

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Proposed Endangered Status for U.S. Populations of Five Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Due to an inadvertent oversight, the United States individuals of the shorttailed albatross, thickbilled parrot, wood bison, northern swift fox, jaguar, margay and ocelot, species which may occur in the United States, are not officially listed as Endangered species although all individuals which may occur in foreign countries are listed. This is because of the special circumstances that these species were listed pursuant to the 1969 Endangered Species Conservation Act, which had separate procedures and separate lists for foreign and domestic species. When the current 1973 Endangered Species Act repealed the 1969 Act, these species were carried forward onto the 1973 combined list but without completing the procedures for listing species which occur within the United States.

The present document proposes to list as Endangered five of the above seven species in their U.S. ranges and corrects the oversight which resulted in their inadvertent exclusion when only individuals which occur in foreign countries were listed. The northern swift fox (*Vulpes velox hebes*) is not being proposed for listing at this time because of uncertainties regarding its taxonomic status and distribution in the United States. These uncertainties are currently being investigated, and action may be taken to list the individuals of this animal when the investigation is completed. The wood bison (*Bison b. athabasca*) is not being proposed because no pure bred individuals of this subspecies are known to occur in the United States. The Yellowstone bison herd, which is basically wood bison in its genetic makeup, is known to be considerably mixed with plains bison stock (*B. b. bison*) and thus consists of hybrid individuals. (Meagher, 1973).

The five species being proposed herein for Endangered status are only occasional wanderers into the United States; there are few, if any, resident populations. Because of the impossibility of determining where the occasional wanderer may turn up, no Critical Habitat can be determined at this time. If time, and additional study,

should demonstrate patterns involving the movements of any of these species into the United States so that areas vital to their survival here become apparent, such areas may be determined as Critical Habitat for any or all of them. For the present, however, it is impossible to make such determinations and therefore no Critical Habitat is proposed in this action.

DATE: Comments on this Proposed Rule should be received by September 23, 1980.

ADDRESSES: Send all communications to: Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public examination during normal business hours at the Services' Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Spinks, Jr., Chief, Office of Endangered Species, 703/235-2771.

SUPPLEMENTARY INFORMATION:**Background**

On July 25, 1979, the Service published a notice in the *Federal Register* (44 FR 43705) that, due to an oversight, the individuals occurring in the United States of the short-tailed albatross (*Diomedea albatrus*), thick-billed parrot (*Rhynchopsitta pachyrhynchus*), Wood bison (*Bison bison athabasca*), northern swift fox (*Vulpes velox hebes*), jaguar (*Panthera onca*), margay (*Felis wiedii*) and ocelot (*Felis pardalis*), are not officially listed as endangered, although individuals of the species which occur in foreign countries are listed. That notice pointed out that the Endangered Species Conservation Act of 1969, under which these species were originally listed, required that the governors of any State in which an endangered species occurs must be notified when such a species is proposed for listing. The seven species enumerated above were placed on the list as endangered "foreign" species and none of the governors of the states in which they are resident was contacted at the time. Thus the native populations of these species were never formally proposed for listing pursuant to the criteria and procedures of the 1969 Act. The 1969 Act has since been repealed by the endangered Species Act of 1973. Because the "foreign" and "native" species lists of the 1969 Act were combined into a single list of "endangered species" under the 1973 Act, the oversight was not discovered until recently. It is now realized that the individuals of these species which occur

in the United States are not officially listed. It has always been the intention of the Service however, that all individuals of the above seven species, both foreign and native, should be listed as endangered (in fact, as mentioned earlier, the Service believed until quite recently that all such individuals were listed). Therefore, the Service is now acting to propose the U.S. range of all three species, except the northern swift fox (*Vulpes velox hebes*), and the wood bison (*Bison b. athabasca*) and to correct the oversight that resulted in their inadvertent omission. We are not proposing the northern swift fox at this time because the taxonomic status of this subspecies, and its distribution, are not sufficiently known to permit a formal proposal. Zoologists in the Office of Endangered Species are currently studying these aspects of the fox's biology and when this study is completed action may be taken to list the U.S. population of this animal. The wood bison is not being proposed because no pure populations are known to occur in the United States, the Yellowstone herd being a hybrid (*B. b. bison* x *B. b. athabasca*) population. (Meagher, 1973).

Section 4(a) of the Act (16 U.S.C. 1531 et. seq.) states:

"General. (1) 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.

Summary of Factors Affecting the Species

The Service's findings relative to the above five factors for the U.S. ranges of the five species under consideration are as follows (numbers in parentheses refer to factors):

Shorttailed albatross (*Diomedea albatrus*)—Factor (2) has brought about the endangered status of this species. Formerly it was an abundant bird throughout the North Pacific. The total population (which may have numbered over a million birds in prehistoric times) was confined to several small islands in the western Pacific. During the non-nesting season the birds ranged north and east into the Bering Sea and the

west coast of North America. In the late 1800's and early 1900's, plume hunters virtually eliminated this species. Fortunately, a few individuals survived (about 10 pairs in 1954) and have been slowly increasing for the past 25 years (present population is thought to be less than 150 birds). Several recent reliable observations off the west coast of the U.S. have been made. Even when abundant, this albatross approached land no closer than two miles except when nesting.

Thick-billed parrot (*Rhynchopsitta pachyrhyncha*)—Factor (1) is responsible for the decline. The parrot nests in the Sierra Madre Occidental of northwestern Mexico and wanders north over the central plateau to the state of Michoacan. Large flights northward into southern Arizona and probably southwestern New Mexico occurred up to 1919. The parrot appears to be totally dependent on mature highland pine forests for food (pine seeds) and nest sites (abandoned woodpecker holes or natural cavities). With the major cutting of the Mexican forests starting in the early 1900's, and now largely complete, this parrot has been rarely seen in the past several decades, even in Mexico. It is remotely possible that the thick-billed parrot may still be a visitor to the mountains of southern Arizona and perhaps New Mexico. A total population estimate is not available, but probably no more than a few hundred birds still survive at the most in Mexico. The last verified U.S. reports were in the 1930's.

Jaguar (*Panthera onca*)—Although the southwestern United States comprises only peripheral range for the jaguar, within this range it has been, and continues to be, jeopardized by Factor (4). Probably there are no resident or breeding populations left in the United States, but stragglers occasionally wander into New Mexico, Arizona, and Texas, where they are generally shot as unwanted predators. Jaguars have not been reported from the wild in New Mexico since 1904, from Arizona since 1971, and from Texas since 1948. Although all three of these States have laws to protect jaguars, these laws have generally not been enforced. Considering the deteriorating status of the species in Mexico it seems unlikely that a jaguar will wander into the United States in the near future, and even more unlikely that a population could become established in the American southwest. Nevertheless, it seems prudent to offer Federal protection if either event should occur.

Ocelot (*Felis pardalis*)—The range of the ocelot like that of the jaguar, is

peripheral to the United States; the primary distribution of the species is Central and South America. Formerly the ocelot was known to occur in the United States in southeastern Arizona, as far north as Fort Verde, and in the southern Rio Grande Plain of Texas, westward to Eagle Pass; scattered but documented reports indicate it may once have occurred as far north as Kerrville, Texas. Today, populations are known to exist only in the Rio Grande area of southeastern Texas, where signs indicate their presence in eastern Cameron County, and in scattered pockets in Willacy and Kenedy Counties. Factors (1) and (4) have posed, and continue to pose, severe threats to the survival of the ocelot in the United States. The clearing of the brush in the Texas Rio Grande region to grow citrus crops, vegetables and cotton began in the 1920's and by 1940 most of the suitable habitat for the species was gone in Texas. Today, very little of the native brushland exists, except for the Laguna-Atascosa and Santa Ana Wildlife Refuges and small, scattered spots elsewhere. The ocelot apparently never was firmly established in Arizona and predator control operations there, as well as in Texas, helped to extirpate or reduce populations to their current endangered status.

Margay (*Felis wiedii*)—The margay is known in the United States from only a single specimen taken at Eagle Pass, Maverick Co., Texas. The species is Central American and South American in distribution and there are almost certainly no resident populations in the United States at the present time. It is possible, however, that on rare occasions, an individual may wander into Texas from Mexico as undoubtedly was the case with the single recorded specimen of the species in the United States. Since the margay is endangered throughout its range south of the United States, certainly any animal that wanders into Texas from Mexico must be regarded as endangered as well, and afforded the full protection of U.S. Federal law. Such an animal would be threatened by stockmen who might poison, shoot or trap it as an unwanted predator.

It should be emphasized that all of the above species are known to be endangered in the areas of their principal distribution and primary abundance outside of the United States. Since U.S. populations are only peripheral to the main populations of each of them, the extremely precarious position of these U.S. populations is particularly emphasized.

Critical Habitat

The range or distribution of all of these species within the United States is not known with certainty. All apparently are peripheral species that wander occasionally over the U.S. border. It is impossible, given our present state of knowledge, to know where these crossings most commonly occur and which areas are critical to the species to assure their continued survival as part of the U.S. fauna. To acquire such knowledge would necessitate years of survey work and thousands of dollars of funding, and such time and expense is not necessary to protect populations or individuals of these species in the United States.

In summary, because the determination of Critical Habitat is impossible considering the migrating nature of the species involved, the Service does not believe it is prudent to propose Critical Habitat for any of them now. In the future, the Service may propose and determine Critical Habitat for any or all of them as data become available to make such determinations.

Effect of Rulemaking

If this proposal is made final, all the 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 these species in interstate or foreign commerce. It would also be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Regulations published in the **Federal Register** (40 FR 44412) provide for the issuance of permits to carry out prohibited activities under certain circumstances. Such permits are available for scientific purposes or to enhance the survival or propagation of the species.

This proposal, if made final, would prohibit "take" of any of these species. Thus, the primary impact of the action would fall on law enforcement officials who would be required to assure that such "take" does not occur. As noted above, however, all of these species occur so infrequently in the United States that the impact on law enforcement officials must be considered negligible.

There would also be regulations concerning import, export and interstate commerce in any of these species, but, to the best of our knowledge, no such activities have occurred, or are expected to occur, in connection with any of them.

Therefore, no recordkeeping or reporting burden would be added because of these regulations.

There will be no major economic impacts in connection with the listing of any of these species. As stated repeatedly above, all are so rare, and occur so sporadically in the United States, that the effects of offering them protection under the Act would have a minimal impact economically. Some of the predators involved in the proposed action might, on occasion, cause livestock damage but permits could be made available for live trapping and relocating such individuals. If populations of any of the species should become established in the United States, Critical Habitats may have to be determined, and steps would have to be taken to assure that such habitats are not adversely modified by Federal agencies. At this point, however, there is no way of knowing if, when, and where any populations might become firmly established and any discussion of possible impacts would be too speculative for serious consideration.

Section 7 of the Act states in part that all Federal agencies shall carry out programs for the conservation of endangered species, and also shall assure that none of their activities (authorized, funded, or carried out) are likely to jeopardize the continued existence of such species. Both of these mandates would apply in the case of the five species proposed for listing as endangered in this document. In accordance with Section 7, all Federal agencies would need to consult with the Service in respect to any action which might jeopardize the continued existence of any of them.

The Federal agencies that might be impacted by this action would be the Department of the Interior (Fish and Wildlife Service Refuges, National Park Service, Bureau of Land Management), Department of Agriculture (U.S. Forest Service), and Department of Defense (Fort Huachuca, Arizona). One or more of the subject species may occur on land managed by these agencies. Section 7 of the Act requires that these agencies utilize their authorities to conserve endangered species, and take no actions which would jeopardize the survival of any of them. Federal agencies managing lands in areas where any of these species might be expected to enter the United States, or where small local populations are known to occur, will need to be aware of the problem and take measures to prevent harm coming to the animals. This might involve posting possible areas with notices informing the public of penalties involved if any endangered species is "taken"; reducing or curtailing predator control operations in such areas; maintaining habitat that might be conducive to survival and possible establishment of the species; etc.

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of endangered and threatened species. 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 or all of the species considered in this proposal are hereby solicited.

comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or lack thereof) to these species;
- (2) The location of any habitat that the Service should consider for future determinations of Critical Habitat;
- (3) Any additional information available concerning the numbers, range and distribution of these species in the United States.

Final regulations on these species will take into consideration the comments and any additional information received by the Director, and such consideration 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, 1000 N. Glebe Road, Arlington, VA, 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.

The primary author of this proposed rulemaking is John L. Paradiso, Office of Endangered Species (703/235-1975).

Regulations Promulgation

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

- 1. Amend Section 17.11 under "MAMMALS" and "BIRDS" as follows:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS:							
Albatross, short-tailed	<i>Diomedea albatrus</i>	North Pacific Ocean; Japan, Soviet Union, Alaska, Canada, Washington, Oregon, California.	Entire	E		None	N/A
Parrot, thick-billed	<i>Rhynchopsitta pachyrhyncha</i>	Arizona, New Mexico, Mexico.	Entire	E		None	N/A

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
Jaguar	<i>Panthera onca</i>	Texas, New Mexico, Arizona, South through Central America to South America.	Entire	E		None	N/A
Ocelot	<i>Felis pardalis</i>	Texas, New Mexico, Arizona, South through Central America to South America.	Entire	E		None	N/A
Margay	<i>Felis wiedii</i>	Texas, through Central America to South America.	Entire	E		None	N/A

Dated: July 17, 1980.

Robert S. Cook,
Acting Director, Fish and Wildlife Service.

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