

Title 50—Wildlife and Fisheries

CHAPTER 1—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That the Yellow-shouldered Blackbird Is An Endangered Species and Determination of Its Critical Habitat

The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a 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 determines the Yellow-shouldered Blackbird (*Agelaius xanthomus*) to be an Endangered Species, and which determines that species' Critical Habitat.

BACKGROUND

On June 10, 1976, the Service published a proposed rulemaking in the FEDERAL REGISTER (41 FR 23406-23408) advising that sufficient evidence was on file to support a determination that the Yellow-shouldered Blackbird was an Endangered Species as provided for by the Act. In addition, sufficient information and cause was at hand to support a proposed determination of Critical Habitat for the species. That proposal summarized the factors thought to be contributing to the likelihood that this bird could become extinct within the foreseeable future; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections and factual information from any interested person.

Section 4(b)(1)(A) of the Act requires that the Governor of each State, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a Threatened Species or an Endangered Species. A letter was sent to Governor Hernandez-Colon of the Commonwealth of Puerto Rico on June 17, 1976, notifying him of the Proposed Rulemaking for the Yellow-shouldered Blackbird. A similar letter was sent on the same date to Mr. Herbert Raffaele of Puerto Rico's Department of Natural Resources. On June 17, 1976, a memorandum was sent to the Service Directorate and affected Regional personnel, and letters were sent to other interested parties including scientists, ornithological societies and bird preservation groups.

No official comments were received from the Governor of Puerto Rico or members of his staff.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a "... summary of all comments and recommendations received ... be published in the FEDERAL REGISTER prior

to adding any species from the List of Endangered and Threatened Wildlife."

In the June 10, 1976, FEDERAL REGISTER proposed rulemaking (41 FR 23406-23408) and the associated June 18, 1976, News Release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a Final Rulemaking.

All public comments received during the period June 10, 1976, to August 9, were considered.

Letters from 10 persons, including representatives of the U.S. Forest Service, U.S. Fish and Wildlife Service, Poultry and Egg Institute of America, New York Zoological Society, American Birds, American Ornithologists Union, and the Environmental Defense Fund, were received.

In addition, several persons included a published report by Dr. Will Post and Dr. James Wiley entitled "The Yellow-shouldered Blackbird—Present and Future" (*American Birds* 30:13-20; 1976).

Comments from nine persons (including all organizations, excepting the Poultry and Egg Institute of America), fully supported the Proposed Rule; one person, representing the Poultry and Egg Institute of America, objected to the proposed determination.

Comments from three persons emphasized that the Yellow-shouldered Blackbird is in immediate danger of extinction, and that immediate conservation efforts are needed. No one opposed this plea.

Three persons agreed with the limits of Critical Habitat as proposed, while no other comments to the contrary were received.

Two persons felt that nest parasitism by the Glossy Cowbird was the most significant factor endangering the Yellow-shouldered Blackbird.

Six other points were made by one person, each as follows:

- (1) Habitat alteration for land development is a factor endangering the bird. (New York Zoological Society).
- (2) The Yellow-shouldered Blackbird might be introduced into other areas on Puerto Rico not subject to Glossy Cowbird (*Molothrus bonariensis*) nest parasitism. (American Birds).
- (3) Control of Glossy Cowbird populations might be a means of conserving the Yellow-shouldered Blackbird. (American Birds).
- (4) The practice of using broad-spectrum poisons for rat control should be abandoned where these also cause mortality to Yellow-shouldered Blackbirds. (Environmental Defense Fund).
- (5) Introduced predators (rat and mongoose) are a serious threat to Yellow-shouldered Blackbird populations. (New York Zoological Society).
- (6) It was pointed out that wild birds can be carriers of diseases transmissible to domestic poultry, such as Exotic Newcastle Disease (VVND), and that the above possibility must be carefully weighed when each avian species is being considered for listing as an Endangered

Species. (Poultry and Egg Institute of America).

The published scientific report by Drs. Post and Wiley summarizes the information and conclusions included in Dr. Post's contract report, the major points of which were summarized in the Proposed Rulemaking (41 FR 23406-23408, June 10, 1976).

CONCLUSION

After a thorough review and consideration of all the information available, the Director has determined that the Yellow-shouldered Blackbird is 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) of the Act. This review amplifies and substantiates the description of those factors included in the Proposed Rulemaking (41 FR 23406-23408). Those factors were described 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

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the Yellow-shouldered Blackbird (41 FR 23406-23408).

Based on this review the Critical Habitat for the Yellow-shouldered Blackbird: *Agelaius xanthomus*, is determined to include the following areas (exclusive of those existing man-made structures and settlements which are not necessary for the normal needs or survival of the species):

- (i) *Mona Island.* Entire Island.
- (ii) *Puerto Rico.* (a) 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 Bahía de Guanica; thence northward along 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 along highway 101 to the point where it crosses Quebrada Boqueron; thence along Quebrada Boqueron to the point where it joins the Bahía de Boqueron.
- (b) A circular area of land, water, and airspace with a one mile radius, the center being the junction of highways 101 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. 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 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 solicit another to commit or 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, possess, sell, purchase, transport, export, or import any 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 seaward 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 live-capturing 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 19183, Washington, D.C. 20036, 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.

(5) Notwithstanding paragraph (c) (1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days."

The determination set forth in this Final Rulemaking also makes the Yellow-shouldered Blackbird eligible for the consideration provided by Section 7 of the Act. That Section reads as follows:

INTERAGENCY COOPERATION

Section 7. 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.

The Director has prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of Section 7 of the Act. In the future, regulations will be published regarding Section 7.

Regulations which appear in Part 17, Title 50 of the Code of Federal Regulations were first published in the FEDERAL REGISTER of September 26, 1975, (40 FR 44412), and provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened Species under certain circumstances.

EFFECT INTERNATIONALLY

In addition to the protection provided by the Act, the Service will review the Yellow-shouldered Blackbird to determine whether it 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 (ices) to that Convention or whether it should be considered under other, appropriate international agreements.

NATIONAL ENVIRONMENTAL POLICY ACT

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the Yellow-shouldered Blackbird. The assessment is the basis for a decision that these determinations are not major Federal actions 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.

This rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (U.S.C. 1531-1543; 87 Stat. 884). The amendments will become effective on December 12, 1976.

Dated: November 9, 1976.

GEORGE W. MILLAS,
Acting Director,
Fish and Wildlife Service.

Accordingly § 17.11 of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the Yellow-shouldered Blackbird to the list under "Birds," as indicated below:

Species		Range						
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules	
Blackbird, Yellow-shouldered	<i>Agelaius zanthoemus</i>	N/A	Puerto Rico and Mona Island	Entire	E		16 N/A.	

3. By adding new § 17.87 to subpart F to read as follows:

§ 17.87 Yellow-shouldered blackbird.

(a) The following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) is Critical Habitat for the Yellow-shouldered Blackbird (*Agelaius zanthoemus*):

(1) *Mona Island*—Entire Island.

(2) *Puerto Rico*—(1) 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 offshore cays, 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 to the point where highway 332 meets

along the Quebrada Boqueron to the point where it joins the Bahia 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.

(b) Pursuant to section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions

authorized, funded, or carried out by them do not result in the destruction or modification of this Critical Habitat area.

[FR Doc.76-34045 Filed 11-18-76;8:45 am]

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Republication of List of Species

Pursuant to 5 U.S.C. 553, § 17.11 of 50 CFR Chapter I is hereby amended.

The purpose of this publication is amend § 17.11 which was published October 27, 1976 as Part IV of the FEDERAL REGISTER (41 FR 47181-47198).

Inadvertently, a page of the republished list was omitted. This omitted page is now published below.

Dated: November 8, 1976.

GEORGE W. MILLIS,
Acting Director,
U.S. Fish and Wildlife Service

Species		Range		Portion of range where endangered or threatened	Status	When listed	Spec. pub.
Common name	Scientific name	Population	Known distribution				
Rat, stick-nest	<i>Leporillus conditor</i>	N/A	Australia	Entire	E	6	N/A
Rat, false water	<i>Xeromys myoides</i>	do	do	do	E	4	Do
Rat, kangaroo, brush-tailed	<i>Bettongia penicillata</i>	do	do	do	E	4	Do
Rat-kangaroo, Gaimard's	<i>Bettongia gaimardi</i>	do	do	do	E	6	Do
Rat-kangaroo, Lesueur's	<i>Bettongia lesueur</i>	do	do	do	E	4	Do
Rat-kangaroo, plain	<i>Caloprymnus campestris</i>	do	do	do	E	4	Do
Rat-kangaroo, Queensland	<i>Bettongia tropica</i>	do	do	do	E	4	Do
Rhinoceros, great Indian	<i>Rhinoceros unicornis</i>	do	India, Nepal	do	E	4	Do
Rhinoceros, Javan	<i>Rhinoceros sondaicus</i>	do	Indonesia, Burma, Thailand	do	E	3	Do
Rhinoceros, northern white	<i>Ceratotherium simum cottoni</i>	do	Zaire, Uganda, Sudan	Central	E	4	Do
Rhinoceros, Sumatran	<i>Dicerorhinus sumatrensis</i>	do	African Republic, Bangladesh to Vietnam to Indonesia (Borneo)	do	E	8	Do
Raki, white-nosed	<i>Chiropterus albinus</i>	do	Brazil	do	E	4	Do
Beal, Mediterranean monk	<i>Monachus monachus</i>	do	Mediterranean, Northwest African Coast and Black Sea	do	E	3	Do
Seledang (Gaur)	<i>Bos gaurus</i>	do	India, Southeast Asia, Bangladesh	do	E	4	Do
Berow, Sumatran	<i>Capricornis sumatrensis</i>	do	Sumatra	do	E	15	Do
Serval, Barbary	<i>Felis serval constantina</i>	do	Algeria	do	E	4	Do
Bhappo	<i>Ovis vignei</i>	do	Kashmir	do	E	15	Do
Shou	<i>Cervus elaphus wallichi</i>	do	Tibet, Bhutan	do	E	4	Do
Siamang	<i>Symphalangus syndactylus</i>	do	Thailand, Malaysia (Malay Peninsula, Sumatra)	do	E	15	Do
Sifakas	<i>Propithecus</i> spp. (all species)	do	Malagasy Republic (Madagascar)	do	E	4	Do
Sloth, Brazilian three-toed	<i>Bradypus torquatus</i>	do	Brazil	do	E	4	Do
Solenodon, Cuban	<i>Atopogale cubana</i>	do	Cuba	do	E	4	Do
Solenodon, Haitian	<i>Solenodon paradoxus</i>	do	Dominican Republic, Haiti	do	E	4	Do
Squirrel, Delmarva Peninsula fox	<i>Sciurus niger cinereus</i>	do	USA (Md.)	do	E	1	Do
Stag, Barbary	<i>Cervus elephus barbarus</i>	do	Tunisia, Algeria	do	E	3	Do
Stag, Kashmir	<i>Cervus elephus hanglu</i>	do	Kashmir	do	E	8	Do
Tamaraw	<i>Anoa mindorensis</i>	do	Philippines	do	E	4	Do
Tamarin, golden-rumped (golden-headed Tamarin; golden-lion Marmoset)	<i>Leontideus</i> spp. (all species)	do	Brazil	do	E	3	Do
Tamarin, pied	<i>Saguinus bicolor</i>	do	Northern Brazil	do	E	16	Do
Tamarin, white-footed	<i>Saguinus leucopus</i>	do	Northern Colombia	do	T	16	17.40(c)
Tapir, Asian	<i>Tapirus indicus</i>	do	Burma, Thailand, Cambodia, Laos, Vietnam, Malaysia (Sumatra)	do	E	15	N/A
Tapir, Brazilian	<i>Tapirus terrestris</i>	do	Venezuela, Argentina, Brazil, Colombia	do	E	4	Do
Tapir, Central American	<i>Tapirus bairdii</i>	do	Southern Mexico to Colombia and Ecuador	do	E	4	Do
Tapir, mountain	<i>Tapirus pinchaque</i>	do	Colombia	do	E	4	Do
Tarsier, Philippine	<i>Tarsius syrichta</i>	do	Philippines	do	T	16	17.40(c)
Tiger	<i>Panthera tigris</i>	do	Temperate and Tropical Asia	do	E	3,5	N/A
Tiger, Tasmanian (Thylacine)	<i>Thylacinus cynocephalus</i>	do	Australia	do	E	8	Do

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Title 7—Agriculture
CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE
PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS
Food Stamp Program
MAXIMUM MONTHLY ALLOWABLE INCOME STANDARDS AND BASIS OF COUPON ISSUANCE
APPENDIX A—48 STATES AND DISTRICT OF COLUMBIA

[FSP No. 1977-1.1, Amdt. No. 93]

FSP No. 1976-1.2 in Appendix A to Part 271 is superseded, effective January 1, 1977, by this FSP No. 1977-1.1.

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semi-annually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, the cost of food did not increase enough in August 1976 for the basic four-person household to require a change in

the coupon allotments or income eligibility standards which became effective July 1, 1976.

Prior to the amendment to the Act requiring semi-annual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semi-annual adjustment, the law specified that the first adjustment be made in January 1974 to reflect changes in food prices through August 1973. Similar procedures have been used for subsequent semi-annual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August, as required by the Act. The income standards and coupon allotments to become effective on January 1, 1977 are based on the cost of the thrifty food plan in August 1976 which was unchanged from February 1976. These standards and allotments shall be effective from January 1, 1977, through June 30, 1977, unless court orders restraining the implementation of the May 7, 1976 amendments to the Food

Stamp Regulations published at 41 FR 187 et seq., are vacated and the Department issues and makes effective substitute standards and allotment levels in accordance with such amendments. Except as they may otherwise be amended or modified, the Food Stamp Program shall be governed by the Regulations in effect on May 6, 1976, during the period that court orders are in effect restraining the implementation of the May 1976 amendments.

Households in which all members are included in the federally-aided public assistance grant, general assistance grant, or supplemental security income benefit shall be determined to be eligible to participate in the program while receiving such grant without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally-aided public assistance, general assistance or supplemental security income benefit, any State (other than Alaska, Hawaii, Puerto Rico, Guam, or the Virgin Islands) or in the District of Columbia shall be as follows: