

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for U.S. Population of the Ocelot

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Due to an inadvertent oversight, the U.S. population of the ocelot (*Felis pardalis*), a species which occurs in extreme southeastern Texas, and which may wander into Arizona from Mexico, is not officially listed as an Endangered species, although all populations which occur in foreign countries are listed. This is because of the special circumstances that this species was 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 When the current 1973 Endangered Species Act repealed the 1969 Act, this species was carried forward onto the 1973 combined list but without completing the procedures for listing species which occur within the U.S.

On July 25, 1980, a proposed rulemaking was published to list the U.S. population of the ocelot, and which sought to correct the oversight which resulted in its inadvertent exclusion when the foreign populations were listed. At that time, the Governors of Texas and Arizona were notified of the proposed action, and asked to submit any data, comments, or opinions they might have. All data received as a result of the proposal have now been analyzed, and the Service is hereby adding the U.S. population of the ocelot to the List of Endangered Fish and Wildlife.

No Critical Habitat is determined in this rulemaking on the ocelot because such a designation would not be in the best interests of conservation of the species.

DATES: This rulemaking becomes effective on August 20, 1982.

ADDRESSES: All questions pertaining to this rulemaking should be addressed to: Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. All data and other materials related to this rulemaking are available for public examination during normal business hours at the Service' Office of Endangered Species, Suite 531, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of

Endangered Species, Washington, D.C. (703/235-1975).

SUPPLEMENTARY INFORMATION:**Background**

On July 25, 1980, the Service published a proposed rulemaking in the *Federal Register* (45 FR 49844) to list the U.S. population of the ocelot (*Felis pardalis*), and four other species, which, due to an oversight, were not legally listed despite the fact that foreign populations of these same species were officially on the List of Endangered Fish and Wildlife. The proposal pointed out that the Endangered Species Conservation Act of 1969, under which these five 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 five species enumerated in the proposal had been placed on the list as Endangered "foreign" species under the 1969 Act, and none of the governors of the States in which they are resident was contacted at the time. Thus the native populations were never legally listed 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 some time later. When it was realized that the populations of these species in the U.S. were not officially listed, the Service published its July 25, 1980, proposal in an attempt to rectify the original error, and to gather sufficient data to warrant listing these U.S. populations. As a result of this proposal, the Service now has sufficient data to warrant a final rulemaking on the ocelot, and is herewith proceeding with a final rulemaking to list the U.S. population of this species as Endangered.

In the proposal, the public and all interested parties were asked to submit views, comments, data, etc., either in support of, or in opposition to, the proposal. The Service has received only two letters that contain comments pertaining to the ocelot. A summary of the contents of these letters as they pertain to the ocelot is as follows:

National Association for Sound Wildlife Programs. In a letter dated October 26, 1980, Dr. John D. Parrot, President of the Association, opposed the listing of any of the five species contained in the proposal. His points specifically pertaining to the ocelot may be summarized as follows:

1. that there is no scientific documentation that the species throughout its range is Endangered or Threatened in the wild;

2. that there is ample evidence that the species has been exterminated in the wild in the U.S.; and

3. that if it has not been exterminated, there is at least no evidence that it maintains any semblance of a viable population in the wild in the U.S.

The Service disagrees with all three of the Association's comments. The Service listed the ocelot as Endangered in 1972, based upon the best scientific and commercial data available. Evidence obtained since 1972, shows that throughout vast areas of Latin America, habitat has been destroyed, and the status of the ocelot continues to deteriorate. Ocelots at present *do* continue to survive in south Texas on about 50,000 acres of public and private land. Estimates of their numbers range from 12 to 60 animals (IUCN Red Data Book, 1982), and they are threatened by both habitat destruction, and killing as unwanted predators. The population, however, is still viable and is known to breed within its restricted range.

The Association's primary concern seems to be that listing the ocelot (as well as the other species in the proposal) in the U.S. as an Endangered species will somehow affect the activities of captive-breeders of this species. Listing of the native population of the ocelot, however, will not significantly change permit requirements for captive-breeders of ocelots. Since the majority of the captive breeding stock has come from the more numerous listed foreign populations, permits to import, export, sell in interstate commerce, etc., have inevitably been required for such captive-breeders of this species regardless of the listed status of the native population. Such permit requirements will continue unchanged under the new regulations, although any breeding done henceforth with native populations would be subject to new permit requirements.

Office of the Governor, State of Texas. In a letter dated November 26, 1980, the Governor of the State of Texas fully supported listing the ocelot (as well as the other species in the proposal).

Although the Governor of Arizona was notified of the proposed action, no response was received from the State. The Service therefore assumes Arizona has no objections to listing the ocelot as Endangered.

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. population of the ocelot are as follows:

Factor number (1) poses the greatest threat to the survival of the ocelot in the U.S. This species at one time inhabited brushland in the southwestern U.S. as far north as the Texas panhandle and central Arizona.

The clearing of 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. Today, very little of the native brushland remains (about 50,000 acres in the southeastern part of the State), and only between 12 and 60 animals are reported to exist there. Thirty thousand acres of remaining brushland is on privately owned land, and is used for lease hunting and livestock grazing (primarily cattle and a few goats), but because of its small area, it is very vulnerable. Only 20,000 acres of land are currently federally protected on the Laguna Atascosa National Wildlife Refuge. The very limited area of habitat remaining for the species, plus the small population size, make it extremely Endangered in Texas. In Arizona, the ocelot apparently never was firmly established, and predator control operations helped to eliminate it some years ago. Any animal found in Arizona today would probably be a wanderer over the border from adjacent Mexico.

Critical Habitat

No Critical Habitat is being determined for the ocelot at this time because such a determination might operate to the disadvantage of the species and could be detrimental to its conservation primarily for the following reasons:

1. Ocelots are extremely valuable commercially; ocelot coats sell in Europe for as much as \$400,000, and a live animal can bring \$400 on the market. If Critical Habitat were to be determined, public hearings would be

held, and attention would be drawn to the exact locality in which remaining populations in the U.S. occur. The great commercial value of the ocelot would make this a dangerous situation possibly causing illegal attempts to capture the few remaining animals for commercial gain.

2. The habitat of the species is already protected on Laguna Atascosa NWR.

For these reasons, no Critical Habitat is being determined for the ocelot in the rulemaking.

Effect of Rulemaking

When this rulemaking becomes effective, all the prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, will apply to the U.S. population of the ocelot. These prohibitions, in part, 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 will also be illegal to possess, sell, deliver, carry, transport, or ship any individual from the U.S. population of the ocelot that was illegally taken. Regulations published in the *Federal Register* (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 survival or propagation of the species.

This rulemaking will prohibit the "take" of any individuals of the U.S. population of the ocelot (except for specific purposes under permit). Ocelots are already protected by State law in Texas so that "take" is already prohibited. The listing action will reinforce State law, and provide additional personnel to enforce protection.

The Department has determined that this is not a major rule under Executive Order 12291. Ocelots occur on brushland which is currently used for livestock grazing and lease hunting. Listing of the ocelot is entirely compatible with both these land uses and will not impact on them in any way. The Service knows of no plans to change present land uses in the area under consideration.

Section 7 of the Act states, in part, that all Federal agencies shall carry out programs for the conservation of Endangered species, and shall assure that, none of their activities (authorized, funded, or carried out) are likely to jeopardize the continued existence of such species. The only Federal agency concerned with the listing of the U.S. population of the ocelot is the Service's

Division of Wildlife Refuges.

Approximately 20,000 acres of ocelot habitat in south Texas is found on the Atascosa National Wildlife Refuge. However, habitat on the Refuge is already being managed for the ocelot, and the species has always been strictly protected there. Therefore, there will be no additional impacts on the Refuge, or on any other Federal agencies resulting from this rule.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rulemaking. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours. A determination has been made that this is not 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, implemented at 40 CFR 1500-1508.

Effects on Small Entities

The Department has determined that this action will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The only small entities in the area are the 30 owners of land on which ocelots occur. These landholders use the land for grazing and lease hunting, neither of which would be affected by the rule. Therefore, the listing is entirely compatible with present land uses; no planned changes in land uses are known.

This finding is made as a result of analyses by the Office of Endangered Species of information received from personnel of the Texas Parks and Wildlife Department, Laguna Atascosa NWR, and Regional field experts.

Author

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

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, and plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended by revising the entry in § 17.11(h) for:

"Ocelot," under "MAMMALS," as follows:

§ 17.11 Endangered and threatened wildlife.

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals: Ocelot	<i>Felis pardalis</i>	U.S.A. (TX, AZ) south through Central America to South America.	Entire	E	118	N/A	N/A.

Dated: July 8, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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