

Standard No. 119 (49 CFR 571.119), New Pneumatic Tires for Vehicles Other Than Passenger Cars, became effective on March 1, 1975. Tires manufactured for a considerable period of time prior to this effective date met the performance requirements of Standard No. 119, but not the marking requirements. Due to declines in truck sales, and in anticipation of the recent strike against the Nation's four largest tire manufacturers, many "pre-Standard No. 119 tires" still exist in tire and vehicle manufacturer inventories. The National Highway Traffic Safety Administration has decided to allow manufacturers of new vehicles until February 28, 1977, to deplete this excess inventory of tires which meet the requirements of Standard No. 119 other than the tire marking requirements (see 41 FR 36657, August 31, 1976).

Newly manufactured motor vehicles equipped with these "pre-Standard No. 119 tires" on front axles are not expected to be sold for several months after the February 28, 1977, date. Without the regulatory relief in this order, interstate motor carriers purchasing these vehicles would be required by § 393.75(f)(1), as it now reads, to replace the front axle tires on these vehicles with tires which fully comply with Standard No. 119. Since the only difference between the two sets of tires would be sidewall markings, the safety of vehicles will not be affected. Accordingly, good cause is found to postpone the April 1, 1977, date found in § 393.75(f)(1) until October 1, 1978. This should allow adequate time for use of original tread on the tires in question.

While it is recognized that the postponement would also have the effect of allowing continued use until October 1, 1978, of "pre-Standard No. 119 tires" on the front axles of existing vehicles, no compromise of safety is foreseen.

Several petitions remain outstanding concerning Docket MC-56 which will be dealt with in a forthcoming Notice of Proposed Rulemaking.

In view of the foregoing, 49 CFR 393.75 is amended as follows:

§ 393.75 Tires.

(f) The words "April 1, 1977," are revised to read "October 1, 1978."

Since this amendment does not revise the substance of a requirement, notice and comment procedures, and publication at least 30 days before the effective date are not needed.

(Sec. 204, 49 Stat. 546, as amended (49 U.S.C. 304); sec. 6, Pub. L. 89-670, 80 Stat. 937 (49 U.S.C. 1655); 49 CFR 1.48; 49 CFR 389.4.)

This amendment is effective December 3, 1976.

Issued on November 24, 1976.

The Federal Highway Administration has determined that this document does not contain a major rule change requiring preparation of an Inflationary Im-

pact Statement under Executive Order 11821 and OMB circular A-107.

ROBERT A. KAYE,
Director, Bureau of
Motor Carrier Safety.

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Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That the Red Hills Salamander Is a Threatened Species

The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a 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 determines the Red Hills Salamander (*Phaeognathus hubrichti*) to be a Threatened Species.

BACKGROUND

On October 1, 1975, the Service published a proposed rulemaking in the FEDERAL REGISTER (40 FR No. 191 45175) advising that sufficient evidence was on file to support a determination that the Red Hills Salamander was an Endangered Species as provided for by the Act. That proposal summarized the factors thought to be contributing to the likelihood that this salamander could become extinct with the foreseeable future; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections and factual information from any interested person.

Section 4(b)(1)(A) of the Act requires that the Governor of each State, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a Threatened Species or an Endangered Species. A letter was sent to Governor Wallace of the State of Alabama on October 6, 1975, notifying him of the proposed rulemaking for the Red Hills Salamander.

Official comments, dated November 12, 1975, were received from Governor Wallace. Governor Wallace expressed his concern for native endangered wildlife as well as the economic well-being of the Red Hills region and indicated his support for programs for protecting both the Red Hills Salamander and the property rights of local landowners. He also suggested that a public hearing be held to allow interested parties to express their views.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in

the FEDERAL REGISTER prior to adding any species to the List of Endangered and Threatened Wildlife.

In the October 1, 1975, FEDERAL REGISTER Proposed Rulemaking (40 FR 45175) and the associated October 1, 1975, News Release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a Final Rulemaking. An additional notice was published (41 FR 1915) extending the 90-day comment period to February 1, 1976.

All public comments received during the period October 1, 1975, to February 1, 1976, were considered.

Letters from 67 individuals, including Governor George Wallace and Representatives William L. Dickinson, Jack Edwards, and Benjamin Gilman, as well as representatives of the Audubon Naturalist Society, Auburn University Department of Forestry, Alabama Farm Bureau Association, Alabama Forestry Association, Society of American Foresters, and Southern Forests Products Association, were received.

In addition, several persons included articles about the proposed addition of the Red Hills Salamander to the Endangered and Threatened Species List from local newspapers with their comments. No additional biological data were added.

Comments supporting the designation of the Red Hills Salamander as an Endangered Species were received from six individuals and conservation groups; one individual was neutral in his opinion.

Comments opposing the designation as Endangered were received from twenty-one individuals, eight representatives of timber companies, and four representatives of various other business interests and Chambers of Commerce.

Comments were also received which, while not directly opposing the designation of the Red Hill Salamander as Endangered, questioned possible economic repercussions on private landowners and the region in general by such a designation. A few individuals requested additional information about the proposed Endangered designation. In these categories, fourteen comments were by individuals, six by representatives of timber companies, one by a State agency, and seven by representatives of various business interests and Chambers of Commerce.

PROPOSAL

After a thorough review and consideration of all the information then available, the Director proposed to determine that the Red Hills Salamander was in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act. The descriptor of those factors included in the proposed rulemaking (40 FR 25175) was as follows:

1. The present or threatened destruction, modification, or curtailment of its habitat or range. The entire geographic range of *Phaeognathus hubrichti* is confined to a small area of south central

Alabama. Within its range there are approximately 60,000 acres of habitat currently capable of supporting populations of the Red Hills Salamander. Within the Red Hills geographic province, *P. hubrichti* appears to be confined to moist, cool mesic forested ravines associated with the Tallahatta and Hatchetigbee geologic formations. It inhabits burrows along the slopes of mesic ravines shaded by an overstory of predominantly hardwood trees. Undisturbed, the forest floor is moist and relatively cool. Spiders, millipedes, and other invertebrate life which constitute the bulk of the diet of *P. hubrichti* are abundant.

Of the approximately 60,000 acres of remaining habitat, approximately 60 percent is currently owned or leased by paper companies which use primarily clearcut techniques of forest management. This technique of forest management coupled with site preparation for replanting completely destroys the habitat of the Red Hills Salamander. The remainder of the available habitat, the majority of which is in private ownership, is also subject to alteration. The conversion from forest land to pasture or cropland is occurring in this area and is equally destructive. The specialized habits of this species along with its low reproductive rate and inability to disperse preclude its movement into adjacent areas.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Overcollecting for commercial, scientific and educational purposes appears to have contributed to the decline of this species at some localities. The population at the type locality, which is well known to collectors, has been reduced.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* There are currently no regulatory mechanisms to protect *P. hubrichti*.

5. *Other natural or manmade factors affecting its continued existence.* The specialized, fossorial mode of existence of this species with its low reproductive rate and inability or reluctance to disperse has apparently contributed to its precarious status.

CONCLUSION

A study prepared for the U.S. Fish and Wildlife Service by Mr. Thomas W. French of Auburn University has added much information on the Red Hills Salamander not available to the Director when this salamander was proposed as Endangered. Conducted between January 19 and April 2, 1976, Mr. French sought to determine more precisely the range, distribution of form within the range, limiting factors associated with distribution, effects of various forestry practices, total acreage of suitable remaining habitat, and delineation of areas that might be considered "critical habitat" for this species.

After careful evaluation, it now appears that the Red Hills Salamander should be designated as a Threatened species as defined in Section 3(15) of the

Act, rather than an Endangered species as defined in Section 3(4). The reasons for this change in determination involves new information on factor number one (The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range). In the proposal, this factor was regarded as the most serious threat facing the salamander. New information, however, obtained from French on April 10, 1976, shows that the situation is not as critical as stated in the original proposal. Primarily, it is this new information on the less critical status of the habitat which leads us to believe that the species is Threatened rather than Endangered.

Although no populations are found on slopes where 100% of tree cover has been removed or slopes on which mechanical or hand planting of pine has followed heavy cutting, spotty populations are found on slopes heavily cut but not clearcut. The new information provided by French shows that clearcutting and mechanical planting on slopes are seldom followed in the area inhabited by the salamander; most timber companies in this area are now selectively "marking out" bluffs and steep slopes, habitat most favorable to the Red Hills Salamander. This type of management allows timber harvesting while maintaining viable salamander populations as long as extensive removal of the tree canopy is avoided. The effects of severe cutting depend on the aspects of the slope and the amount of seepage. Clearcutting above the slope seldom appears to be a major detrimental factor to populations of the salamander.

Despite the fact that new data indicate a less severe threat to the salamander than stated in the original proposal, the situation is still serious enough to warrant Threatened status. Of the 60,000 acres of the present range, 6745 acres are believed to have supported salamander populations but no longer do so because of adverse timbering practices, or support populations which are low in number and irregularly distributed. Extensive removal of tree canopies and non-selective timber harvesting practices could have severe effects on the remaining specialized habitat of this species. In addition, studies on movements of this salamander confirm that it has a limited ability to recolonize formerly occupied habitat.

The report by French added no new information regarding the other factors specified by Section 4(a)(1) of the Act reported in the proposed Endangered designation for this salamander (40 FR 45175).

EFFECT OF THE RULEMAKING

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

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered Species. The regulations referred to above, which

pertain to Endangered Species, are found at § 17.21 of Title 50 and, 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.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days.

(d) *Possession and other acts with unlawful 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.

(1) *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.

The determination set forth in this final rulemaking also makes the Red Hills Salamander 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.

The Director has prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of Section 7 of the Act. In the future, regulations will be published regarding Section 7.

Regulations which appear in Part 17, Title 50 of the Code of Federal Regulations were first published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412), and provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened Species under certain circumstances.

EFFECT INTERNATIONALLY

In addition to the protection provided by the Act, the Service will review the Red Hills Salamander to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement

upon the appropriate Appendix(ices) to that Convention or whether it should be considered under other, appropriate international agreements.

NATIONAL ENVIRONMENTAL POLICY ACT

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the Red Hills Salamander. The assessment is the basis for a decision that this determination 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.

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

This amendment will become effective on January 3, 1977.

Dated: November 16, 1976.

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

Accordingly § 17.11 of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the Red Hills Salamander to the list under "Amphibians" as indicated below:

| Species | | Range | | | | | |
|------------------------|---------------------------------|------------|--------------------------|---|--------|-------------|---------------|
| Common name | Scientific name | Population | Known distribution | Portion of range where threatened or endangered | Status | When listed | Special rules |
| Salamander, Red Hills. | <i>Phaeognathus huerichii</i> . | NA | United States (Alabama). | Entire | T | | NA |

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