

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

Endangered and Threatened Wildlife and Plants; Reproposal of Critical Habitat for the Plymouth Red-Bellied Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reproposal of Critical Habitat for the Plymouth red-bellied turtle.

SUMMARY: The Service reproposes Critical Habitat for the Plymouth red-bellied turtle (*Chrysemys rubriventris bangsi*). Endangered status and Critical Habitat were originally proposed for this species on May 19, 1978 (43 FR 21702-21705). The Critical Habitat portion of this proposal was withdrawn by the Service on March 6, 1979 (44 FR 12382-84) because of the procedural and substantive changes in prior law made by the Endangered Species Act Amendments of 1978. This proposed rule comports with these requirements.

DATES: Comments on this proposed rule must be submitted by November 18, 1979.

ADDRESSES: Interested persons or organizations are requested to submit comments to Director (OES), U. S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rulemaking are available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 500 1000 North Glebe Road, Arlington, Virginia 22201. Public meetings/hearings will be held at the locations set out in the table below.

FOR FURTHER INFORMATION CONTACT: For further information on the original proposal, as well as on this supplement, contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species (703/234-2771).

SUPPLEMENTARY INFORMATION:**Background**

The Plymouth red-bellied turtle was proposed as Endangered with Critical Habitat on May 19, 1978. 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. The present rulemaking will bring the

Critical Habitat proposal into conformity with the Amendments.

The known range of the Plymouth red-bellied turtle (*Chrysemys rubriventris bangsi*) consists of 11 ponds and adjacent land in Plymouth Township, Plymouth County, and ponds on Naushon Island, Dukes County, Massachusetts.

Various estimates, ranging from less than 100 to 200, have been made of the total population of this turtle in Plymouth County, but there are insufficient data to support these estimates. Quantitative data are limited to that developed by Dr. Terry Graham in his 1969 mark-release-recapture studies. He captured a total of 35 *C. r. bangsi* in Gunner's Exchange, Hoyts, Crooked, and Island ponds, Plymouth County. The last sighting of the red-bellied turtle on Naushon Island was reported by Dr. James D. Lazell Jr. in 1971. Since that time, the continued existence of this species there has not been verified.

The Plymouth population survives at low population levels in Billington Sea, Boot Pond, Crooked Pond, Duck Pond, Gunners Exchange Pond, Hallfield Pond, Hoyts Pond, Negro Pond, Turtle Pond, Island Pond, and a named pond 0.1 kilometers northwest of Island Pond. The total area of all eleven ponds is approximately 410 acres. However, because the Plymouth red-bellied turtle wanders extensively over land and lays its eggs on land, herpetologists familiar with this turtle have concluded that a larger area is essential to its conservation.

Knowledge of the historical range of *C. r. bangsi* is limited. There is evidence that the range once extended at least 50 miles farther north to the Ipswich River in Essex County, and south to Martha's Vineyard, Massachusetts. This evidence consists of skeletal remains of the red-bellied turtle found in Indian shell heaps at Ipswich and Vineyard haven, Massachusetts. Based on this evidence, it has been concluded that the red-belly was widespread in eastern Massachusetts from more than 4,000 years ago until at least 1,000 years ago.

Summary of Factors Affecting the Species

Foremost among the reasons for the turtle's endangered status is its very limited range. Ten of the eleven ponds known to support the turtle are within one 1500-acre area and the eleventh pond (Billington Sea) is already

surrounded by a great deal of residential development. The entire Plymouth County area and particularly the land adjacent to the county's many scenic ponds is increasingly being developed for housing. As a result, a major threat to this species is the modification of ponds and associated wetlands on which it depends. Some areas may also be adversely affected by road widening projects.

Although residential development will not directly eliminate the turtle from the ponds, the best scientific evidence indicates that it will decrease the turtle's reproductive success and the survival of its young as a result of:

(1) Increased disturbance to nesting areas adjacent to the ponds by humans and their pets,

(2) Increased collection and harassment of turtles by youngsters in the area,

(3) Manipulation of terrestrial and aquatic vegetation used as food by the turtle,

(4) Increased siltation and other water quality problems which may affect the aquatic flora and fauna which comprise the turtle's food supply. Because ground water, which supplies the water in these ponds, moves freely through the sandy soils, pollution at a considerable distance from the essential habitat ponds could impact the turtle's habitat.

(5) Shoreline modification, filling, and dredging for beaches, dikes, real estate, etc.

Furthermore, Dr. James D. Lazell, Jr. has indicated that the Plymouth red-belly's conservation depends on the amount of time it can spend basking in the sun. Intensive human activity around the ponds will tend to keep this cautious turtle underwater which may lead to serious metabolic deficiencies, weight loss, and eventual death.

Summary of Previous Comments

A total of seven comments were received in response to the proposal of May 19, 1978 (43 FR 21702-21705) to list this species as Endangered and designate its Critical Habitat. All responded favorably to the proposed status and designation of Critical Habitat. One of those who commented, Dr. James Lazell, Jr., recommended enlarging the Critical Habitat to:

All lands within the Town of Plymouth, Plymouth County, Massachusetts, within the boundaries

formed by State Route 3 on the Northeast, Long Pond Road on the East, Miles Standish State Forest and Plymouth State Reservation on the South, Furnace Road on the West, and Summer Street on the Northwest, back to the intersection of Summer Street and Route 3.

Michael Dukakis, Governor of Massachusetts at the time, noted that Plymouth red-bellied turtles are known from Upper West Pond and Micajah Pond, although these records are very old. The turtle is also known from several ponds on Naushon Island, but as the former Governor noted, this island is already protected through restricted access by its owner. He further questioned limiting the Critical Habitat designation solely to ponds while leaving out adjacent land areas. The Service has carefully considered these comments and agrees that the Critical Habitat designation should be expanded beyond the lake areas proposed in the May 19, 1978 rulemaking. The Service believes that, based on the best scientific and commercial data available, the additional land areas proposed by this rulemaking are essential for the Conservation of this species because of their value for nesting, basking and overwintering.

Critical Habitat

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 geographic 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 believes that certain ponds and adjacent land areas within the geographical area occupied by the species under consideration should be designated as Critical Habitat.

This species has an extremely limited range and is highly susceptible to changes in its habitat. Since physical or chemical changes in the waters occupied by this species as well as alteration of basking, nesting and

overwintering sites may result in extinction, designation of Critical Habitat is essential for this turtle's conservation. The physical and biological features of this 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 a draft impact analysis and believes at this time that economic and other impacts of this action are insignificant in the foreseeable future. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action (see below).

The Service will prepare a final impact analysis prior to the time of final rulemaking, and will use this document as the basis for its decision as to whether or not to exclude any area from Critical Habitat for the Plymouth red-bellied turtle.

Effect of This Proposal if Published as a Final Rule

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 an '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 this section."

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out, do not jeopardize the continued existence of the Plymouth red-bellied turtle, but also to insure that their actions do not result in the destruction or adverse modification of this critical habitat which has been determined by the Secretary to be critical.

Section 4(f)(c) of the Act requires, to the maximum extent practicable that any proposal to determine 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 this species.

1. With regard to the Plymouth red-bellied turtle, a major threat to the continued existence of this species is the adverse modification of the water quality and levels of the ponds on which it depends. Any significant alteration of the water levels, as by groundwater pumping, or reduction in water quality which would reduce or eliminate vegetation and aquatic prey items of this turtle could adversely modify Critical Habitat since aquatic vegetation serves as both food and shelter to the turtle. Siltation resulting from land clearing adjacent to ponds or pollution of the groundwater could eliminate vegetation and aquatic invertebrates.

2. Because this species uses wetlands adjacent to the ponds, the draining of wetlands within the Critical Habitat could adversely affect the species.

3. Shoreline modification, filling, and dredging for beaches, dikes, real estate development or similar types of activity could be considered to adversely affect Critical Habitat since they could affect water quality, levels of shoreline, and nesting and overwintering sites for the species.

Public Meetings/Hearings

The Service hereby announces that a public meeting/hearing will be held on this proposed rule. The public is invited to attend this meeting/hearing and to present opinions and information on the

proposal. Specific information relating to the public meeting is set out below:

Place, Date, Time and Subject

- Hearing Room, Plymouth Town Office Building, October 17, 1979, 10-12 a.m., 1-3 p.m. Plymouth red-bellied turtle.

Public Comments Solicited

The Director intends that the rules finally adopted be as accurate and effective as possible in the conservation of the Plymouth red-bellied turtle. Therefore, any comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of this proposed rule are solicited. The Service particularly requests comments on the following:

- Biological and other relevant data concerning any threat (or lack thereof) to this species;
- Additional information concerning the range and distribution of the species;
- Current or planned activities in the subject areas;
- The probable impacts of such activities if the area is designated as critical habitat; and
- The foreseeable economic and other impacts of the critical habitat designation.

National Environmental Policy Act

A draft environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment will be the basis for a decision as to whether this determination 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.

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

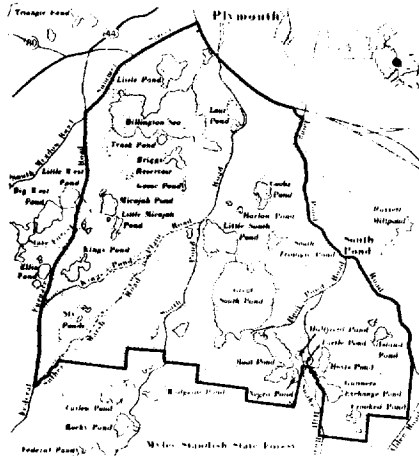
Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Act 12044 and 43 CFR Part 14.

Regulations Promulgation

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

§ 17.95 [Amended]

1. It is proposed that § 17.95(c), Reptiles, be amended by adding Critical Habitat of the Plymouth red-bellied turtle after that of the leatherback sea turtle as follows:



Plymouth Red-Bellied Turtle

(Chrysemys rubriventris bangsi)

All lands within the boundaries formed by State Route 3 on the Northeast, Long Pond Road on the East, Miles Standish State Forest and Plymouth State Reservation on the South, Furnace Road on the West, and Summer Street on the Northwest, back to the intersection of Summer Street and Route 3.

Dated: August 30, 1979.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

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