpha-chloralose, placed around monkey feeders on two monkey islands in southwest Puerto Rico has resulted in the death of some Yellow-shouldered Blackbirds which fed on the poison baits.

CRITICAL HABITAT

Section 7 of the Act, entitled "Inter-agency Cooperation", states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and 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 and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term critical habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765).

The areas delineated below do not necessarily include the entire critical habitat of the Yellow-shouldered Blackbird, and modifications to critical habitat descriptions may be proposed in the future. In accordance with Section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the critical habitat of the Yellow-shouldered Blackbird found within the areas delineated below.

It is recognized that some of the delineated areas are large and may contain man-made structures, settlements and other localities that are not of primary use to the Yellow-shouldered Blackbird. It should be stressed, however that this is only a proposed rulemaking that is setting forth the outer parameter of the critical habitat areas in question and that based upon data received and additional studies conducted by the Fish and Wildlife Service, the final rulemaking may exclude areas found to be devoid of critical habitat significance.

Until the issuance of additional guide lines, all Federal departments and agencies should, in accordance with section 7 of the Act, consult with the Secretary of the Interior with respect to any action which might reasonably be expected to affect critical habitat within the delineated areas.

CRITICAL HABITAT DETERMINATION

Based upon a contract study by Dr. Will Post of all known nesting areas of the subject species, Critical Habitat for the Yellow-shouldered Blackbird include the following areas:

- (1) *Mona Island.* Entire Island.
- (2) *Puerto Rico.* (a) An area of land, water, and airspace within Puerto Rico beginning at a point where the Quebrada Boqueron joins the Bahia de Boqueron thence proceeding southwesterly along the coast to Cabo Rojo; thence eastward along the coast, including off-shore cays to the point where highway 332 meets the Bahia de Guanica; thence northward or highway 332 to its junction with highway 116; thence westward on highway 116 to its junction with highway 305; thence westward on highway 305 to its junction with highway 303; thence northward on highway 303 to its junction with highway 101; thence westward or highway 101 to the point where it crosses Quebrada Boqueron; thence along Quebrada Boqueron to the point where it joins the Bahia de Boqueron.

(b) A circular area of land, water, and airspace with a one mile radius, the center being the junction of Highways 360 and 102 in the town of San German.

(c) Roosevelt Roads Naval Station southeast of Ceiba.

EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered Species. All of those prohibitions and exceptions also apply to any Threatened Species unless a Special Rule pertaining to that Threatened Species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered Species, are found at § 17.21 of Title 50 and, for the convenience of the reader, are reprinted below:

§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to collect another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters beyond of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

- (i) Aid a sick, injured or orphaned specimen; or
- (ii) Dispose of a dead specimen; or
- (iii) Salvage a dead specimen which may be useful for scientific study; or
- (iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by decapitating, and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 1010, Washington, D.C. 20260, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane, the second by transporting an illegally taken whooping crane, and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

The determination set forth in these Proposed Rules and the proposal of critical habitat also would make the Yellow-shouldered Blackbird eligible for the consideration provided by section 7 of the Act.

The Director is preparing, in consultation with the affected agencies, guidelines for Federal agencies for the application of section 7 of the Act. In the future, regulations will be published regarding section 7.

Regulations published in the FEDERAL REGISTER of September 23, 1975, (40 FR 44612) provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened Species under certain circumstances. Such permits involving Endangered Species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the Act, the Director will notify the Governor of Puerto Rico with respect to this proposal and request his comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and

effective in the conservation of the Endangered or Threatened species as possible. 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 Yellow-shouldered Blackbird;

(2) The location of and the reasons why any habitat of the Yellow-shouldered Blackbird should or should not be determined to be "Critical Habitat" as provided for by Section 7 of the Act;

(3) Additional information concerning the range and distribution of the Yellow-shouldered Blackbird.

Final promulgation of the regulations on the Yellow-shouldered Blackbird 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.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Wildlife Office of Endangered Species and International Activities, 1615 K Street, N.W., Washington, D.C. 20006, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102 (2)(c) of the National Environmental Policy Act of 1969.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments and other documents, preferably in triplicate to Director of the U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments and materials received no later than August 5, 1976, will be considered. Comments and materials received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1615 K Street, N.W., Washington, D.C.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

Dated: June 1, 1976.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11 by adding in alphabetical order the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Popu-lation	Known distribution	Portion of range where threatened or endangered			
BIRDS							
Blackbird, Yellow-shouldered.	<i>Agelaius xanthomus.</i>	Not appli- cable.	Puerto Rico and Mona Island.	Entire.....	E	Not applica- ble.

2. It is further proposed to add a new § 17.87 as follows:

§ 17.87 Yellow-shouldered blackbird.

(a) The following area is Critical Habitat for the Yellow-shouldered Blackbird (*Agelaius xanthomus*):

- (1) *Mona Island*. Entire Island.
- (2) *Puerto Rico*. (i) An area of land, water, and airspace within Puerto Rico beginning at a point where the Quebrada Boqueron joins the Bahía de Boqueron; thence proceeding southwesterly along the coast to Cabo Rojo; thence eastward along the coast; including off-shore cays, to the point where highway 332 meets the Bahía de Guanica; thence northward on highway 332 to its junction with highway 116; thence westward on highway 116 to its junction with highway 305; thence westward on highway 305 to its junction with highway 303; thence northward on highway 303 to its junction with highway 101; thence westward on highway 101 to the point where it crosses Quebrada Boqueron; thence along Quebrada Boqueron to the point where it joins the Bahía de Boqueron.
- (ii) A circular area of land, water, and airspace with a one mile radius, the center being the junction of highways 360 and 102 in the town of San German.
- (iii) Roosevelt Roads Naval Station southeast of Ceiba.

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