

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing as Endangered With Critical Habitat for the Plymouth Red-Bellied Turtle in Massachusetts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Plymouth red-bellied turtle (*Chrysemys rubriventris bangsi*) to be an Endangered species and determines the Critical Habitat of the species. The turtle is only known from Plymouth and Dukes Counties in Massachusetts. This action is being taken because the number of this species is low, the habitat of the species is subject to alteration, turtles have been reported as being harassed by people, and predation could be a negative factor in the continued survival of the species. This rule provides the full protection of the Endangered Species Act of 1973, as amended, to this species.

DATES: This rule becomes effective on May 2, 1980.

ADDRESSES: Questions concerning this action may be addressed to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to the rule are available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

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) or the Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 ext. 316).

SUPPLEMENTARY INFORMATION:**Background**

On June 6, 1977, the Fish and Wildlife Service published a notice in the *Federal Register* (42 FR 28903-28904) to the effect that a review of the status of 12 species of turtles, including *Chrysemys rubriventris*, was being conducted.

In response to the notice, comments were received from a number of biologists as to the precarious status of this species. In addition, literature records were checked and the results of the studies of Dr. Terry Graham of

Worcester State College were reviewed. As a consequence of this review, the Service proposed that the Plymouth red-bellied turtle be listed as Endangered under provisions of the Act, and proposed 11 ponds as Critical Habitat, in the *Federal Register* of May 19, 1978 (43 FR 21702-21705). The comments from the Notice of Review were summarized in this document (also see the June, 1978, *Endangered Species Technical Bulletin* for details of this proposal). 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.

On March 6, 1979, the Service withdrew all proposed Critical Habitats until such time as they could be repropoed in accordance with the 1978 amendments (see the *Federal Register*, 44 FR 12382-12384). On September 13, 1979, the Service repropoed Critical Habitat to include an area of approximately 7000 acres in Plymouth County. This expanded Critical Habitat was suggested by Dr. James D. Lazell, Jr., because of the turtle's tendency to wander, especially when searching for a suitable nesting site. See the *Federal Register* of September 13, 1979 (44 FR 53422-53424) and the October, 1979, *Endangered Species Technical Bulletin* for details.

In conjunction with the repropoal for Critical Habitat, the Service held a public meeting and hearing on October 17, 1979, in Plymouth, Massachusetts, to explain the proposal, answer public questions, and to solicit additional information on the biology of the turtle and the economic effects of a Critical Habitat designation on federally authorized and funded projects in the area. In response to several requests, the Service also held an evening public meeting on January 15, 1980, and an evening hearing on January 29, 1980. All public comment periods were closed on February 13, 1980.

The biology of the turtle was reviewed in the original proposal as well as the repropoal of Critical Habitat for this species. Persons who desire to review these data should consult these documents. The Plymouth red-bellied turtle was originally reported in the literature based on a specimen collected in 1869 from near Sparrow Hill about a half mile north of Billington Sea. In 1937, Dr. Harold Babcock designated the turtle as a distinct subspecies on the basis of its greater shell height to length proportion. In 1978, Dr. Terry Graham corroborated Babcock's designation when he completed an in-depth analysis

of the shell dimensions of both subspecies of *Chrysemys rubriventris* concluding *bangsi* as morphometrically distinct from *rubriventris*. Dr. Graham has continued working on the ecology of this subspecies, marking and releasing turtles in Hoyts, Gunners Exchange, Island, Crooked, and an unnamed pond northwest of Island pond. Only 41 animals have been captured despite intensive survey. Dr. Graham's work is continuing under grants from the U.S. Fish and Wildlife Service; his data form the basis for the final Critical Habitat included in this rule.

One additional item needs to be mentioned. There is considerable controversy among turtle biologists with regard to the generic name of fresh water turtles, that is, whether the name should be *Chrysemys* or *Pseudemys*. Both names are found in current literature, although there is considerable evidence suggesting the name *Chrysemys* should be limited to painted turtles (*Chrysemys picta*). The Service will continue to use *Chrysemys* until the taxonomic work is published on this generic separation. However, the table in #17.11 in which the species is listed will be published as *Chrysemys* (= *Pseudemys*) *rubriventris bangsi* to eliminate any future confusion in names.

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 to the list of Endangered and Threatened Wildlife.

In the May 19, 1978, *Federal Register* proposed rule (43 FR 21702-21705) to list this species as Endangered, and the September 13, 1979 repropoal of Critical Habitat (44 FR 53422-53424), the June 13, 1978 and September 18, 1979 Press Releases on these propoals, the June, 1978 and October, 1979 *Endangered Species Technical Bulletins*, and the various public meetings and hearings (see "Background" section), all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rule.

All public comment submitted between May 19, 1978 and July 18, 1978, September 13, 1979 and November 16, 1979, and January 10, 1980 and February 13, 1980, were considered.

In the repropoal of Critical Habitat published in the *Federal Register* of September 13, 1979, all comments that were received in response to the original proposal were summarized and will not be repeated here. Persons interested in

reviewing these comments should consult that Federal Register document (44 FR 53422-53424).

A total of 66 comments were received in writing by the Service to the reproposal of Critical Habitat. In addition, 14 comments were presented at the public hearing of October 17, 1979, and 15 comments at the public hearing of January 29, 1980. Three petitions were received in support of the reproposal of Critical Habitat; these contained 134 signatures. Of the comments, 49 supported and 4 opposed the proposal but added no new information of a biological or other nature to that contained in the original two proposals for this species. One individual discussed the problems of rising land values and taxes and expressed concern about the designation of Critical Habitat although it is not clear from her letter whether she supported or opposed the proposed listing.

There were nine comments which supported the proposal and added new or additional information:

Mr. Tony Baker, the owner of "Negro Pond", noted that the name of the pond is now "Ingalls Pond".

Dr. Gordon Thurow advocated what he terms a "bullseye natural drainage system approach" to protection whereby there would be a central or core area of prime habitat for which people are largely excluded and the boundaries could be natural drainage divides. There would also be an outer ring area where people could live with various legal protections, also defined by drainage divides. In this way, a buffer zone could be presented around the most critical areas needed by the species, and artificial boundaries could be avoided.

Mr. Steve Chumra (Commissioner, Department of Fisheries, Wildlife and Recreational Vehicles for the State of Massachusetts) states:

Biologists within our Division of Fisheries and Wildlife have reviewed all known biological data pertaining to this turtle and have kept in close touch with research underway to help improve our understanding of the life history of this unique member of the Commonwealth's fauna. Based on all available data, it is our opinion that the Plymouth Red-bellied Turtle is very likely on the verge of extinction and that the remaining population will likely disappear without special conservation efforts. The Division of Fisheries and Wildlife, which recently entered into a Cooperative Endangered Species Agreement with the Service, intends to undertake a research and management program on this unique reptile, stressing continued scientific research, public education and conservation.

Division biologists, who testified at the public meeting and hearing held by your agency in Plymouth, on October 17, 1979,

have also reviewed the environmental and economic assessment proposed by the Service and believe that the proposal will provide a useful means to assure that federal agency actions will not disrupt or destroy requisite biological factors associated with the turtle, and at the same, not bring any major economic loss or hardship within the Town of Plymouth. It is our belief that the Critical Habitat proposal represents a conscientious effort on the part of your agency to balance the demands placed upon the turtle's habitat.

In conclusion, this Department is interested in taking all reasonable measures that will aid in the conservation of the Plymouth Red-bellied Turtle. We believe that since this turtle is known to wander extensively over land, the 7,000 acre designation as Critical Habitat is an appropriate action. We are appreciative and supportive of the Service's efforts to foster conservation of this rare and scientifically invaluable resource. Under the Division's recently signed Agreement with your agency, we are confident that any land use conflicts between man and the turtle that should arise in the future, will be successfully resolved or mitigated.

Mr. Richard E. Kendall (Commissioner, Department of Environmental Management in Massachusetts) included the following in his letter:

Dr. Terry Graham, a professor at Worcester State College who has devoted many years of study to these turtles, believes there are several reasons for its current endangered status. The race has a very limited range; ten out of the eleven ponds in which they have been found are within a 1500 acre area. The other pond, Billington Sea, has already been highly modified by development. Female Plymouth red-bellied turtles have been found to have very low fertility rates. They lay their eggs on land and during the nesting season tend to wander extensively, sometimes up to ½ mile away from any pond. This behavior accentuates the need to designate the surrounding land as well as the ponds as critical habitat. In addition, these reptiles are very easily frightened and are often disturbed by human activity such as boating and hunting:

Mr. Theodore Steinway makes a number of points:

1. Mr. Steinway has examined a number of maps, including some as old as the 1850's, and can't find reference to a "Duck" Pond.
2. The pond mentioned as unnamed in the proposal appears as "Little" Pond in the 1903 Atlas of Massachusetts and on the 1936 map of Myles Standish State Forest.
3. "Hallfield" Pond is a repeated misnomer (including the USGS map) and should be "Hillfield" Pond.

Mr. Steinway also noted that Dr. Frederick Lucas' specimen of 1869 came from Sparrow Hill, a good ways north of Billington Sea and that his aunt picked up a specimen in the 1930's three miles

from the nearest known habitat. He recommended keeping the Critical Habitat large.

Mr. Dix Leeson, Jr. (Nature Conservancy) states the following concerning the statements made at the public hearing of October 17, 1979:

Most of the negative testimony which was orally presented in the two public sessions related to expected limitations on future private use of land in the proposed critical habitat. Your record should show that this modest amount of negative testimony was accompanied (and perhaps induced) by quite inaccurate reporting of your habitat proposal in one of the Boston Metropolitan newspapers. Even a cursory review of the clippings in October of 1979 will show the blatant inaccuracies concerning the intent and effect of this proposal.

There is, however, unavoidable uncertainty about the effects of designating these 7000 acres as critical habitat. Federal agencies providing either funds or permits for projects in the area will have to consult with your agency. It is obviously not possible to pinpoint at this time the particular activity which might not be allowed because of its effect on the few remaining turtles.

On the other hand, it is possible to examine the land uses currently allowed in this portion of Plymouth (residential) and compare them with the presently known needs of this species. The comparison shows no apparent conflict between most types of residential (including some shoreline) development and the turtles. In fact, the pond containing the largest number of turtles (approximately half of the known individuals!) has one of the most densely developed shorelines of any in the proposed critical habitat. In summary, I see no significant impact of the proposed habitat on the uses which the town has already specified are appropriate for this area.

I would also like to point out that considering the species' very low numbers (less than 50 individuals in the world, of which fewer than one dozen are females) the proposed habitat and the limitations it imposes offer only minimal protection. The restraint called for on the part of those persons proposing to disturb Massachusetts' only endemic turtle seems to us to be a small and reasonable cost indeed.

One person submitted a long letter questioning whether the Town of Plymouth and State of Massachusetts regulatory agencies have been effective in controlling growth around the ponds in Plymouth. He noted that improper development procedures have led to pond pollution to within 300 feet of his private well, and he believes that future generations have a right to come and observe Plymouth red-bellied turtles in their natural habitat.

Two persons stated that they believe that the turtle needs the avoidance of disturbance to survive and that there has been shooting of turtles (possibly) on Boot Pond. They believe the area should be left as it is so that the

ecosystem may be preserved. The only letter opposing the listing was submitted by the Plymouth Area Chamber of Commerce. They state:

The 7,000 acres affected lies in the heart of the town and immediately adjoins (on two sides) areas presently seeing substantial growth. Real estate is of prime value and such designation would seriously limit most future growth in years ahead. Population figures by the Mass. Census project Plymouth as a major economic development growth area in the South Shore. Federal limitation imposed by this designation would substantially alter or limit our options.

The long term productivity of this turtle would be in conflict with this changing community's environment. In 1970 the population was 18,000. Today it stands at 33,000.

Since the turtle has migrated great distances since it was first reported, as the population has apparently not decreased since 1969 and as Chamber members have recollected citing the turtle in the Myles Standish State Park and, further, since the present environment's uniqueness [sic] cannot be identified, we do not think the turtle is dependent on his existing location. The sand turtle in Muscatine, Iowa was relocated. Once believed to be an endangered species, they are now thriving. We, therefore, propose that this be seriously considered for the red-bellied turtle in Plymouth.

Mr. William J. Devine requested that the Service prepare an Environmental Impact Statement and provided extensive comment on the Environmental Assessment prepared by the Service in connection with the 1978 proposal. Among his points are:

1. He notes that some authors have questioned the subspecific status of the turtle and believes this should be resolved prior to acceptance of the Assessment.
2. He believes each pond should be examined for the presence of the turtle to determine an accurate population size.
3. The assessment does not identify the exact number of ponds or amount of species found in each pond.
4. The assessment does not take into consideration the new concentrations of population in the area of proposed Critical Habitat.
5. In the section *Environmental Impacts of the Proposed Action*, the positive and negative effects on man's health, welfare, and surroundings is not addressed. Instead, the status improvement of the species is discussed.
6. The land acquisition section is inadequate because it fails to take into account the Nature Conservancy's acquisition on Gunner's Exchange Pond and the effect of land transfer if the turtle is not listed as Endangered.
7. He states:

The Assessment states there is no way of knowing at this point which such actions would be affected. There has been a recent experience in Houston where a large section of land was held up in the development stage because of a rare toad which was placed on the endangered species list. As it turned out the toad was not so rare, but it took the developer almost three years to prove his point in court.

The Housing industry as you can well understand is quite dependent on Federal funds. The area of the proposed critical habitat in the future will want to take advantage of these Federal monies in various housing programs such as the Farmer's Home program under the Department of Agriculture. This Assessment in no way has taken the interfacing of these programs with their economic impact for the future.

8. Finally, he questions the *Alternatives* section:

If you take the quote from the Assessment The Weight [sic] of available data indicate that the two turtles are likely to become extinct, this Assessment in no way provides enough information to substantiate the listing of the red-bellied turtle as endangered. There is no proof that the red-bellied turtle will decline in population unless protective measures are taken.

Of the 14 comments presented at the October 17, 1979 public hearing, two were requests for additional hearings at night when more people could attend, five opposed the designation of Critical Habitat, five favored the proposal, one presented the written statement of another individual, and one presented a talk entitled "Dr. Reed's Legacy to Plymouth" in which he talked about Dr. Lawrence B. Reed whom, according to the commentor, used to go to North Carolina and bring back red-bellied turtles and release them into Crooked Pond. This release took place in the early 1920's. The commentor also mentions overpopulation of turtles in one pond and the possibility of trapping and releasing turtles in other areas. The Commentor concluded that Dr. Reed's legacy was leaving Plymouth with a red-bellied turtle controversy.

As stated previously, 15 comments were presented at the public hearing of January 29, 1980. Six spoke in favor of the proposal, six against it, one commented on the Environmental Assessment, one was an observer from Congressman Studts office and made no comment, and one was undecided. Three commentors (one on behalf of the Plymouth Area Chamber of Commerce) submitted comments in writing and these have already been summarized. The major opposition stemmed from anticipated impacts of the designation of Critical Habitat on the use of land and a general feeling of more government control. Those in favor of the proposal generally expressed concern for the

survival of the turtle and the maintenance of its ecosystem.

Discussion and Conclusions

Many of those who spoke in opposition to the proposal did not seriously question the status of the Plymouth red-bellied turtle and the potential for the decline of this subspecies. Instead, they voiced concern at the impact of the designation of Critical Habitat on their activities and future development around Plymouth Township. Actually, there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect the species. Indeed, no activity is automatically excluded. This point is still not well understood by much of the public. There is widespread and erroneous belief that a Critical Habitat designation is somewhat akin to the establishment of a wildlife refuge and automatically closes an area to most human uses. A Critical Habitat designation applies only to Federal agencies, and is an official notification to these agencies that their responsibilities under Section 7 of the Act are applicable in a certain area.

The Service recognizes that there may be some name changes with regard to ponds within the designated Critical Habitat and thanks Mr. Baker and Mr. Steinway for pointing these out. Future discussions of the names of these ponds will include their use of names.

Dr. Thurow's idea of using natural boundaries is good and the Service tries to use such boundaries whenever possible. However, there are occasions when it is not possible to give the best definition of the Critical Habitat solely by using natural boundaries. The Service believes that the boundaries included in this final rule best define the area of critical survival importance to the Plymouth red-bellied turtle based on the work of Dr. Terry Graham. The Act provides no legal means of prohibiting the activities of private landowners, such as excluding people from the Critical Habitat, which are not involved in direct take of the species. Indeed, the vigilance and cooperation of private landowners, such as many of those who supported the proposal, is a positive and absolutely necessary step to insure the continued survival of the turtle. The Service especially thanks Mr. Ryder, Ms. O'Brien, and Mr. Hauthaway for their long letters and protection of this species in the Plymouth area. The service also acknowledges the support of the Massachusetts Department of Fisheries, Wildlife, and Recreational Vehicles, the Massachusetts Department of Environmental Management, and Mr.

Leeson of the Nature Conservancy in Boston for the information presented in their letters.

With regard to the comments of the Plymouth Area Chamber of Commerce, the Service will work in close cooperation with any agency to minimize impacts on future development in the Plymouth area. No automatic limitations are imposed by a designation of Critical Habitat. It does, however, require that federal agencies insure that their actions are not likely to jeopardize the continued existence of the species.

During the extensive public comment period and associated meetings and hearings, no federal activities were pinpointed which would be affected by such a designation. In addition, federal agencies which were contacted were unable to identify any adverse impacts. The Service believes that both the turtle and people residing in the area can coexist with minimum adverse impact on future growth.

Since the turtle is only known to occur in limited areas in Plymouth (and perhaps Dukes) County, such areas are indeed unique, even if every facet of the turtle's environment cannot be appreciated or understood by human observers. The turtle is dependent on the maintenance of its environment in these areas since it is well known that the subspecies *bangsi* occurs nowhere else. The "sand turtle in Muscatine, Iowa" is presently proposed as an Endangered species. An attempt to establish the turtle in another area in Iowa has in no way diminished the problems faced by this species throughout its range. This species, *Kinosternon flavescens spooneri*, is today only found in significant numbers in one location. The subspecies throughout its range is not thriving. The artificial movement of an animal from an area where known to occur to a different area is a risky and often biologically unsound practice. For many of the reasons cited by Mr. Kendall, such is not likely to be feasible with regard to the Plymouth red-bellied turtle.

Mr. William Devine provided extensive comment on the Environmental Impact Assessment prepared by the Service in conjunction with the original proposal to list this turtle as Endangered. The E.I.A. was prepared in early 1978, however, when some actions, such as the Nature Conservancy acquisition, had not yet been proposed. The Service makes the following points:

1. With regard to taxonomic status, the morphometric work completed by Terry Graham validates the original subspecific description given by Babcock. Therefore, the Service believes

that the taxonomic question has been resolved. Indeed, Roger Conant, who originally questioned Babcock's data, now fully supports listing under the name *bangsi*.

2. Surveys have been conducted by Dr. Graham and state officials on the ponds in the Plymouth area. However, because of the duration of looking (over 10 years) for Plymouth red-bellied turtles in southeastern Massachusetts, it is unlikely any new significant populations will be discovered. Indeed, in some ponds known to be inhabited by these turtles (see "Background"), only 41 individuals have been found.

3. The Service acknowledges that future population growth was not incorporated into the original assessment. This oversight has been corrected in the final assessment based on figures submitted by the Old Colony Planning Council. These figures show a projected growth of 48,300 people by 1995 in the Plymouth area. In the final assessment, additional information on housing requirements, employment projections, and industrial development have been incorporated to insure that full consideration is given to the effect of the listing and Critical Habitat designation on man's health, welfare, and surroundings.

4. The Service acknowledges that if the turtle is not listed, the transfer of land from the Nature Conservancy to the Service cannot take place as planned. This section has been revised in the final assessment.

5. No land was held up from development in Houston, Texas, because of the listing of the Houston toad in 1970 or its proposed designation of Critical Habitat in 1977. No court case has been filed with regard to this species.

6. At the time the original assessment was written (April, 1978), there were no requirements to take economic considerations into account during the listing process. Because of the 1978 amendments to the Act, the Service does now consider these factors. The Service contracted the Old Colony Planning Council and several federal agencies to determine the possible economic effects of a Critical Habitat designation in the proposed area. This information has been incorporated into the assessment. However, the Service agrees with the OCP's conclusion: "Designation of the various ponds as Critical Habitat is not likely to cause any negative impacts in the expected and desired pattern of land use and growth." The Service acknowledges that there may be some minor impact on future development in the designated Critical Habitat. However, it is not likely that undue

adverse economic impacts will result because of this rule.

7. The information which discussed the decline of the turtle was presented in the original proposal of May 19, 1978 (Federal Register, 43 FR 21702-21705) as required by the Act. This proposal was attached to the Environmental Impact Assessment as Appendix I. Contrary to Mr. Devine's assertion, the best available consensus among scientists who have worked on the turtle and understand its ecological requirements is that it will decline unless afforded protection. However, the Service acknowledges that there is no "proof" that it will decline unless protective measures are taken. Indeed, it may continue to decline in spite of protective measures.

Finally, with regard to the potential for the presence of *C. rubriventris* in Massachusetts resulting from the introduction of red-bellied turtles from North Carolina, the first red-bellies reported in Southeastern Massachusetts were in 1869, considerably prior to the early 1920's reported by Mr. Tracy. The statistically significant morphological differences reported by Dr. Graham preclude, in the opinion of the Service, the Plymouth turtles as being entirely of North Carolina origin.

After a thorough review and consideration of all the information available, the Director has determined that (1) the Plymouth red-bellied turtle is threatened with becoming extinct 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, as specified in the proposal of May 19, 1978 (43 FR 21702-21705), and (2) listing this species as Endangered with the specified Critical Habitat will provide it with necessary protections to ensure its survival.

The Critical Habitat in this final rule is smaller than the original 7000 acres proposed. The final area is approximately 3269 acres and is based on the studies of the needs and ecological requirements of the Plymouth red-bellied turtle by Dr. Terry Graham during the spring and summer of 1979. This final area contains, as far as can be determined, sufficient area for the population of turtles to survive and reproduce successfully.

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 an impact analysis and believes that economic and other impacts of this action are not significant in the foreseeable future. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this action.

Effects of This Rule

Section 7(a) of the Act provides:

"(1) 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.

"(2) 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') is not likely to 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. This rule now requires 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.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any rule which determines 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.

As explained above, the Service believes there are no significant economic impacts on such activities as a result of this action in the foreseeable future.

Endangered species regulations 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 are summarized below.

With respect to the Plymouth red-bellied turtle, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, would apply. 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 this species in interstate or foreign commerce. 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.

Regulations published in the Federal Register of September 28, 1975 (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provide 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.

Effect Internationally

The Service will review the status of the Plymouth red-bellied turtle 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 to that Convention, and whether it 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 to 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 order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, Part 17, Subparts B and I, Title 50 of the Code of Federal

§ 17.11 Endangered and threatened wildlife.

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:

List of Endangered and Threatened Wildlife (§ 17.11)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Turtle, Plymouth red-bellied.	<i>Chrysemys</i> (= <i>Pseudemys</i>) <i>rubriventris bangsi</i> .	U.S.A. Massachusetts.....	Entire	E	17.95(c)	NA

2. Section 17.95(c) is amended by adding the following Critical Habitat description after the Critical Habitat description for the leatherback sea turtle:

§ 17.95 Critical habitat—Fish and wildlife.

(c) Reptiles

Plymouth red-bellied turtle

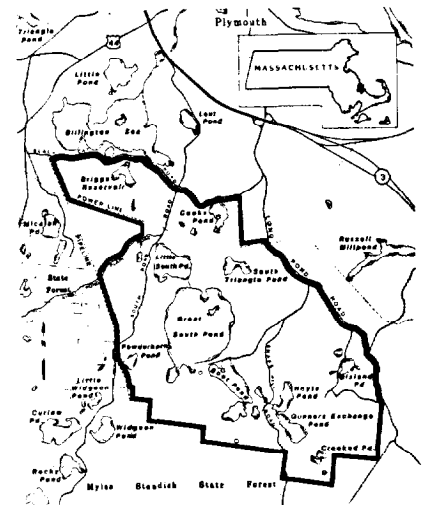
(*Chrysemys rubriventris bangsi*)

Massachusetts (Plymouth County)

An area including Briggs Reservoir, Cooks Pond, Little South Pond, South Triangle Pond, Great South Pond, Powderhorn Pond, Boat Pond, Hoyte Pond, Gunners Exchange Pond, Crooked Pond and Island Pond as follows: Beginning at the intersection of the centerline of the right-of-way of the Boston Edison and New Bedford Gas and Edison Light Company transmission lines and the westerly right-of-way line of Long Pond Road, thence southeasterly, along the westerly right-of-way line of Long Pond Road, 10,370 feet to the intersection of the said right-of-way line and the boundary line of the Myles Standish State Forest; thence southerly and westerly, along the boundary line of the Myles Standish State Forest, crossing and re-crossing Snake Hill Road, 11,200 feet, more or less; thence westerly, leaving the boundary line of the State Forest, 1,550 feet, more or less, to the boundary line of the Myles Standish State Forest; thence westerly, along the boundary line of the Myles Standish State Forest, 9,180 feet, more or less, to the intersection of

the boundary of the said State Forest and the easterly right-of-way line of the Algonquin Gas Transmission Company pipeline; thence northerly, along the easterly right-of-way line of the said pipeline, 6,223 feet, more or less, to the intersection of the easterly right-of-way line of the said pipeline and the northerly right-of-way line of Kings Pond Plain Road; thence northeasterly, along the northerly right-of-way line of said road 3,100 feet to a point; thence northerly, 800 feet, more or less, to the southerly right-of-way line of the Boston Edison and new Bedford Gas and Edison Light Company transmission lines; thence northwesterly, along the southerly right-of-way base of the said transmission lines, 4,150 feet, more or less, to the intersection of the southerly right-of-way line of the said transmission lines and the easterly right-of-way line of the Algonquin Gas Transmission Company pipeline; thence northerly, along the easterly right-of-way line of the said pipeline, 2,500 feet, more or less, to the intersection of the easterly right-of-way line of the said pipeline and the southerly right-of-way line of Black Cat Road; thence southeasterly, along the southerly right-of-way line of said road, crossing South Pond road and continuing southeasterly, along the southerly right-of-way line of an unnamed road, 10,370 feet, more or less, to a point; thence southerly 2,300 feet, more or less, to the northerly right-of-way line of the Boston Edison and New Bedford Gas and Edison Light Company transmission lines, thence easterly, along the northerly right-of-

1,300 feet, more or less, to the intersection of the northerly right-of-way line of the said transmission lines and the westerly right-of-way line of Long Pond Road; thence southerly, along the westerly right-of-way line of said road, 100 feet, more or less, the place of beginning.



Dated: March 24, 1980.

Warren T. Olds, Jr.,
Acting Director, Fish and Wildlife Service.

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