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 or Threatened Status for 32 U.S. Snails

The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a proposed rulemaking, pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C., 1531–1543, 87 Stat. 884; hereinafter the Act), which would determine 15 U.S. snails to be Endangered species and 17 such snails to be Threatened species. He also requests comments regarding the determination of "Critical Habitat" of any of these molluscs.

BACKGROUND

Section 4(a) of the Act states:

"General.—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 manmade factors affecting its continued existence."

This authority has been delegated to the Director.

On June 15, 1973, the Service entered into a contract with The Chicago Field Museum of Natural History to investigate the status of certain snails indigenous to Eastern North America. A final report dated December 12, 1974, contained data indicating that several of the snails studied were either Threatened or Endangered Species as provided for by the Act.

Another contract entered into between the Service and the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails produced similar results which are documented in a final report dated August 25, 1975.

A third Service contract entered into with the Arizona State University produced a final report dated December 15, 1974. This report identified several southwestern freshwater snails that appeared to be Endangered or Threatened Species as provided for by the Act. Status reports on 4 other snails were submitted by experts on these species. James Carlton and Barry Roth, both affiliated with the California Academy of Sciences submitted reports on *Helminthoglypta walkeriana*, *Carrosa miwoka*, and *Helminthoglypta nickliniana awania* in November 1972. Fred Thompson of the Florida State Museum, Leslie Hubricht of Meridian, Mississippi, and Alan Craig of Florida Atlantic University submitted reports on *Orthalicus reses reses* in January 1973, and January 1974.

These findings are summarized herein. The snails are grouped geographically into an American Southwest group, a California group; and an Eastern group. Summaries of these findings are presented following the name of each species.

On October 17, 1974, the Service published a Notice in the FEDERAL REGISTER (34 FR 37078–79) advising that a review of several species was underway to determine whether any were Threatened species or Endangered species. Only one comment was received as a result of that "Notice." In a letter dated December 11, 1974, Governor Reagan of California offered several comments, suggested further study and provided a copy of a California Department of Fish and Game report entitled "Rare and Endangered Land Mollusks in California" (Inland Fisheries Administrative Report No. 72–10, submitted May 1972) authored by Barry Roth of the Sierra Club, San Francisco, California 94104. This information has been considered and is incorporated into the administrative record of this proposal.

SUMMARIES OF FACTORS AFFECTING THE SPECIES

AMERICAN SOUTHWEST GROUP

The Service has evidence on file that the following twelve (12) aquatic mollusks endemic to the American Southwest are Endangered Species or Threatened Species as defined by the Act: St. George snail (*Amnicola deserta*); Socorro snail (*Amnicola neomexicana*); Reeves County snail (*Cochliopa texana*); Cheatum's snail (*Tryonia cheatumi*); Bad Water snail (*Assiminea infirma*); Muddy Valley turban snail (*Fluminicola avernalis*); Ash Meadows turban snail (*Fluminicola erythropoma*); Pahranagat Valley turban snail (*Fluminicola merriami*); Amargosa snail (*Fontelicella micrococcus*); Diamond-Y pond snail (*Physa virgata bottomeri*); Zion Canyon snail (*Physa zioni*); and White River snail (*Tryonia clathrata*).

The five criteria of Section 4(a) of the Act, and their application to the abovenamed species, are as follows:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*

St. George snail—Proposed Endangered—formerly believed to live in several springs in and near St. George, Washington County, Utah. This minute snail is now restricted to one seepage spring 3 meters long and 3/10 of a meter wide on sandstone kept moist by seepage which waters a small private garden. Since 1916, when the species was first discovered, all nearby springs which might have habitats supporting this species have been capped for city water supply. This species is further endangered by the likelihood that modification of the road directly above the seepage would cause the seepage to cease flowing.

Socorro snail—Proposed Endangered—Discovered in 1916, this minute snail was formerly known from the Sedillo and Socorro Springs in Socorro County, New Mexico, but probably is extinct because of capping of springs to supply the city of Socorro with water. It was found as recently as 1971 and, although it is not considered likely, extensive search in other nearby seepages conceivably may reveal one or more additional populations.

Reeves County snail—Proposed Endangered—This species was formerly abundant in a lake in Reeves County, Texas, but this lake was drained by channelization and the species declined. It has stabilized in numbers since 1968 in the lake's cave spring and downstream for about 800 meters. However, increased agricultural pumpage nearby has caused a decline in the discharge out of this spring, thus threatening the continued existence of this species.

Cheatum's snail—Proposed Endangered—This species was formedly abundant in a lake in Reeves County, Texas, but this lake has been drained by channelization and the species is now much less abundant. It presently is found in a spring that discharges from a cave and in the first 800 meters or so of the run from the spring. Although the population has suffered no known major change since 1968, there recently has been a precarious decline in the discharge from the spring which threatens the continued existence of the species.

Bad Water snail—Proposed Threatened—Restricted to several seepage springs at Bad Water in Death Valley National Monument, California, this species has declined and is declining because of lowered water table and increased tourist pressure (people trampling the marsh habitat).

Muddy Valley turban snail—Proposed Threatened—This species has always been restricted to springs in Muddy Valley, Clark County, Nevada, where it is

found on rocks at the source of one spring and on submergent vegetation in several other springs. All these springs are within about two sections of land and arise from the same complex of aquifers. Lowering of the water table by pumpage would therefore affect all of the springs. An even greater threat in this area has been the conversion of some of these springs to commercial spas in which the number of snails has declined greatly.

Ash Meadows turban snail—Proposed Threatened—This species has always been restricted to the Ash Meadows area in Nye County, Nevada, but has been eliminated from a number of springs. And in the Point of Rocks Spring Complex, the habitat area has been halved in the last four years. It is today present in small head springs and restricted to areas near the outflows. The largest populations remain at the Point of Rocks Spring complex and the Scruggs Spring complex. Increasing agricultural pumpage is rapidly reducing the abundance of the snails. Road construction and spring head modifications are also reducing habitat. The total area which supports this snail among the different springs is about 25 square meters.

Pahranagat Valley turban snail—Proposed Threatened—Historically restricted to 3 springs of the Pahranagat Valley in Lincoln County, Nevada, it is found on rocks and submergent vegetation in runs near the springs' sources. All three spring systems are from the same aquifer, and [illegible] potential lowering of the water table by agricultural pumpage [illegible].

Amargosa snail—Proposed Threatened—This species is restricted to the Amargosa River drainage including springs at Tecopa and near Tecopa Hot Springs in Inyo County, California; a spring in Ash Meadows, Nye County, Nevada; springs in northern San Bernardino County, California; and Oasis Valley Spring, California. These springs are all fed by the same aquifer. This is ominous because several springs in the area have already dried. A further threat has been and continues to be capping of springs in the area.

Diamond-Y pond snail—Proposed Threatened—Formerly known from the entire Leon Creek system including Comanche Spring, which has been drained dry, it is now restricted to the Diamond-Y (Wilbank) Spring complex and Leon Creek, north of Fort Stockton in Pecos County, Texas. The required habitat of this species is threatened by oil and brine spills from local oil fields. Protective measures have already been taken, however, as good cooperation has been received from Exxon, Northern Natural Gas and Phillips Oil Company which have constructed retaining dikes. There is still a real danger and the species is proposed as threatened.

Zion Canyon snail—Proposed Threatened—A fresh water snail which has evolved unusual features which allow it to survive in spring seepages in its vertical canyon wall habitat, it has always been restricted to Narrows Canyon. Zion National Park, Washington County, Utah. It is rare and the total area it occupies is approximately 20 square meters spread along a nature trail. It receives some protection by virtue of being in a National Park but is threatened by increasing human pressure.

White River snail—Proposed Threatened—Formerly distributed throughout the pluvial White River system in Nevada, it is now restricted to springs in the Muddy River Valley, Clark County; Pahranagat Valley, Lincoln County; and White River Valley, Nye County. Increased ground water pumpage which could adversely affect these springs is anticipated in the area.

2. *Overutilization for commercial, sporting, scientific or educational purposes.* Not known to be applicable to any of the twelve above-named species.

3. *Disease or predation.* All twelve species are jeopardized by the spread of the Asian snail (*Melanoides tuberculatus*) into their required habitat. In particular, the *Muddy Valley turban snail*, the *Pahranagat Valley turban snail* and the *White River snail* are already competing with the Asian snail for any habitat where they are subject to fish predation, since the Asian snail has a selective advantage in such habitats. Recent declines of the White River snail may be attributed directly to competition with the Asian Snail.

4. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms adequate to protect these species from over-collecting or other human predation presently exist.

5. *Other natural or manmade factors affecting its continued existence.* Not known to be applicable to any of the twelve above-named species.

In summary, four species from the American Southwest group are proposed as "endangered" because they occur on private land and are restricted to single springs which are jeopardized by water use and invasion of the Asian Snail: St. George snail (*Amnicola deserta*); Socorro snail (*Amnicola neomexicana*); Reeves County snail (*Cochliopa texana*); and Cheatum's snail (*Tryonia cheatumi*). Some of the other eight species are proposed as "threatened" because although they are each restricted to a single, vulnerable spring, seepage, pond, run or creek the species receive some protection by virtue of being in a national park. Others are restricted to single aquifers which are subject to ground water pumping, pollution, or invasion by the Asian snail. These two groups consist of the Bad Water snail (*Assiminea [illegible]*); Muddy Valley turban snail (*Fluminicola avernalis*); Ash Meadows turban snail (*Fluminicola erythropoma*); Pahranagat Valley turban snail (*Fluminicola [illegible]riana*); Amargosa snail (*Fontelicella micrococcus*); Diamond-Y pond snail (*Physa virgata baltomeri*); Zion Canyon snail (*Physa zionis*); and White River snail (*Tryonia clathrata*).

CALIFORNIA GROUP

On October 17, 1974, the Service published, in the FEDERAL REGISTER a notice that it was reviewing the status of fifteen (15) California land snails as well as several other species (39 FR 37078–37079). The Service now has sufficient [illegible] that the following nine [illegible] of these California land snails are [illegible] Species or Threatened Species as provided for by the Act: Slug snail (*[illegible] notabilis*); Dented peninsula snail (*Helminthoglypta arrosa [illegible]*); [illegible] peninsula snail (*Helminthoglypta [illegible] [illegible]*); Banded [illegible] snail (*Helminthoglypta walkeriana*); [illegible] snail (*Micrarionta [illegible]*); [illegible] snail (*Micrarionta tryoni*); [illegible] snail (*Monadenia fidelis [illegible]*); California northern river snail (*[illegible] setosa*); and Karok Indian snail (*Vespericola karokorum*).

The five criteria of section 4(a) of the Act, and their application to the above-named species, are as follows:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*

Slug snail—Proposed Endangered—Known only from Santa Barbara Island, California, this is a unique subterranean slug-like snail with a very small range on the island. It could be destroyed by accidental brush fires, and is endangered by competition for habitat with introduced species including the ice plant. The total range is probably less than 1000 square yards. The habitat cannot survive the slightest disturbance and is jeopardized by the use of an existing trail. A major increase in recreational use or development of Santa Barbara Island without appropriate safeguards could exterminate this species. Activity [illegible] from the canyons which would increase the wind-or-water-transport of loose sediment into the canyons would defi-

nitely be detrimental, as would landfill or excavation.

Dented peninsula snail—Proposed Endangered—Known only on Point Reyes Peninsula, Marin County, California, this species is restricted to the exposed headlands of the point proper and to a few miles to either side. It is threatened by grazing, road construction, grading, excavation for parking, and vacation facility development.

Nicklin's peninsula snail—Proposed Endangered—Also known only on the tip of Point Reyes Peninsula, Marin County, California, this species also is threatened by grazing, road construction, grading, excavation for parking, and vacation facility development.

Banded dune snail—Proposed Endangered—This species is known only from Morro Bay, San Luis Obispo County, California, and is endangered by housing development in the area where reproduction occurs, by dune buggies or other off-road-vehicles, and potentially by the dumping of dredge spoils.

Fraternal snail—Proposed Endangered—This species is known only from a shrinking range on San Nicolas Island, Ventura County, California, and is endangered by the grazing of feral goats. It is vulnerable to military operations or other actions which result in the introduction of exotic species or major erosion. It may be extinct.

Tryon's snail—Proposed Threatened—This snail is known only from Santa Barbara Island and San Nicolas Island, California. On San Nicolas Island feral goats have greatly reduced its range and it is vulnerable to military operations or other actions which result in the introduction of exotic species or major erosion. On Santa Barbara Island a striking decrease in plants of the Genus *Coreopsis* and concommitant increase in iceplant has probably cut in half the available area for *M. tryoni*.

Rocky coast snail—Proposed Threatened—This small, variably colored subspecies is known only from the rocky moist coastal terraces of Point St. George near Crescent City in Delnorte County, California, in association with certain seashore plants. It is endangered by housing expansion and over-grazing.

California northern river snail—Proposed Threatened—This snail is known only from talus slopes along Swede Creek in the Trinity River drainage. Stripping of cover by logging above the forested talus slopes where *M. Setosa* lives would change the erosion pattern, and the subsequent increased runoff would be expected to remove the forest duff in which it survives.

Karok Indian snail—Proposed Threatened—This species is known only from a few miles on the north side of the Klamath River, Humbolt County, California, and is endangered by high water. *Vespericola karokorum* inhabits only the deepest, narrowest, fissure-like gorges—never exposed habitats; they are always found extremely close to water. Logging topographically above the narrow gulches might readily result in heavy sedimentation or runoff problems in the gulches. Stripping of local cover would drastically alter the moisture regime and probably exterminate the species. Widening or regrading of the small road on the northeast side of the Klamath River in this area would definitely be detrimental to the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*

The *Slug snail, Tryon's snail* and *Karok Indian snail* are of interest and vulnerable to over-collecting.

3. *Disease or predation.* Not known to be applicable to any of these species.

4. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms adequate to protect these species from overcollecting, or other human predation presently exist.

5. *Other natural or manmade factors affecting its continued existence.* Not known to be applicable to any of the nine above-named species.

In summary, five of the California group are proposed as "endangered" because they are restricted to very small areas or occur in small numbers and are in immediate danger of extinction throughout their range: Slug snail (*Binneya notabilis*); Banded dune snail (*Helminthoglypta walkeriana*); fraternal snail (*Micrarionta feralis*); Rocky coast snail (*Monadenia fidelis pronotis*); and Karok Indian snail (*Vespericola karokorum*). The other four species are proposed as "threatened" because they occur over a wider range or in larger numbers and are potentiallly in jeopardy over most of their range: Dented peninsula snail (*Helminthoglypta arrosa miwoka*); Nicklin's peninsula snail (*Helminthoglypta nicklinlana awania*); Tryon's snail (*Micrarionta tryoni*); and California northern river snail (*Monadenia setosa*).

EASTERN GROUP

The Service has evidence that the following eleven (11) species of Eastern land snails are Endangered Species or Threatened Species as provided for by the Act: Painted snake coiled forest snail (*Anguispira picta*); MacClintock's discoid land snail (*Discus macclintocki*); Jone's middle-toothed land snail (*Mesodon jonesianus*); Virginia fringed mountain snail (*Polygyriscus virginianus*); Chittenango ovate amber snail (*Succinea ovalis chittenangoensis*); flat spired three-toothed land snail (*Triodopsis platysayoides*); Magazine Mountain middle-toothed land snail (*Mesodon magazinenses*); Pilsbry's narrow apertured land snail (*Stenotrema pilsbryi*); Clark's Nantahala middle-toothed land snail (*Mesodon clarki nantahala*); strange many whorled land snail (*Polygyra peregrina*); and Stock Island tree snail (*Orthalicus reses reses*).

The five criteria of Section 4(a) of the Act, and their application to the above named species, are as follow:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*

Painted snake coiled forest snail—Proposed Endangered—Discovered in 1906 in Buck Creek Cove, south of Sherwood, Franklin County, Tennessee, it has never been found elsewhere although it has been extensively searched for by several competent malacologists. The area is subject to periodic lumbering; this species is not found in habitats that no longer have good cover and cannot survive such lumbering.

MacClintock's discoid land snail—Proposed Endangered—Also known as the Iowa pleistocene driftless snail, this is a relic of pre-glacial times, once widespread but now known only from a cave in Bixby State Park, Clayton County, Iowa. The snail's survival in a non-glaciated driftless area within the boundaries of the last four glaciations is so unique that the species was first described and has long been known only as a fossil. General threats in the Driftless Area include the spraying of 2,4,5–T, a defoliant. This spraying is being done to convert forest and brush land into pasture for livestock. The existence of this species depends upon its requirement for a "fossil" climate at the mouth of the cave where temperature and humidity are relatively constant. If the talus is undisturbed this will be an effective reservoir but the talus habitat appears thin, and one ardent collector could destroy it, and thereby the species, in one afternoon. Probably fewer than one hundred live individuals exist.

Jones' middle-toothed land snail—Proposed Endangered—This species lives in the humus zone very near to a parking area at Newfound Gap, North Carolina. Trampling of the forest litter can easily destroy this species. There are only an estimated 300 living individuals which are found only in birch, beech, maple, and hemlock forest in the Great Smokey Mountains National Park in Swain County, North Carolina.

Virginia fringed mountain snail—Proposed Endangered—Known only from a small area of a single river bluff opposite Radford in Pulaski County, Virginia, there are only a few hundred individuals at most in existence, and they are endangered by the destruction of rock slide habitat from quarrying and road construction. It is the only species in the genus. Thus the genus is endangered and loss of the Virginia fringed mountain snail would detract greatly from living diversity.

Chittenango ovate amber snail—Proposed Endangered—Restricted to the spray zone talus and rocks under Chittenango Falls, Madison County, New York, this form requires cool to cold air circulating through the talus area.

This snail was common in 1905, rare in 1965, and very rare in 1974. It occupies a total area of less than 200 square feet. There has been a drastic decrease in populations of other mollusks downstream and this subspecies is believed to have declined because of pollution in the spray.

Flat spired three-toothed land snail—Proposed Endangered—This species is restricted to isolated patches of deep undisturbed litter and sheltered retreats among rocks in a small area of less than one-quarter square mile on the summit of Cooper's Rock, Monongalia County, West Virginia. In dry seasons the snails

retreat in among the huge scattered and split boulders just below the summit. The entire one-quarter square mile area is regularly and frequently visited by the public. A concession stand is at the top of the rock with moderately extensive parking available. There are about 300 to 500 living individuals. The species is endangered because trampling of the foraging litter is reducing the available food space niche for this highly restricted species.

Magazine Mountain middle-toothed land snail—Proposed Threatened—This snail is known only from one area consisting of a few acres. That area is located about 200 feet from a loop summit road and parking area. Although one dead shell was found on the south side of the summit of Magazine Mountain, in Logan County, Arkansas, the species now is restricted to a large talus just below a cliff on the north side of the summit of Magazine Mountain. This species is threatened due to easy access and vulnerability of it and its only existing habitat to human encroachment.

Pilsbry's narrow apertured land snail—Proposed Threatened—This snail is restricted to the north side of Rich Mountain in Polk County, Arkansas, and Leflore County, Oklahoma. Although it is fairly common in its very limited range in rock slides and among scattered boulders under heavy forest cover and damp ravines, any major lumbering could locally destroy populations. Clear cutting would create major problems.

Clark's Nantahala middle-toothed land snail—Proposed Threatened—This species is restricted to the Blowing Spring area of Nantahala Gorge and Handpole Brook in Swain County, North Carolina. Widening of U.S. 19 to four lanes, as has been proposed, could destroy most of the known colonies of this subspecies.

Strange many whorled land snail—Proposed Threatened—This species is common on rocky slopes and in rock piles at the base of bluffs. Although locally abundant, it is restricted to a small area between a railroad track and some bluffs of the White River near Calico Rock, Izard County, Arkansas and just north of Allison, Stone County, Arkansas. It is proposed as a threatened species because removal of talus could wipe it out.

Stock Island tree snail—Proposed Threatened—Once known from Key West, other lower keys, Key Vaca, and Stock Island, it has been extirpated from all but the latter. It was extirpated on Key West by real estate development and requires the retention of some natural habitats on Stock Island, where it is similarly threatened, for its continued existence. It may be threatened by overgrazing.

2. *Overutilization for commercial, sporting, scientific or educational purposes.*

The *Virginia fringed mountain snail* could literally be wiped out by one or two collections and the *Stock Island tree snail* is threatened by overcollecting.

3. Disease or predation.

MacClintock's discoid land snail is threatened by predation by Cychrine beetles and the *Chittenango ovate amber snail* is seriously threatened by predation by the introduced and now established European *Discus rotundatus* and *Oxychilus*.

4. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms adequate to protect these species from overcollecting, or other human predation presently exist.

5. *Other natural or manmade factors affecting its continued existence.* Not known to be applicable to any of the eleven above-named species.

In summary, six speries from the Eastern group are proposed as "Endangered" because they are restricted to a very small area or occur in small numbers and are in immediate danger of extinction throughout their range: Painted snake coiled forest snail (*Anguispira picta*); MacClintock's discoid land snail (*Discus macclintocki*); Jones' middle toothed land snail (*Mesodon jonesianus*); Virginia fringed mountain snail (*Polygyriscus virginianus*); Chittenango ovate amber snail (*Succinea ovalis chittenangoensis*); and flat spired three-toothed land snail (*Triodopsis platysayoides*). The other five species are proposed as "threatened" because they occur over a wider range or in larger numbers and are potentially in jeopardy over most of their range; Magazine Mountain middle-toothed land snail (*Mesodon magazinenses*); Pilsbry's narrow apertured land snail (*Stenotrema pilsbryi*); Clark's Nantahala middle-toothed land snail (*Mesodon clarki nantahala*); strange many whorled land snail (*Polygyra peregrina*); and Stock Island tree snail (*Orthalicus reses reses*).

DESCRIPTION OF THE PROPOSAL

Determination that an animal is a Threatened or Endangered species would, among other things, make that species, including any part, product, egg or offspring thereof, or the dead body or parts thereof subject to the prohibitions and exceptions in § 17.21 of the regulations in this Part, which were published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44423) 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 solicit 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 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."

Although the Act authorizes the Secretary to publish ". . . such regulations as he deems necessary and advisable for the conservation of . . ." any species de-

termined to be a Threatened species, no special regulations are proposed for any of the species herein proposed to be determined Threatened species. Lacking any such special regulations, all of the provisions set forth in § 17.31 would apply to such Threatened species as well as any Endangered species. That section incorporates all the provisions of § 17.21, and adds an exception which allows the taking of such species by certain Federal or State conservation personnel in the course of scientific research or conservation programs.

Section 3(14) of the Act defines the term "take" as follows:

"(14) The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

It should be noted that a determination that an animal is an Endangered species or a Threatened species generally imposes no restrictions upon: otherwise lawful possession; the *intrastate* sale; nor upon the *interstate* movement of such specimens unless such movement is in the course of a commercial activity. In this context, the term "commercial activity" is defined in Section 3(1) of the Act as follows:

"(1) The term 'commercial activity' means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling."

The terms "industry or trade," as used in the above definition, were defined in the September 26, 1975, FEDERAL REGISTER (40 FR 44416) as follows:

"'Industry or trade' in the definition of 'commercial activity' in the Act means the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit;"

In the case of Endangered or Threatened wildlife, regulations published in 40 FR 44412 provide for the issuance of permits to carry out otherwise prohibited activities under certain circumstances. Such permits 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.

Determination that an animal is a Threatened or an Endangered species makes that species eligible for the protection provided by Section 7 of the Act which reads as follows:

"INTERAGENCY COOPERATION

Sec. 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."

No determination of "Critical Habitat" presently is proposed for any of the species named herein. However, the Director recognizes that loss of habitat is the principal threat faced by many of these species and intends to propose the determination of Critical Habitat for many in the near future. A further elaboration of the concept of Critical Habitat was published on April 22, 1975 (40 FR 17764–17765).

The act requires inclusion of the ". . . scientific and common name or names, if any, * * *" upon the list of those species determined to be Threatened or Endangered. No generally recognized common name exists for some of the snails herein discussed. In such cases common names have been assigned to the animal. As usage of common names varies considerably, it should be recognized that only the scientific names carry legal significance.

The Service recognizes that invertebrate taxonomy is not an exact science, that the knowledge of such animals continues to develop, and that scientific nomenclature reflects such understanding. It further recognizes that the classification and nomenclatural rank given a taxon is subject to opinion, based on the specialist's knowledge of the animal in question, and his interpretation of the science. Comments and data toward improving the accuracy of common names, as well as scientific names, are requested.

Pursuant to Section 4(b) of the Act, the Director will notify the Governors of the States of Arkansas, California, Florida, Iowa, Nevada, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Texas, Utah, Virginia, and West Virginia with respect to this proposal and request their comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends the finally adopted rules to be as accurate and effective in the conservation of any 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. The existence of any living specimen of those species felt possibly to be extinct;
2. Biological or other relevant data concerning any threat (or the lack thereof) to any species included on the following list;
3. the location of and reasons why any habitat of any snail named herein should be determined to be "Critical Habitat" as provided for by Section 7 of the Act;
4. improved scientific or common names for any snail on the following list;
5. additional information concerning the range and distribution of any of these snails.

Final promulgation of the regulations on these species 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 Service's Office of Endangered Species and International Activities, 1612 K Street, NW., Washington, D.C. 20240 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 the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments and materials received no later than June 28, 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, 1612 K Street NW., Washington, D.C.

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

Dated: April 15, 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:

It is proposed to amend section 17.11 by adding in alphabetical order the following to the list of snails:

§ 17.11 Endangered and threatened wildlife.

SPECIES			RANGE				
Common name	Scientific Name	Population	Known Distribution	Portion of Range Where Threatened or Endangered	Status	When listed	Special rules
• • •			• • •			• • •	
SNAILS:							
Snail, Amargosa	*Fontelicella micrococcus*	N/A	USA (California, Nevada)	Entire	T		N/A
Snail, Ash Meadows Turban	*Fluminicola erythropoma*	N/A	USA (Nevada)	Do	T		N/A
Snail, Bad Water	*Assiminea infirma*	N/A	USA (California)	Do	T		N/A
Snail, Banded Dune	*Helminthoglypta walkeriana*	N/A	Do	Do	E		N/A
Snail, California Northern River	*Monadenia setosa*	N/A	Do	Do	T		N/A
Snail, Cheatum's	*Tryonia cheatumi*	N/A	USA (Texas)	Do	E		N/A
Snail, Chittenango Ovate Amber	*Succinea oralis chittenangoensis*	N/A	USA (New York)	Do	E		N/A
Snail, Clark's Nantahala Middle-toothed Land.	*Mesodon clarki nantahala*	N/A	USA (North Carolina)	Do	T		N/A
Snail, Dented Peninsula	*Helminthoglypta arrosa microla*	N/A	USA (California)	Do	T		N/A
Snail, Diamond-Y Pond	*Physa virgata bottomeri*	N/A	USA (Texas)	Do	T		N/A
Snail, Flat-Spired Three-toothed Land.	*Triodopsis platysayoides*	N/A	USA (West Virginia)	Do	E		N/A
Snail, Fraternal	*Micrarionta feralis*	N/A	USA (California)	Do	E		N/A
Snail, Fraternal	*Micrarionta fraulis*	N/A	USA (California)	Do	E		N/A
Snail, Jones' Middle-toothed Land	*Mesodon jonesianus*	N/A	USA (North Carolina)	Do	E		N/A
Snail, Karo's Indian	*Vespericola karokorum*	N/A	USA (California)	Do	E		N/A
Snail, MacClintock's Discoid Land	*Discus macclintocki*	N/A	USA (Iowa)	Do	E		N/A
Snail, Magazine Mountain Middle-toothed Land.	*Mesodon magazinensis*	N/A	USA (Arkansas)	Do	T		N/A
• • •			• • •			• • •	
Snail, Muddy Valley Turban	*Fluminicola grayalis*	N/A	USA (Nevada)	Do	T		N/A
Snail, Nicklin's Peninsula	*Helminthoglypta nickliniana awania*	N/A	USA (California)	Do	T		N/A
Snail, Pahranagat Valley Turban	*Fluminicola merriami*	N/A	USA (Nevada)	Do	T		N/A
Snail, Painted Snake Coiled Forest	*Anguispira picta*	N/A	USA (Tennessee)	Do	E		N/A
Snail, Pilsbry's Narrow Apertured Land	*Stenotrema pilsbryi*	N/A	USA (Arkansas, Oklahoma)	Do	T		N/A
Snail, Reeves County	*Cochliopa texana*	N/A	USA (Texas)	Do	E		N/A
Snail, Rocky Coast	*Monadenia fidelis pronata*	N/A	USA (California)	Do	E		N/A
Snail, St. George	*Amnicola deserta*	N/A	USA (Utah)	Do	E		N/A
Snail, Slug	*Binneya notabilis*	N/A	USA (California)	Do	E		N/A
Snail, Socorro	*Amnicola neomexicana*	N/A	USA (New Mexico)	Do	E		N/A
Snail, Stock Island Tree	*Orthalicus reses reses*	N/A	USA (Florida)	Do	T		N/A
Snail, Strange Many-whorled Land	*Polygyra perversa*	N/A	USA (Arkansas)	Do	T		N/A
Snail, Tryon's	*Micrarionta tryoni*	N/A	USA (California)	Do	T		N/A
Snail, Virginia Fringed Mountain	*Polygyriscus virginianus*	N/A	USA (Virginia)	Do	E		N/A
Snail, White River	*Truncilla clathrata*	N/A	USA (Nevada)	Do	T		N/A
Snail, Zion Canyon	*Physa zionis*	N/A	USA (Utah)	Do	T		N/A

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(e) When an act of an oil or gas lessee or his authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee or his authorized representative, tives, such lessee or said representative shall join in the appointment of an arbitrator.

(f) * * * If no such action is filed within said time and the award is against Lessee or his authorized repressntative, he shall pay the same together with interest at the rate of 6 percent per annum from date of award, within 10 days after the expiration of said period for filing an action. If he fails to do so, in the discretion of the Superintendent, the Lessee or his authorized representative shall be subject to a penalty of $10 per day for each day thereafter that he remains in default.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 915]

AVOCADOS GROWN IN SOUTH FLORIDA

Limitations of Handling

Consideration is being given to the following proposal, as hereinafter set forth, which would regulate the handling of fresh avocados grown in South Florida by establishing minimum quality and maturity requirements for such avocados. The proposal would establish U.S. No. 3 as the minimum grade and would prescribe minimum weights or diameters by specified dates as the maturity requirements. Weights or diameters and picking dates are indices used at harvest to assure that avocados are mature and will ripen satisfactorily after picking.

The proposed requirements would be established pursuant to § 915.51 *Issuance of regulations* and were recommended by the Avocado Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915; 40 F.R. 52605), regulating the handling of avocados grown in South Florida. The proposed minimum grade and maturity requirements for handling of designated varieties of avocados would be effective on and after May 31, 1976. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same in quadruplicate with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 10, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The purpose of the proposed regulation is to assure that the fruit of the various varieties will be of suitable quality and maturity so as to provide consumer satisfaction which is a critical element in disposition of the crop. Immature avocados are unpalatable and external characteristics do not provide a basis on which to distinguish immature avocados from those that will ripen into a palatable product, hence consumers have no rational basis for selection of satisfactory fruit.

The recommendations of the Avocado Administrative Committee reflect its appraisal of the avocado crop and current and prospective market conditions. Shipments of avocados are expected to begin on or about May 31, 1976. The committee has considered and recommended the quality and maturity requirements, including shipping periods, deemed appropriate to the current season for the designated varieties and types of avocados, to prevent the handling of immature and other undesirable fruit. Such recommendation is designed to recognize the differences in consumer demand within and outside the production area and to provide the trade and consumers with an adequate supply of mature avocados of a satisfactory quality commensurate with crop conditions in the interest of producers and consumers pursuant to the declared policy of the act.

Such proposal reads as follows:

§ 915.318 Avocado Regulation 18.

(a) *Order.* (1) During the period May 31, 1976, through April 30, 1977, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade: *Provided,* That avocados which fail to meet the requirements of such grade may be handled within the production area, if such avocados meet all other applicable requirements of this section and are handled in containers other than the containers prescribed in § 915.305, as amended (7 CFR Part 915; 40 F.R. 52605), for the handling of avocados between the production area and any point outside thereof;

(2) On and after the effective date of this regulation, except as otherwise provided in subparagraphs (10) and (11) of this paragraph, no avocados of the varieties listed in Column 1 of the following Table I shall be handled prior to the date listed for the respective variety in Column 2 of such table, and thereafter each such variety shall be handled only in conformance with subparagraphs (3), (4), (5), (6), (7), (8), and (9) hereof.

TABLE I

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(3)	(3)	(4)	(5)	(6)	(7)	(8)
Kosel	5-31-76	16 oz	6-14-76	13 oz	6-28-76	10 oz	7-12-76
Arue	5-31-76	16 oz	6-14-76	14 oz 3 3/16 in	7-19-76		
Roland 22	6-14-76	22 oz	6-28-76	20 oz	12-27-76		
J. M. Poropat	6-28-76	17 oz 3 5/16 in	12-27-76				
Fuchs	6-21-76	14 oz 3 3/16 in	7- 5-76	12 oz 3 3/16 in	7-19-76	10 oz 2 15/16 in	8- 9-7
K-5	6-28-76	18 oz 3 5/16 in	7-12-76	14 oz 3 3/16 in.	7-26-76		
Dr. DuPuis #2	6-21-76	16 oz 3 3/16 in	7- 5-76	14 oz 3 3/16 in	7-19-76		
Hardee	7- 5-76	16 oz 3 3/16 in	7-12-76	14 oz 2 13/16 in	8- 2-76		
Pollock	7- 5-76	18 oz 3 1/16 in	7-19-76	16 oz 3 3/16 in	8- 2-76		
Simmonds	7- 5-76	16 oz 3 3/16 in	7-19-76	14 oz 3 3/16 in	8- 2-76		
Nadir	7- 5-76	14 oz 3 3/16 in	7-12-76	12 oz 3 3/16 in	7-19-76	10 oz 2 15/16 in	8- 2-76
Katherine	7- 5-76	16 oz	7-19-76	14 oz	8- 2-76		
Halle	7- 5-76	20 oz	7-19-76	16 oz	7-26-76	14 oz	8-16-76
Ruehle	7-19-76	18 oz 3 1/16 in	7-26-76	16 oz 3 3/16 in	8- 2-76	14 oz 3 3/16 in	8-30-76
Dawn	7-19-76	12 oz 3 3/16 in	8- 2-76	10 oz 3 3/16 in	8-16-76		
Webb 2	7-19-76	18 oz	8- 2-76	16 oz	8-16-76		
Biondo	8- 2-76	15 oz	12-27-76				
Cash	7-19-76	16 oz	12-27-76				
Peterson	7-26-76	14 oz 3 3/16 in	8- 9-76	10 oz 3 3/16 in	8-23-76	8 oz 2 15/16 in	9- 6-76
Gretchen	8- 2-76	14 oz	8-16-76	12 oz	8-30-76		
Trapp	8-16-76	14 oz 3 1/16 in	8-30-76	12 oz 3 3/16 in	9-13-76		
Waldin	8-16-76	16 oz 3 3/16 in	8-30-76	14 oz 3 3/16 in	9-13-76	12 oz 3 5/16 in	9-27-76
Pinelli	8- 2-76	18 oz 3 1/16 in	8-16-76	16 oz 3 1/16 in	8-30-76		
Miguel	8- 2-76	22 oz 3 1/16 in	8-16-76	20 oz 3 1/16 in	8-30-76	18 oz 3 1/16 in	9-13-76
Nesbitt	8- 2-76	22 oz 3 5/16 in	8-16-76	18 oz 3 3/16 in	8-23-76	16 oz 3 5/16 in	9-13-76
Beta	8-16-76	18 oz 3 3/16 in	8-23-76	16 oz 3 1/16 in	9-13-76		
K-9	8-16-76	16 oz	9- 6-76				
Tower 2	8-16-76	14 oz	8-30-76	12 oz	9-27-76		