

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

Proposal To Determine 2 Birds, 1 Lizard, 3 Snails, and 1 Insect, all Indigenous to the California Channel Islands, To Be Endangered Species

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 7 U.S. animals to be Endangered Species. These species, which are all members of the same ecosystem on San Clemente Island, California, are as follows: San Clemente Loggerhead Shrike (*Lanius ludovicianus mearnsi*), San Clemente Sage Sparrow (*Amphispiza belli clementae*), Island Night Lizard (*Klauberina riversiana*), Wreathed Island Snail (*Micrarionta redimita*), Horseshoe Snail (*Micrarionta interisla*), Gabb's Snail (*Micrarionta gabbii*), and San Clemente Coenonycha (*Coenonychia clementina*). The Island Night Lizard is also found on the nearby San Nicolas and Santa Barbara Islands.

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 man-made factors affecting its continued existence.

This authority has been delegated to the Director.

On June 1, 1973, the Service entered into a contract with the Sierra Club, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained information indicating that the three land snails proposed herein, among others, were Endangered Species as provided for by the Act.

On March 20, 1974, the Service entered into a contract with the James Ford Bell Museum of Natural History, University of Minnesota, Minneapolis, to investigate the status of the Island Night

Lizard. During October 1974 a final report was received and contained data which suggested that the Island Night Lizard was an Endangered Species as provide for by the Act. A third contract report submitted by the Point Reyes Bird Observatory, Bolinas, California, contained data supporting a proposed Endangered status for the San Clemente Loggerhead Shrike and the San Clemente Sage Sparrow.

Finally, information supplied by a staff member of the California Department of Food and Agriculture, Sacramento, California, indicates that a beetle, the San Clemente Coenonycha, is Endangered as defined by the Act.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein. Since the threats faced by each species are similar they are described under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the San Clemente Loggerhead Shrike, San Clemente Sage Sparrow, Island Night Lizard, Wreathed Island Snail, Horseshoe Snail, Gabb's Snail, and San Clemente Coenonycha (beetle) are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All of the proposed species occur on San Clemente Island, Los Angeles County, California. In addition, the Island Night Lizard occurs on San Nicolas and Santa Barbara Islands, Los Angeles County, California.

On San Clemente Island the habitat of each of the species herein proposed has been severely degraded by the grazing of introduced animals not native to the island, particularly goats, swine, and black-tailed deer.

Prior to the introduction of these animals to the island by man, San Clemente was covered with native woodland and sagebrush scrub habitat. Now, due in large part to the depredations of the introduced animals, woodland is almost entirely absent and sagebrush scrub occurs only in a few rugged, relatively inaccessible canyons. In addition, removal of native vegetation by the introduced animals has resulted in top soil and litter erosion which further degrades the habitat upon which the survival of the species herein proposed is dependent. The extinction of all these species is likely in the foreseeable future, as their population levels have become critically low due to habitat degradation caused, among other things, by introduced animals.

Population levels of the Island Night Lizard, although relatively high on San Clemente Island, are critically reduced

on San Nicolas and San Barbara Islands due to habitat alterations caused by farming, fire, grazing by introduced animals, and invasion by exotic plants which have occurred on one or both islands.

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

3. *Disease or predation.* This factor may apply to the San Clemente Loggerhead Shrike, San Clemente Sage Sparrow, and Island Night Lizard. Depredation by feral housecats (*Felis catus*) on San Clemente Island is thought to be a factor in the reduced population levels of these three birds.

4. *The inadequacy of existing regulatory mechanisms.* The San Clemente Loggerhead Shrike and the San Clemente Sage Sparrow are protected by the Migratory Bird Treaty Act and by California State law. The Island Night Lizard population on Santa Barbara Island is provided legal protection by its existence in the Channel Islands National Monument (U.S.N.P.S.). There currently exist no regulations pertaining to the protection and conservation of the other 4 species for the fact that access to their habitat is controlled by the U.S. Navy.

5. *Other natural or man-made factors affecting their continued existence.* Each species herein proposed faces the additional threat of being deleteriously affected by the further introduction of exotic species to their habitats. Competition from species with similar ecological adaptations is the most serious of these threats. Since native wildlife populations, particularly those peculiar to island ecosystems such as those of the California Channel Islands, are often affected detrimentally by the accidental or intentional introduction of non-native species, any further such introductions should be prevented by all possible means.

EFFECT OF THE RULEMAKING

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

Endangered Species regulations already published in Part 17 of 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 Section 17.21 and, for the convenience of the reader, are reprinted below:

(1722) 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.

transporting an illegally taken 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.

(1) Sell or offer for sale. (i) 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.

Regulations published in 50 C.F.R. §§ 17.22-17.23 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.

The determination herein proposed would also make each of the subject species eligible for the consideration provided by Section 7 of the Act. That Section reads as follows:

INTERAGENCY COOPERATION

Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Although no "Critical Habitat" has yet been determined for any of the seven subject species, the other provisions of Section 7 will be applicable.

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 these species and may propose the determination of Critical Habitat for some or all in the near future. A further elaboration of the concept of Critical Habitat was published in the FEDERAL REGISTER of 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 the snails

and beetle 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. Comments and data toward improving the accuracy of common names are requested.

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

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted 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 other living individuals of these species;

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 species 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 species on the following list;

5. Additional information concerning the range and distribution of any of these species.

Final promulgation of these proposed rules will take into consideration the comments and any additional information received by the Director and such communications may lead him to withdraw all or part of the proposal or to adopt final rules that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal, is on file in the Service's Office of Endangered Species and International Activities, 1612 K Street, N.W., Washington, D.C. 20240, and may be examined there during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments and other documents, preferably in triplicate, to Director (FWS/LE), U.S. Fish and Wildlife Service, P.O.

PROPOSED RULES

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Box 19183, Washington, D.C. 20036. All relevant comments and materials received no later than August 2, 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 690, 1612 K Street, N.W., Washington, D.C.

This proposed rulemaking is issued under the authority contained in the En-

dangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

Dated: May 26, 1976.

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

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chap-

ter 1, Title 50 of the Code of Federal Regulations, as set forth below:

It is proposed to amend § 17.11(h) by adding the following in alphabetical order:

§ 17.11 Endangered and threatened wildlife.

(h)

Species		Range		Portion of range where threatened or endangered	Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution				
(a) Molluscs							
(1) Small, wreathed island	<i>Microrionta radiata</i>	Not available	San Clemente Island, Los Angeles County, Calif.	Entire	E		Not available
(2) Small, horseshoe	<i>Microrionta mitchellii</i>	do	do	do	E		Do.
(3) Small, gabb's	<i>Microrionta gabbii</i>	do	do	do	E		Do.
(b) Insects							
(4) Beetle, San Clemente Co-snoonycha	<i>Cocconycha clementina</i>	do	do	do	E		Do.
(c) Birds							
(5) Shrike, San Clemente log-perhead	<i>Lanius ludovicianus mexicanus</i>	do	do	do	E		Do.
(6) Sparrow, San Clemente sage	<i>Amphispiza belli clementina</i>	do	do	do	E		Do.
(d) Reptiles							
(7) Lizard, island night	<i>Xylocryptus rufescens</i>	do	San Clemente Island, Santa Barbara Island, San Nicolas Island, Los Angeles County, Calif.	do	E		Do.