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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF90

Endangered and Threatened Wildlife and Plants; Final Rule To List the Mississippi Gopher Frog Distinct Population Segment of Dusky Gopher Frog as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service, determine the Mississippi gopher frog (*Rana capito sevosa*) distinct population segment of the gopher frog (*Rana capito*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). Historically, the Mississippi gopher frog distinct population segment is believed to have occurred in at least nine counties or parishes across Louisiana, Mississippi, and Alabama, ranging from east of the Mississippi River in Louisiana to the Mobile River delta in Alabama. Today, it is known from only one site in Harrison County, Mississippi. The greatest threat to this last surviving population is the low number of adult frogs in the population and their vulnerability to environmental stressors, both natural and human-induced. Human-induced threats are a result of habitat destruction and degradation in the area adjacent to the frog's only known breeding site. Habitat changes are occurring due to construction associated with a proposed housing development and the construction and expansion of two highways. This action extends the Act's protection to the Mississippi gopher frog distinct population segment.

DATES: This rule is effective January 3, 2002.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Mississippi Field Office, U.S. Fish and Wildlife Service, 6578

Dogwood View Parkway, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Ms. Linda LaClaire at the above address, telephone 601/321-1126, or facsimile 601/965-4340.

SUPPLEMENTARY INFORMATION:

Background

The gopher frog (*Rana capito*) is a member of the large cosmopolitan family, Ranidae ("true frogs"). The genus *Rana* is the only North American representative of this family. We define the Mississippi gopher frog distinct population segment as those populations of gopher frogs in the lower coastal plain ranging from the Mississippi River in Louisiana to the Mobile River delta of Alabama. Goin and Netting (1940) originally described frogs from this geographic range as a distinct species of gopher frog, *Rana sevosa*. The taxonomic history of gopher frogs is complex (summary in Altig and Lohofener 1983). Subsequent to the original description by Goin and Netting, frogs of this population segment were considered subspecies of *Rana capito* (gopher frog) (*R. c. sevosa*, common name dusky gopher frog) (Wright and Wright 1942) and later subspecies of *R. areolata* (crayfish frog) (*R. a. sevosa*) (Viosca 1949, Neill 1957). In 1991, Collins challenged the taxonomic arrangement that lumped crayfish frogs and gopher frogs together as one species and recommended their separation based on biogeographical grounds. This arrangement was followed by Conant and Collins (1991), who again recognized the name *R. c. sevosa*.

Young and Crother (2001) conducted the first comprehensive biochemical analysis of the relationships between gopher frogs and crayfish frogs and among subspecies of gopher frogs. They used allozyme electrophoresis (an assay (examination) of gene products) to examine allelic (genetic) differences between and among populations. Allozyme data have been used extensively to investigate the evolution of genetic relationships among related species. Young and Crother (2001) analyzed tissue from gopher frogs across the range of the species including populations in Mississippi, Alabama, Georgia, Florida, and North Carolina, and from crayfish frogs from Arkansas, Kansas, and Missouri. They found strong support for the species designations *R. areolata* (crayfish frogs) and *R. capito* (gopher frogs). In addition, they found that the population of gopher frogs from Harrison County, Mississippi, showed a fixed difference

at a single locus (site for a specific gene on a chromosome) from all other gopher frogs east of the Mobile River drainage in Alabama. This difference is considered by many taxonomists that support the phylogenetic (evolutionary) species concept to be significant enough to warrant elevation of the frog to its own species (Young and Crother 2001). No other specific taxonomic divisions were determined among the remaining populations of gopher frogs sampled. Since Harrison County is within the range of the original specimens used to describe *R. sevosa*, Young and Crother recommended the resurrection of *R. sevosa* as a distinct species.

Young and Crother's recommendation and their supporting data were published relatively recently (May 2001). Given the varied and confusing history surrounding *sevosa*, it is unclear if the suggested taxonomy will be accepted by the herpetological scientific community. Young and Crother (2001) alluded to potential debates about this designation in their paper when they stated: "It might be suggested that we have comfortably separated *R. areolata* from *R. capito* with three mutually exclusive differences but have not demonstrated the same for *R. capito* and *R. sevosa* with one fixed difference." In any case, our analysis of the five listing factors would be the same whether the Mississippi gopher frog is considered a distinct population segment or a unique species. We will continue to use the common name "Mississippi gopher frog" to avoid confusion with other populations of gopher frogs further east. The Mississippi gopher frog distinct population segment will be defined as all gopher frogs west of Mobile Bay, following the range description of Goin and Netting (1940). The scientific name, *Rana capito sevosa*, will be used to represent this distribution of frogs. If the name *Rana sevosa* is ultimately accepted by the herpetological scientific community, we will revise our List of Endangered and Threatened Wildlife and Plants to reflect this change in nomenclature (scientific name).

The Mississippi gopher frog has a stubby appearance due to its short, plump body, comparatively large head, and relatively short legs (Conant and Collins 1991). The coloration of its back is dark and varies in individual frogs. It ranges from an almost uniform black to a pattern of reddish brown or dark brown spots on a ground color of gray or brown (Goin and Netting 1940). Warts densely cover the back. The belly is thickly covered with dark spots and dusky markings from chin to mid-body (Goin and Netting 1940, Conant and Collins 1991). Males are distinguished

from females by their smaller size, enlarged thumbs, and paired vocal sacs on either side of the throat (Godley 1992). Richter (1998) reported mean snout-vent lengths from three years of data. They ranged from 63.2 to 70.2 millimeters (mm) (2.5 to 2.8 inches (in)) for males and 78.0 to 82.7 mm (3.1 to 3.3 in) for females in the extant population. Mississippi gopher frog tadpoles are presently indistinguishable in the field from those of leopard frogs and other gopher frogs (Altig *et al.* 2001).

Mississippi gopher frog habitat includes both upland sandy habitats historically forested with longleaf pine and isolated temporary wetland breeding sites embedded within the forested landscape. Frequent fires are necessary to maintain the open canopy and ground cover vegetation of their aquatic and terrestrial habitat.

Adult and subadult Mississippi gopher frogs spend the majority of their lives underground. They use active and abandoned gopher tortoise (*Gopherus polyphemus*) burrows, abandoned mammal burrows, and holes in and under old stumps as refugia (Allen 1932; LaClaire, pers. obs. 1996; Richter *et al.* 2001). Gopher tortoise burrows likely represented preferred underground habitats. In Florida, Godley (1992) reported that the closely related Florida gopher frog was known only from sites that supported gopher tortoises. The remaining Mississippi gopher frog population occurs in an area presently lacking gopher tortoises, most likely as a result of habitat degradation. An abandoned tortoise burrow occurs approximately 0.8 kilometers (km) (0.5 miles (mi)) from the breeding pond, and an active burrow was found within 1.6 km (1 mi) of the site in 1992 (T. Mann, Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1999).

The Mississippi gopher frog breeding site is an isolated pond (not connected to any other water body) that dries completely on a cyclic basis. Faulkner (unpub. data 2000) recently conducted hydrologic research at the site. He described the pond as a depressional feature on a topographic high. The dominant source of water to the pond is rainfall within a small, localized watershed that extends 61 to 122 meters (m) (200 to 400 feet (ft)) from the pond's center. Substantial winter rains are needed to ensure that the pond fills sufficiently to allow hatching, development, and metamorphosis (change to adults) of larvae. The timing and frequency of rainfall are critical to the successful reproduction and recruitment of Mississippi gopher frogs.

The single remaining breeding pond known for the Mississippi gopher frog is located in Harrison County, Mississippi. Adult frogs move to this wetland breeding site during heavy rain events, usually from January to late March (Richter and Seigel 1998b). The breeding pond is approximately 1.5 hectares (3.8 acres) when filled. It attains a maximum depth of 1.1 m (3.6 ft). The pond is hard-bottomed, has an open canopy, and contains emergent and submergent vegetation. Female Mississippi gopher frogs attach their eggs to the rigid vertical stems of emergent vegetation (Young 1997, Richter and Seigel 1998a, 1998b). The pond typically dries in early to mid-summer, but on occasion has remained wet until early fall (G. Johnson, U.S. Forest Service, pers. comm. 1993; Young 1997; Richter and Seigel 1998b). As many as 21 amphibian species (17 frogs and 4 salamanders) are known to utilize the site (R. Seigel, unpub. data 2001). Bailey (1990), Palis (1998), and Greenberg (2001) found similar habitat attributes in breeding ponds of the closely related gopher frogs in Alabama and Florida.

Adult Mississippi gopher frogs leave the pond site after breeding during major rainfall events. Adults of both sexes use specific migratory corridors when exiting the breeding pond (Richter and Seigel 1998b). Movements away from the pond are slightly east of due north. Richter *et al.* (2001) tracked a total of 13 frogs using radio transmitters. The farthest movement recorded was 268 m (879 ft) by a frog tracked for 88 days from its exit of the breeding site. In Florida, gopher frogs have been found 2 km (1.2 mi) from their breeding sites (Carr 1940, Franz *et al.* 1988). It is unclear if the distances recorded for the Mississippi gopher frogs were typical as the tracking periods represented only a fraction of their yearly life cycle. Movements corresponded with major rain events. However, dry conditions prevailed during most of the two study periods. In fact, the frogs in Richter and Seigel's study moved during only one 24-hour period, which was associated with a rain event.

Amphibians need to maintain moist skin for respiration (breathing) and osmoregulation (controlling the amounts of water and salts in their bodies) (Duellman and Trueb 1986). Since they disperse from their aquatic breeding sites to the uplands where they live as adults, desiccation (drying out) can be a limiting factor in their movements. Thus, it is important that areas connecting their wetland and terrestrial habitats are protected in order to provide cover and appropriate

moisture regimes during their migration. This may be especially important for juveniles as they move out of the breeding pond for the first time (A. Braswell, North Carolina State Museum of Natural Sciences, pers. comm. 2000).

It is likely that, given appropriate habitat, Mississippi gopher frogs are long-lived. The longevity record for a captive close relative, the Carolina gopher frog (*R. capito capito*), is 9 years, 1 month (Snider and Bowler 1992). However, overall low rates of recapture at the extant breeding pond suggest low adult survival in the Mississippi gopher frog population (Richter 1998).

Historical records for the Mississippi gopher frog exist for two or possibly three parishes in Louisiana, six counties in Mississippi, and one county in Alabama. Researchers conducting numerous surveys have been unable to document the continuing existence of the Mississippi gopher frog in Louisiana (Seigel and Doody 1992, Thomas 1996) or in Alabama (Bailey 1992, 1994). The last observation of a gopher frog in Louisiana was in 1967 (G. Lester, Louisiana Natural Heritage Program, pers. comm. 1991). In Alabama, it was last seen in 1922 (Bailey 1994).

Historical records for the Mississippi gopher frog are limited. We have compiled 35 historical records—1 in Alabama, 14 in Louisiana, and 20 in Mississippi. Historical records are defined as those localities where gopher frogs were found prior to 1990. No new localities for the frog have been found since 1988. Localities are sites identified from specimens captured or heard calling during sampling of potential breeding sites or by surveying highway crossings when individuals were on their way to or from breeding sites. Of the 35 historical records, 24 provided data that were used to approximate the location of the original site.

Habitat degradation is the primary factor in the loss of gopher frog populations in Alabama, Louisiana, and Mississippi. Bailey (1994) visited the historical Alabama locality in 1993. The habitat had been developed as a residential area, and was no longer suitable for the gopher frog. Seigel and Doody (1992) and Thomas (1996) surveyed historical sites in Louisiana and searched for other potential sites that might be occupied by gopher frogs. They also found that longleaf pine forests in Louisiana had been severely degraded. The historical breeding and upland habitats had changed as a result of urbanization and conversion of forest to pine plantation. For example, they found three historical breeding sites that had been extensively altered. One had been converted into a permanent pond

in a residential backyard. Two other ponds had been extensively altered by bedding, clearing, and nutrient loading during conversion of the surrounding habitat to pine plantation. Both survey efforts by Seigel and Doody (1992) and Thomas (1996) were unsuccessful to find any Mississippi gopher frogs in Louisiana.

Crawford (1988) surveyed 42 ponds in 6 Mississippi counties in 1987 and 1988. He attempted to relocate all of the State's historical localities for the gopher frog. He found that habitat in the vicinity of historical localities had been altered by conversion of natural forest to agriculture and pine plantations. Urbanization was a factor in the loss of at least three breeding ponds. The character of relocated historical breeding ponds had been changed from open-canopy, temporary ponds with clear water and hard bottoms to muddy, more permanent ponds with a closed canopy (G. Johnson, pers. comm. 1999). No appropriate habitat for the Mississippi gopher frog could be found near any of the localities (G. Johnson, pers. comm. 1999). Crawford (1988) also used aerial maps to identify potential breeding sites. In many cases, ponds identified on these maps no longer existed due to land use changes. However, he was able to verify the presence of the species at four new sites in Harrison County, Mississippi. At three of these four sites, only one individual was observed. Kuss (1988) surveyed 60 ponds in southern Mississippi for the flatwoods salamander (*Ambystoma cingulatum*). He did not encounter any gopher frogs during the surveys. Subsequent to these studies, surveys have documented the continued existence of only one population in Mississippi. This population breeds at a pond located in the DeSoto National Forest in Harrison County. Surveyors working in Mississippi during the 1990s have been unable to find the species at any other sites (R. Jones, Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1998; G. Johnson, pers. comm. 1999). Although Allen (1932) found gopher frogs to be common in the coastal counties of Mississippi earlier in the century, today R. Seigel (Southeastern Louisiana University, pers. comm. 2001) estimates the extant Mississippi gopher frog population to be only 100 adult frogs at a single site.

The extensive habitat alteration found during surveys of historical gopher frog localities in Alabama, Louisiana, and Mississippi resulted from the loss of virtually all of the natural longleaf pine forest in these States. Presettlement longleaf pine forests were the dominant

forest type of the southeastern coastal plain. Today, less than 2 percent of these forests remain (Ware *et al.* 1993). Second growth longleaf pine forests in the vicinity of historical Mississippi gopher frog breeding sites were clearcut extensively in the mid-1950s and then again in the 1980s and 1990s. Longleaf pine forest habitat was replaced with dense pine plantations, agriculture, and urban areas. Habitat degradation has occurred as a result of alterations in the soil horizon (layering of different soil types), forest litter, herbaceous community, and occurrence of downed trees and stumps that Mississippi gopher frogs use as refugia. Fire suppression has further degraded the habitat. The hydrology of many isolated temporary wetlands, required as breeding sites for the Mississippi gopher frog, has been altered. In addition, these same factors have resulted in the decline of the gopher tortoise, whose burrows are most likely the preferred habitat for adult gopher frogs. As a result of these habitat changes, both the uplands and the pond basins previously occupied by the Mississippi gopher frog have become unsuitable.

Distinct Vertebrate Population Segment

The biological evidence supports recognition of the Mississippi gopher frog as a distinct vertebrate population segment for purposes of listing, as defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). The definition of "species" in section 3(16) of the Act includes "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment endangered or threatened?).

Habitat of the lower Gulf Coastal Plain from the Mississippi River to the Mobile River delta contains the westernmost population of gopher frogs. This population segment is discrete because it is geographically segregated from other gopher frogs by a large gap (approximately 200 km (125 mi)) of unoccupied habitat and the Mobile River delta. Consequently, this population does not mix with other gopher frogs.

Young and Crother (2001) presented data that the Mississippi gopher frog distinct population segment is biologically and ecologically significant due to genetic characteristics different from the species as a whole (see discussion in "Background" section). They analyzed tissue from gopher frogs across the range of the species, including populations in Mississippi, Alabama, Georgia, Florida, and North Carolina, and found that the population of gopher frogs from Harrison County, Mississippi, showed a fixed difference at a single locus (site for a specific gene on a chromosome) from all other gopher frogs east of the Mobile River drainage in Alabama. This difference is considered by many taxonomists to be significant enough to warrant elevation of the frog to its own species (Young and Crother 2001).

Previous Federal Action

In our December 30, 1982, Notice of Review, we designated the dusky gopher frog (designation *Rana areolata sevosa*) as a category 2 candidate and solicited status information (47 FR 58454). Category 2 candidates were those taxa for which we had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. In our September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554), Notices of Review, we retained the dusky gopher frog in category 2. We identified the dusky gopher frog as a category 1 candidate species in our November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), Notices of Review. Category 1 taxa were those taxa for which we had sufficient information on biological vulnerability and threats on file to support issuance of proposed listing rules. Beginning with our February 28, 1996, Notice of Review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and we now consider only taxa that meet the definition of former category 1 taxa as candidates for listing. At that time, we removed *Rana areolata sevosa* from candidate status based on the need for additional information to support a listing proposal. We then completed an analysis of newly available information from recent studies and determined that listing the Mississippi gopher frog distinct population segment was warranted. We elevated the Mississippi gopher frog to candidate status in our October 25, 1999, Notice of Review (64 FR 57534).

We published the proposed rule to list the Mississippi gopher frog in the **Federal Register** on May 23, 2000 (65 FR 33283). This final rule is made in accordance with a judicially approved settlement agreement, which requires us to submit a final listing decision to the **Federal Register** by November 28, 2001.

We have been coordinating with our partners, the U.S. Forest Service, Mississippi Department of Wildlife, Fisheries and Parks, and Dr. Rich Seigel of Southeastern Louisiana University, on Mississippi gopher frog surveys and monitoring for the past 10 years. During the past 2 years, we and our partners have increased conservation efforts at the remaining breeding pond and adjacent areas on the DeSoto National Forest. These efforts have included attempting to alter two existing ponds to create potential breeding sites for the Mississippi gopher frog; developing a strategy to construct new breeding ponds; and responding to the ongoing drought by transporting water overland to the known breeding pond (with the assistance of the Mississippi National Guard) and digging two wells adjacent to the pond. A Memorandum of Understanding has been drafted between the partners for conservation of this species and is currently under review by the parties.

Summary of Comments and Recommendations

In the May 23, 2000, proposed rule and associated notifications, we requested that all interested parties submit factual reports or information that might contribute to the development of this final rule. The comment period for the proposed rule was open from May 23 through July 24, 2000. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested that they comment. We published a legal notice in the *Clarion Ledger* on June 2, 2000, and another in the *Sun Herald* on June 3, 2000, announcing the proposal and inviting comment. We received 18 comment letters. Twelve of these supported, 3 opposed, and 3 were neutral on the proposed listing action. The breakdown of the comments included 2 from Federal agencies, 2 from State agencies, and 14 from individuals or groups. The Mississippi Department of Wildlife, Fisheries and Parks and the Louisiana Department of Wildlife and Fisheries supported the protection of the Mississippi gopher frog distinct population segment under the Act. One request was made for a public hearing, however the request was later withdrawn.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below. Comments of a similar nature or point are grouped together (referred to as "Issues" for the purpose of this summary) below, along with our response to each.

Issue 1: The proposed listing rule was not based on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. The Service used too many documents that were not published papers in peer-reviewed journals in writing the rule.

Response: We thoroughly reviewed all available scientific and commercial data in preparing the proposed rule. We sought and reviewed historic and recent publications and unpublished reports concerning the Mississippi gopher frog and other gopher frog species, as well as literature documenting the decline of the longleaf pine ecosystem in general. We considered all types of available information in making a listing determination. This included reliable unpublished reports, non-literature documentation, and personal communications with experts. The public reviewed the proposed rule, which also was peer reviewed according to our policy (see "Peer Review" section). In the process of updating the proposed rule, some citations have changed due to the publication in peer-reviewed journals of some data originally cited as personal communications, unpublished manuscripts, or theses. We used our best professional judgment and based our decision on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

Issue 2: The Service does not have sufficient scientific information to conclude that the Mississippi gopher frog is a distinct species or a distinct population segment. As a result, the evaluation of the five factors is insufficient to support the listing of the frog.

Response: We analyzed the Mississippi gopher frog in relation to the three elements necessary for a population to be listed under the Act as a distinct vertebrate population segment—discreteness, significance, and population segment conservation status (see "Distinct Vertebrate Population Segment" section). The commenters did not provide any data to support their assertions. The best available scientific evidence supports the designation of the Mississippi gopher frog as a distinct vertebrate population segment.

Issue 3: The scientific data may provide support that the Mississippi gopher frog is a distinct population segment. However, since there is only one extant population, this population cannot be considered the same as populations, now extinct, which once occurred within the described range of *Rana sevosa* (west of Mobile Bay).

Response: In the original description of *Rana sevosa*, Goin and Netting (1940) restricted this species to the area of the Gulf coast from Louisiana to west of Mobile Bay, Alabama. They considered Mobile Bay a biogeographic barrier. At that time, gopher frogs were not known from other areas of eastern Alabama or the Florida panhandle. Gopher frogs were later discovered in these areas and subsequent authors extended the range of what was then described as the subspecies *R. capito sevosa* into eastern Alabama and the panhandle of Florida. The range extension was based on similarities in size and coloration of frogs across this area. However, no empirical data exist to support this designation (P. Moler, Florida Fish and Wildlife Conservation Commission, pers. comm. 2000). Young and Crother (2001) recently completed genetic analyses of gopher frogs from Mississippi, eastern Alabama, and the panhandle of Florida. Their results, showing differences between Alabama and Florida panhandle populations and the Mississippi gopher frog, provide evidence that gopher frogs differ on either side of Mobile Bay. Since the Mississippi gopher frog occurs within the original geographic area described by Goin and Netting for *Rana sevosa*, we will regard all populations historically distributed within that original area as part of the Mississippi gopher frog distinct population segment until such time as data dictate otherwise.

Issue 4: The Service should conduct more research before a listing decision is made.

Response: We have conducted and supported research on the Mississippi gopher frog for the past 10 years. We have learned much about the species during this period. Although there are still aspects of this species' life history which are not known, the information standard in section 4(b)(1) of the Act does not require us to possess detailed or extensive information about the general biology of the species or to make an actual determination of the causes for the species' status to make a listing determination. We have made the decision that the Mississippi gopher frog is in danger of extinction using the best available scientific and commercial information as required by the Act's information standard. We evaluated all

information with regard to its applicability to determination of species status using the five factors described under section 4(a)(1).

Issue 5: The Service should conduct more surveys before a listing decision is made. The Service may have missed populations of the Mississippi gopher frog due to the ongoing drought.

Response: Surveys for Mississippi gopher frogs have been ongoing since the late 1980s (see "Background" section). Most of the available habitat has been degraded or destroyed at historical sites. The drought has made sampling difficult; however, at most sites surveyed, poor habitat quality was the limiting factor, not lack of water. We used our best professional judgement and based our determination on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

Issue 6: Service suggestions that forest management activities have caused population declines in the Mississippi gopher frog are inappropriate.

Response: The best available information on the effects of timber management on the Mississippi gopher frog, cited in the "Background" and "Summary of Factors Affecting the Species" sections, indicates that habitat alteration, including loss of ground cover vegetation, destruction of subterranean refugia and alteration of hydrology at previously occupied sites, has been a causative factor in the decline of gopher frogs throughout the range of *Rana capito sevosus*. The manner, timing, and extent of silvicultural activities all dictate what effects they may have on the Mississippi gopher frog and its habitat. Timber management that avoids adverse effects to important habitat characteristics is compatible with maintenance of the Mississippi gopher frog, as evidenced by its continued occurrence on the DeSoto National Forest.

Peer Review

In accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we requested the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested three individuals who possess expertise on gopher frog natural history and ecology to review the

proposed rule and provide any relevant scientific data relating to taxonomy, distribution, or to the supporting biological data used in our analyses of the listing factors. All expressed their belief that the data supported protection of the Mississippi gopher frog distinct population segment under the Act. We have incorporated their comments into the final rule, as appropriate, and briefly summarized their observations below.

All three reviewers strongly supported the listing of the Mississippi gopher frog as endangered. One reviewer provided his assessment of the available taxonomic data for the Mississippi gopher frog. He agreed with our determination of the geographic range of the Mississippi gopher frog distinct population segment. The second reviewer provided comments on our analysis of Mississippi gopher frog telemetry data. He believed that the cessation of movement in frogs followed to the proximity of the clearcut could have been explained by several factors other than the habitat changes on the site. He suggested that the location where they stopped could have been the burrow where they normally resided; that the lack of rainfall may have affected their movements; and that the timeframe the frogs were tracked was too short to accurately determine the length of their movements. The third reviewer commented that emigrating juveniles are more subject to predation or desiccation than adults as they move out of the pond. As a result, he believed that good quality terrestrial habitat close to the breeding pond, including cover objects, may be especially important for metamorphs.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Mississippi gopher frog distinct population segment should be classified as an endangered species. We followed the procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) issued to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mississippi gopher frog distinct population segment (*Rana capito sevosus* Goin and Netting 1940) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The range of the Mississippi gopher frog has been reduced as a result of habitat destruction and modification (see "Background" section). Longleaf pine forested habitat has been reduced to less than 2 percent of its original distribution. Historically, the Mississippi gopher frog distinct population segment occurred in at least nine counties or parishes in the States of Alabama, Mississippi, and Louisiana. Today, it is known from only one site in Harrison County, Mississippi. Potentially available habitat continues to be degraded due to the accelerated rate of residential and commercial development in Harrison County.

The private property 200 m (656 ft) immediately north of the only known Mississippi gopher frog breeding site is slated for residential and commercial development, including a 20,000-unit retirement community (L. Lewis, Brown and Mitchell, Inc., pers. comm. 1999). This site was clearcut and prepared in 1994 prior to acquisition by the development company. Potential habitat for the Mississippi gopher frog was considerably degraded as a result. Richter (1998) reported that the majority of gopher frogs leaving the breeding pond moved in a northerly direction towards this private property. Three frogs, tracked using transmitters, were observed at the fence line delineating the DeSoto National Forest property boundary from the property (Richter *et al.* 2001). It seems likely that Mississippi gopher frogs may have occurred on this site in the very recent past. We are currently working with the developers of the site on a plan to restore and protect habitat in a "no development zone" on the property. Nevertheless, the large scale of development in the vicinity of the remaining habitat for the Mississippi gopher frog, including both ongoing and planned highway expansion, will fragment the remaining longleaf pine habitat (see "Factor E"). Urbanization will expand along these highway corridors and further reduce available habitat for the frog.

The remaining breeding pond for the Mississippi gopher frog is located in the DeSoto National Forest. Silviculture, including timber sales with associated clearcutting and replanting, is currently the primary activity in this area. Incompatible timber management could alter the suitability of the Mississippi gopher frog's remaining habitat (see "Background" section). The private property north of the breeding pond

(described above) was previously owned by a timber company. The negative effects of the clearcutting and site-preparation activities included the destruction of all burrows and stump holes that could have been used by migrating or resident frogs. During bedding, the soil structure and below-ground structure (burrows, stump holes) were destroyed as hummocks with deep furrows on either side were created on which to replant trees. In addition, all overstory was removed from the site. The immediate result of this activity was creation of an area that would represent a desert to moisture-requiring frogs. Although at least three frogs moved to the vicinity of this site, it is not known what effect the altered landscape may have had on their movements. The effects of the timber harvest and replanting on the Mississippi gopher frog population are unknown. The frogs may or may not have used the site prior to the timbering activities. However, the resultant changes in habitat have made the site currently unsuitable for them.

Several recent studies (National Council on Air and Stream Improvement, Inc. (NCASI), unpub. data 1999, Baughman 2000, Russell 2000) have demonstrated that management of industrial forest lands can be compatible with maintaining a diverse amphibian community. However, rare amphibians which are endemic to the longleaf pine ecosystem, such as gopher frogs (LaClaire 1997), are not a typical component of this amphibian community on industrial forest lands. For example, a recent survey of ephemeral ponds on intensively managed forest lands found gopher frogs in only 17 of 444 ponds (4 percent) surveyed in Alabama, Florida, and Georgia (NCASI, unpub. data 1999). The loss of essential upland and wetland habitat features is most likely responsible for the absence of these species. Habitat alterations resulting from historical land use practices, including fire suppression (see "Factor E"), removal of downed logs and other coarse woody debris, and short rotation times, may offer a partial explanation for the loss of these habitat features (Baughman 2000, Russell 2000).

Historical gopher frog breeding sites have been degraded and destroyed by roads that pass through or are adjacent to ponds. Erosion of unpaved roads adjacent to breeding sites may result in an influx of sediment from surrounding uplands during rainstorms. Runoff from paved roads may include petrochemicals or other substances toxic to frogs. The hydroperiod (period during which a wetland holds water) of the

ponds can be negatively affected by increased input of water to the sites or by the road acting as a dam, both of which would create a more permanent pond. In addition, heavily traveled roads pose a threat to migrating frogs.

The open canopy and flat, unforested bottom of the Mississippi gopher frog breeding pond represent an alluring site for dumping unwanted trash and riding off-road vehicles (ORV). Many temporary ponds throughout the southeast have been degraded as a result of garbage dumping (LaClaire, pers. obs. 1994). ORVs can cause direct mortality of gopher frog tadpoles and adults (J. Jensen, Georgia Department of Natural Resources, pers. comm. 1996) as well as alter the quality of a breeding site. ORVs alter the contours of the pond floor, eliminate herbaceous vegetation, and can alter the hydrology of the site (LaClaire, pers. obs. 1995). Loss of herbaceous vegetation caused by ORVs could also discourage gopher frog reproduction, since egg masses are attached to stems of herbaceous vegetation (Young 1997; Richter and Seigel 1998a, 1998b). ORV tracks have been documented within the Mississippi gopher frog breeding site (G. Johnson, pers. comm. 1994). In 1994, an area of the DeSoto National Forest within 2.4 km (1.5 mi) of the existing breeding pond was temporarily closed due to accumulation of trash, soil erosion, and water quality degradation caused by ORVs, damage to endangered and sensitive plants and animals, and other vandalism (K. Godwin, U.S. Forest Service, pers. comm. 1994). ORV use on the DeSoto National Forest will likely increase in the vicinity of the pond when the proposed housing development is completed adjacent to the site.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Direct take of Mississippi gopher frogs for commercial, recreational, scientific, or educational purposes is not currently a threat. However, large numbers of other species of frogs are nationally and internationally traded for resale in pet stores and for food. Listing the Mississippi gopher frog may make it more attractive to collectors through recognition of its rarity. In addition, the life history and ecology of Mississippi gopher frogs make them vulnerable to collecting, as well as vandalism. Only one breeding pond remains for this frog. At predictable times of the year, all breeding adults congregate at this site to breed. A single act of collecting or vandalism could destroy the population.

C. Disease or Predation

Disease is not known to be a factor in the decline of the Mississippi gopher frog. However, during monitoring of our efforts to alter a nearby pond and create a new gopher frog breeding site, a fungal disease was observed in leopard frog tadpoles. Subsequent to this discovery, tadpole populations were monitored more closely and 100 percent mortality of these leopard frog tadpoles was observed. A sample of diseased tadpoles was sent to the U.S. Geological Survey's National Fish Wildlife Health Center in Madison, Wisconsin. The fungus has not yet been identified and the mode of transmission is unknown. However, this yeast-like fungus has been implicated in five die-offs at sites nationwide and has affected six species of ranid (frogs of the genus *Rana*) tadpoles (D. Green, National Wildlife Health Center, Madison, Wisconsin, pers. comm. 2001). Biosecurity measures, such as sterilizing boots and equipment, have been implemented at the existing Mississippi gopher frog breeding pond as a precaution against disease transmission. An unrelated chytrid fungus has been implicated in the decline of amphibians in the western United States, including the endangered Wyoming toad (M. Jennings, U.S. Fish and Wildlife Service, pers. comm. 2001).

Predation may be a threat. Survivorship from the egg stage to metamorphosis is typically low for ranid frogs and was estimated by Richter (1998) to be 4.91 percent for Mississippi gopher frogs. Additional predation, beyond the norm, could result in complete reproductive failure. Richter and Seigel (1998a) reported that approximately 44 percent of all eggs at the existing breeding site were lost in 1997 prior to hatching. An undetermined amount of the egg mortality was due to predation by caddisfly larvae (Order Trichoptera, Family Phryganeidae) on the egg masses. Richter (2000) observed no larval caddisflies at the Mississippi gopher frog breeding site in 1996, but caddisflies infested 100 percent of Mississippi gopher frog egg masses in 1997 and 1998. He found that two larval caddisflies in laboratory test chambers could consume between 11 and 24 developing embryos of leopard frogs (another ranid species; gopher frog embryos were not used due to their rarity). The effect of caddisfly predation on the Mississippi gopher frog population is unknown. However, any increases in mortality resulting from predation are a cause for concern in such an extremely small and isolated population.

Predation from fish probably contributed to the loss of historic populations. Temporary ponds altered to form more permanent bodies of water and stocked with fish are no longer suitable breeding sites. Fish may have also entered breeding sites through the connection of drainage ditches and firebreaks to pond basins. The Mississippi gopher frog is adapted to temporary wetlands, and its larvae cannot survive the heavy predation of bass and sunfish commonly used to stock ponds. One historical location in Louisiana was destroyed in part because it has become a permanent pond inhabited by fish (Thomas 1996). In Mississippi, a calling male was discovered in 1987 at a site that has since been converted to a fish pond (T. Mann, pers. comm. 1998). No gopher frogs have been reported subsequently at this site, which is no longer considered suitable breeding habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

Louisiana has no protective legislation for the Mississippi gopher frog. Alabama protects all gopher frogs as nongame species (J. Woehr, Alabama Department of Conservation and Natural Resources, pers. comm. 1994). The Mississippi gopher frog is listed as endangered in Mississippi (Mississippi Department of Wildlife, Fisheries and Parks 1992), and both Mississippi and Alabama provide protection against collecting of the species. However, this legislation does nothing to alleviate the habitat loss that has caused the decline of the species. The only known breeding site for the Mississippi gopher frog is on U.S. Forest Service land in Mississippi. As a result, there has been a concerted effort to encourage the U.S. Forest Service to manage the site for the frog. Although the U.S. Forest Service has an obligation under the National Forest Management Act, to ensure their land management activities protect fish and wildlife, forest management is often limited by existing funding. Other avenues of funding become available to the U.S. Forest Service once a species is federally listed.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fire is needed to maintain the natural longleaf pine community. Ecologists consider fire suppression a primary reason for the degradation of the remaining longleaf pine acreage in the southeast (Noss 1988, Ware *et al.* 1993). Fire suppression has reduced the quality of terrestrial and aquatic habitat for the Mississippi gopher frog. Canopy closure from fire suppression alters the

forest floor vegetation and threatens the open, herbaceous character typical of gopher frog breeding ponds (Kirkman 1995, LaClaire 1995). In addition, fire causes the release of nutrients bound in plant material. This release of nutrients results in a flush of primary productivity that is important to the herbivorous gopher frog tadpoles. Fire suppression has probably negatively impacted all of the historical Mississippi gopher frog sites. At this time, fire is the only known management tool that will maintain the existing breeding pond as suitable habitat.

Between 1991 and 2001, the U.S. Forest Service has conducted periodic growing-season burns of the forest compartment surrounding the Mississippi gopher frog breeding pond and of the pond basin itself. These burns improved habitat conditions, but the frequency and extent of burning needs to be improved. Appropriate burning regimes must be maintained to prevent woody encroachment and to enhance herbaceous growth. Residential and commercial development and road construction in the vicinity of the breeding pond will create increased concerns about, and likely reduce the use of, fire as a management tool. The fire management officer on the DeSoto National Forest estimates that, due primarily to smoke management concerns, that development in the area will cause a 20 percent reduction in the amount of days that the U.S. Forest Service will have the opportunity to burn Mississippi gopher frog habitat (J. Boykin, U.S. Forest Service, pers. comm. 2001).

Habitat fragmentation of the longleaf pine ecosystem, resulting from habitat conversion, threatens the survival of the single remaining Mississippi gopher frog population. Studies have shown that the loss of small, fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, Burkey 1995). As patches of available habitat become separated beyond the dispersal range of a species, populations are more sensitive to genetic, demographic, and environmental variability and may be unable to recover (Gilpin 1987, Sjogren 1991, Blaustein *et al.* 1994). This scenario describes threats to the Mississippi gopher frog. Five historical Mississippi gopher frog localities exist within a 19.2 km (12 mi) radius of the remaining site. Highways have fragmented this area and contributed to habitat degradation. The most recent records of frogs at these locales was in the late 1980s. The planned

construction of highways within 5 km (3.1 mi) both to the north and east of the existing Mississippi gopher frog pond will further isolate the remaining population from other potentially restorable habitat in the DeSoto National Forest. The Biloxi River and additional residential development bound the habitat to the west and south.

Low reproductive potential may also present a threat to the Mississippi gopher frog's continued existence. Studies at the Mississippi breeding site suggest that female Mississippi gopher frogs may not breed until 2 to 3 years of age and may breed only in alternate years and/or have only a single lifetime breeding event (Richter and Seigel 1998b). In addition, survival of juvenile frogs is thought to be extremely low (Richter and Seigel 1998b).

Annual variability in rainfall influences how frequently and how long a pond is appropriate breeding habitat. Reliance on specific weather conditions results in unpredictable breeding events and reduces the likelihood that recruitment will occur every year. No larvae survived to metamorphosis in 3 out of 6 years of the reproductive study of the extant Mississippi gopher frog population (summarized in Richter and Seigel 1998b). In addition, study results indicate that only 1 year out of 6 resulted in the explosive numbers (2,488) of juveniles typical of temporary pond breeding amphibians.

The Mississippi gopher frog population is highly susceptible to genetic isolation, inbreeding, and random demographic events as a result of having only one known breeding site. Long-lasting droughts or frequent floods may negatively affect the population. Although these are natural processes, other threats, such as habitat fragmentation, habitat degradation, and low reproductive potential, may cause the population to decline to the point that it cannot recover.

Pesticides and herbicides pose a threat to amphibians such as the Mississippi gopher frog, because their permeable eggs and skin readily absorb substances from the surrounding aquatic or terrestrial environment (Duellman and Trueb 1986). Aquatic frog larvae are likely more vulnerable than adults to chemical changes in their environment. Negative effects of commonly used pesticides and herbicides on amphibian larvae include delayed metamorphosis, paralysis, reduced growth rates, and mortality (Bishop 1992, Berrill *et al.* 1997, Bridges 1999). Sublethal levels of chemical contamination can alter juvenile recruitment in amphibian populations (Bridges and Semlitsch 2000). Adult gopher frogs are

predaceous and could be affected by pesticides accumulated in their invertebrate prey. Herbicides may alter the density and species composition of vegetation surrounding a breeding site and reduce the number of potential sites for egg deposition, larval development, or shelter for migrating frogs.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Mississippi gopher frog distinct population segment as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. As discussed under Factor A, in spite of extensive surveys throughout the known range of the Mississippi gopher frog, only one population of approximately 100 adult frogs is known to exist. Natural processes, such as genetic isolation, inbreeding, droughts, and floods, pose ongoing threats to this population. Further, residential and commercial development in conjunction with new and expanding highways will increase habitat fragmentation and the likelihood of fire suppression. Both habitat fragmentation and fire suppression pose threats to the frog's remaining habitat. For these reasons, we find that the Mississippi gopher frog distinct population segment is in danger of extinction throughout all or a significant portion of its range and, therefore, endangered status is appropriate.

Critical Habitat

Critical habitat is defined in section 3, paragraph 5(A), of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential to the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. In the proposed rule, we indicated we would make a final critical habitat determination with the final listing determination for the Mississippi gopher frog. However, our budget for listing and critical habitat activities is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the Mississippi gopher frog without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke the protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designation when it is essential that such determinations be promptly published. We will prepare a critical habitat determination for the Mississippi gopher frog in the future at such time as our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is

subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Mississippi gopher frog occurs in the DeSoto National Forest, Federal land administered by the U.S. Forest Service. The U.S. Forest Service will be required to evaluate whether their activities have the potential to adversely affect the Mississippi gopher frog. Their activities that could adversely affect the frog include, but are not limited to, forest management and road construction. Other Federal agencies that may be involved in authorizing, funding, or carrying out activities that may affect the Mississippi gopher frog include the U.S. Army Corps of Engineers, due to their regulation of discharges of dredged or fill material into wetlands under section 404 of the Clean Water Act; the Federal Energy Regulatory Commission, due to their oversight of gas pipeline and powerline rights-of-way; and the Federal Highway Administration, if Federal funds are involved in road construction. However, we have resolved nearly all section 7 consultations so that species are protected and project objectives are met.

We have been working with the U.S. Forest Service since 1988 to protect the last remaining population of the Mississippi gopher frog. We have advised the U.S. Forest Service on protection and management needs for this species. We have supported research on the ecology and life history of this population by projects funded through our cooperative agreement with the State of Mississippi under section 6 of the Act. In addition, we have collaborated with the U.S. Forest Service and the Mississippi Department of Wildlife, Fisheries and Parks on the plans to move gopher tortoises to the existing breeding site to provide additional subterranean refugia via the tortoise's burrows and to create new breeding ponds for the frog. We have drafted a Memorandum of Understanding with our partners and this document is currently under review by all the parties.

Section 9 of the Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of

the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that are or are not likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range.

We believe, based on the best available information, that the following activities are unlikely to result in a violation of section 9 for the Mississippi gopher frog:

- (1) Possession of legally acquired Mississippi gopher frogs;
- (2) Lawful hunting activities;
- (3) Lawful burning of habitat where the Mississippi gopher frog is known to occur, including winter burning;
- (4) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, bedding, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), when the activity is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act; and,

- (5) Conversion of longleaf pine habitat where the Mississippi gopher frog does not occur.

We believe the following activities could potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

- (1) Unauthorized killing, collecting, handling, or harassing of individual Mississippi gopher frogs, including unauthorized use of off-road vehicles in the wetland basins of known breeding sites of the species.

- (2) Possessing, selling, transporting, or shipping illegally taken Mississippi gopher frogs;

- (3) Unauthorized destruction or alteration of the hydrology of the frog's

wetland breeding sites. These actions would include activities that alter the localized watershed that supplies water to the ponds or alter the water-holding capacity at existing breeding sites. Unauthorized actions that could alter the hydrology of breeding sites would include discharge of fill material, draining, ditching, bedding, clear-cutting within the wetland, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), and unauthorized use of vehicles within the wetland; and,

- (4) Discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, pesticides, and gasoline) into isolated wetlands or upland habitats supporting the species. This includes any application of terrestrial or aquatic pesticide that results in the mortality of adult frogs or tadpoles, regardless if the pesticide was applied in accordance with the labeling instructions. This includes drift from aerial applications and runoff from surface applications.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public. You should direct questions regarding whether specific activities may constitute a violation of section 9 to the Field Supervisor of our Mississippi Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. For endangered species, you may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. You may request copies of the regulations regarding listed wildlife from, and address questions about prohibitions and permits to, the U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 200, Atlanta, Georgia 30345, or telephone 404/679-4176; facsimile 404/679-7081.

National Environmental Policy Act

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental

Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

You may request a list of all references cited in this document, as well as others, from the Mississippi Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Linda V. LaClaire, Mississippi Field Office (see **ADDRESSES** section) (601/321-1126).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, Mississippi gopher.	<i>Rana capitol sevosa</i>	U.S.A. (AL, FL, LA, MS).	Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	E	718	NA	NA
*	*	*	*	*	*		*

Dated: November 26, 2001.
Marshall P. Jones, Jr.,
Acting Director, Fish and Wildlife Service.
 [FR Doc. 01-29923 Filed 12-3-01; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 112801A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2001 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by November 30, 2001. Therefore, the General category fishery will be closed effective 11:30 p.m. on November 30, 2001. This action is being taken to prevent overharvest of the total adjusted General category quota of 919.7 metric tons (mt).

DATES: Effective 11:30 p.m. local time on November 30, 2001, through May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of

Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27 (a)(1). The 2001 fishing year General category quota and effort control specifications were issued on July 13, 2001 (66 FR 37421, July 18, 2001).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The adjusted 2001 fishing year BFT quota specifications issued pursuant to § 635.27 set a total adjusted General category quota of 919.7 mt, including the New York bight set-aside, of large medium and giant BFT to be harvested from the regulatory area during the 2001 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by November 30, 2001. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time November 30, 2001. The intent of this closure is to prevent overharvest of the quota established for the General category.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26. Vessels permitted in the Charter/Headboat category may

continue to fish for and retain BFT under the Angling category regulations. The current Angling category daily retention limit, effective from November 1, 2001 through May 31, 2002 is one large school or small medium BFT (measuring from 47 to less than 73 inches (from 69 to less than 119 cm) curved fork length) (66 FR 31844, June 13, 2001). In addition, Angling and Charter/Headboat category vessels may retain one large medium or giant "trophy" BFT, measuring 73 inches (185 cm) or greater, per fishing year (June 1 through May 31).

Classification

This action is taken under § 635.28 (a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 28, 2001.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
 [FR Doc. 01-29981 Filed 11-29-01; 4:00 pm]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010208032-1109-02; I.D. 112601D]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest; closure.