

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, waste treatment and disposal.

Dated: February 11, 2002.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

[FR Doc. 02-4405 Filed 2-22-02; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 12-month Finding for a Petition To List the Big Cypress Fox Squirrel

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Big Cypress fox squirrel (*Sciurus niger avicennia*) under the Endangered Species Act of 1973, as amended (Act). After a review of all available scientific and commercial information, we find that listing of the Big Cypress fox squirrel is not warranted at this time. We will continue to seek new information on the biology, ecology, distribution, and habitat of the Big Cypress fox squirrel, as well as potential threats to its continued existence. If additional data become available in the future, we may reassess the need for listing.

**DATES:** The finding announced in this document was made on February 15, 2002.

**ADDRESSES:** The complete file for this finding, including comments and information submitted, is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960.

**FOR FURTHER INFORMATION CONTACT:** David Martin (see **ADDRESSES** section; telephone 561/562-3909 extension 230; facsimile 561/562-4288).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, we must make a finding within 12 months of the date of receipt of the petition as to whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Upon making a 12-month finding, we must promptly publish notice of such finding in the **Federal Register**.

The Big Cypress fox squirrel (*Sciurus niger avicennia*) is a subspecies of the fox squirrel (*Sciurus niger*), which occurs over most of the eastern and central United States, extending into south-central Canada (Koprowski 1994). The Big Cypress fox squirrel is restricted to southwest Florida. Its historic range was southwest Florida from south of the Caloosahatchee River, west of the Everglades, to as far south as Cape Sable (Williams and Humphrey 1979, Moore 1956). Despite human development and changes in land use in the southwestern Florida peninsula, the current range of the Big Cypress fox squirrel, based on its description in the best available information, is essentially unchanged (Humphrey and Jodice 1992, Williams and Humphrey 1979, and Moore 1956). Big Cypress fox squirrels have been reported present in Hendry and Lee Counties south of the Caloosahatchee River, Collier County, the mainland of Monroe County, and extreme western Miami-Dade County (a strip of land on the western side of the true Everglades, largely in Big Cypress National Preserve) (Humphrey and Jodice 1992, Jodice 1990, Wooding 1990, and Williams and Humphrey 1979). The Big Cypress fox squirrel is, however, absent from a few areas of its historic range like the Cape Sable coast of Everglades National Park in the vicinity of Flamingo, Monroe County. (Wooding

1990, Jodice 1990, Humphrey and Jodice 1992).

Fox squirrel research specific to Florida was only begun in the 1950s (Wooding 1990). Therefore, very little information regarding Big Cypress fox squirrels is available from prior to that time. Studies of the Big Cypress fox squirrel in its natural habitat are virtually nonexistent. Available reports specific to the Big Cypress fox squirrel provide limited details regarding the biology of, population status of, and threats faced by this fox squirrel range-wide. In addition, no recent studies or evaluations of the Big Cypress fox squirrel have been conducted. The only recent analysis was conducted on potential Big Cypress fox squirrel habitat (Wilson/Miller Inc. 2002). The previous range-wide report by Cox *et al.* (1994) on habitat used 1985-1989 Landsat imagery.

The State has protected the Big Cypress fox squirrel since 1973, when the Florida Fish and Wildlife Commission (Commission) listed it as endangered. The State reclassified the Big Cypress fox squirrel to threatened in 1979; the species retained protection as a nongame species. As a threatened species, Big Cypress fox squirrels and their nests cannot be taken or possessed without authorization from the Commission.

Our involvement with the Big Cypress fox squirrel began when we identified the Big Cypress fox squirrel as a category 2 candidate species in Notices of Review published in the **Federal Register** on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Prior to 1996, a category 2 species was one that we were considering for possible addition to the Federal Lists of Endangered and Threatened Wildlife and Plants, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. We identified the Big Cypress fox squirrel's status as "D" or "Declining" in the 1991 and 1994 Notices of Review. This designation indicates decreasing numbers or increasing threats. In addition, we identified a priority for this subspecies and most of our other category 2 candidates during the completion of the 1991 and 1994 Notices of Review. In 1991, the Big Cypress fox squirrel was identified as a priority 9. Based on the listing priority system detailed in the **Federal Register** in 1983 (48 FR 43103), this priority indicated that the Big Cypress fox squirrel faced a moderate to low magnitude of imminent threats. In

1994, the Big Cypress fox squirrel was identified as a low-priority category 2 candidate. We discontinued designation of category 2 species in the February 28, 1996, Notice of Review (61 FR 7596). This notice redefined candidate to include only species for which we have information needed to propose them for listing.

On January 5, 1998, we received a petition from the Biodiversity Legal Foundation, Sidney Maddock, Florida Biodiversity Project, Brian Scherf, and Rosalyn Scherf, to list the Big Cypress fox squirrel as a threatened species and designate critical habitat concurrently with listing. The petitioners stated that the Big Cypress fox squirrel is threatened by several factors, including habitat loss, fragmentation, and modification; exclusion of fire; predation; road mortality; and poaching. After considering the petition and reviewing all available scientific and commercial information, we made a 90-day finding that the petition to list the Big Cypress fox squirrel presented substantial information indicating that the requested action may be warranted. We published a notice announcing our finding in the **Federal Register** on September 9, 1998 (63 FR 48165), and initiated a status review on the subspecies.

On December 11, 2000, the petitioners filed a complaint in the U.S. District Court for the Southern District of Florida, Key West Division, against the U.S. Fish and Wildlife Service (Service), the Director of the Service, and the Secretary of the Department of the Interior, alleging the Service failed to make a 12-month finding on the petition to list the Big Cypress fox squirrel. On September 25, 2001, the U.S. Department of Justice entered into a settlement agreement with the petitioners in which the Service agreed to complete a 12-month finding for the Big Cypress fox squirrel and submit this finding to the **Federal Register** by February 18, 2002.

#### **Summary of Factors Affecting the Species**

Under Section 4(a)(1) of the Act, a species may be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, sporting, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data

available and after taking into account any efforts being made by any State or foreign nation to protect the species. We have examined each of the five listing factors under the Act for their application to the Big Cypress fox squirrel as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Big Cypress fox squirrel's current range, as described in the best available information, remains essentially unchanged (Humphrey and Jodice 1992, Williams and Humphrey 1979, Moore 1956) from its historic range. This subspecies of fox squirrel has been found to use most types of forests within its range, including open pinelands (wet or dry), mixed open pine-cypress, mixed open pine hardwoods, open hardwood, seasonally used cypress strand and edges of cypress dome strands, interiors of cypress domes and strands, prairie with interspersed pines or adjacent pineland, live oak savannas, and mangrove, cypress, and hardwood swamps. Although many questions remain about habitat use and requirements for this squirrel, the Big Cypress fox squirrel seems to prefer an open understory in the habitat types that it frequents (Ditigen 1999, Wooding 1990, and Brown 1978). We also believe the Big Cypress fox squirrel is opportunistic in its use of available habitat. For example, in addition to the habitat types listed above, Big Cypress fox squirrels also persist in urban settings where native vegetation is present (Ditigen 1999, Cox et al. 1994, and Williams and Humphrey 1979). These settings include golf courses, city parks, and residential areas that contain or have adjacent pine flatwoods, upland fringes of cypress domes, and tropical hardwood forests.

Habitat for the Big Cypress fox squirrel exists on both private land and conservation lands within this subspecies' range. We provide a brief county-by-county analysis:

#### **Hendry County**

The land ownership is mostly private and land use is mainly agriculture and ranching. Most Big Cypress fox squirrel habitat is in the northwestern part of the county on several ranches. These areas are all medium-sized (1,000–4,000 ha) with existing Big Cypress fox squirrel populations (Wooding 1997). Fox squirrels use both pine and cypress habitats, as well as improved cattle pastures that have live oaks, on ranchlands in Hendry County (Williams and Humphrey 1979). Okaloacoochee Slough State Forest is also in this county. The rate of population growth

for Hendry County as estimated and projected gradually decreases between 1990 and 2030. (For all human population figures, 1990 and 2000 figures from U.S. Census, available at <http://swfloridabusiness.com>; "Projections of Florida Population by County, 2000–2030," produced by the Bureau of Economic and Business Research, University of Florida. Data presented at website of Southwest Florida Regional Planning Council (see Literature Cited)).

#### **Lee County**

In eastern Lee County, land ownership is similar to Hendry County. A notable Big Cypress fox squirrel population in a medium-sized area of habitat was found on a ranch in this part of the county (Wooding 1997). Wooding also reported Big Cypress fox squirrels from golf courses and ranchettes adjacent to this area. Western Lee County is mostly urban or residential in and near Ft. Myers and Naples, including the corridor of I–75. However, areas of habitat that Big Cypress fox squirrels use exist in this area, like Estero Bay State Buffer Preserve and Koreshan State Historic Site. Lee County, between 2000 and 2010, will gain the greatest number of people (98,412) of all the counties within the range of the Big Cypress fox squirrel. We expect this population growth will be focused around the I–75 corridor.

#### **Collier County**

The northwestern edge of Collier County is similar to western Lee County, with mostly urban or residential areas in and near the Naples area and the end of the I–75 corridor. We expect population growth in the county to be focused in this area. Wooding (1997) found Big Cypress fox squirrels to be common on some golf courses around Naples. In addition, Rookery Bay National Estuarine Research Reserve, which has reported fox squirrels (Florida Department of Environmental Protection 2001a), is in this area. The remainder of Collier County to the south and east is mostly in public ownership as conservation lands. Big Cypress fox squirrels have been reported from all conservation lands in this county and one ranch.

#### **Monroe and Miami-Dade Counties**

Monroe County and extreme western Miami-Dade County are largely composed of Everglades National Park, where the squirrel is a resident and can be found in mangroves, pinelands, and cypress swamp (<http://www.nps.gov/ever/eco/mammals.htm>). We believe that residential and urban land uses in

this part of the Big Cypress fox squirrel's range are insignificant.

### Summary

Within the geographic range of the Big Cypress fox squirrel, 58 percent of the potential habitat for this subspecies exists in conservation lands (551,855 ac) and a little under 400,000 ac exists on nonconservation lands, for a total of 949,000 ac (WilsonMiller Inc. 2002). Big Cypress fox squirrels occur in nearly all conservation lands within their range.

Recently, WilsonMiller Inc. (2002) evaluated the amount of potential habitat available to the Big Cypress fox squirrel in southwest Florida, especially in Collier, Hendry, Lee, and Monroe counties. It noted that the basis of Cox et al.'s (1994) report, especially their choice to use pineland and dry prairie as the principal components of Big Cypress fox squirrel habitat and their subsequent analysis based on these cover types, was inconsistent with Big Cypress fox squirrel habitat types described in current literature (Humphrey and Jodice 1992), did not fully account for the occurrence data reported by Williams and Humphrey 1979, and underestimated the total amount of Big Cypress fox squirrel potential habitat. In its analysis, WilsonMiller Inc. used 1995 data to map, with a minimum map unit size of 5 acres, habitat types utilized by the fox squirrel and consistent with Humphrey and Jodice (1992). The mapped results indicate that more than twice as much Big Cypress fox squirrel potential habitat (949,000 ac) exists than what was estimated by Cox et al. (about 414,000 ac). The WilsonMiller Inc. map also indicates large, interconnected, forested patches of Big Cypress fox squirrel habitat that may allow movement and genetic interchange. According to WilsonMiller Inc., its analysis and map correlates well with available occurrence data for the Big Cypress fox squirrel and includes conservation lands with known Big Cypress fox squirrel residents and habitat that was not accounted for by Cox et al. (1994).

In general, we believe—based on WilsonMiller Inc.'s (2002) study—that the Big Cypress fox squirrel has more potential habitat than outlined by Cox et al. (1994) (over 900,000 acres) and has additional larger patches of habitat than those classified by Wooding (1997). We also believe similar to Wooding (1997) that smaller, isolated, fragmented pockets of squirrels are surviving in strips and patches of habitat, such as golf courses and fringes of residential areas. We believe the Big Cypress fox squirrel has been difficult to assess in its

range. Among other reasons, native fox squirrel habitat is often too dense to make behavioral observations (or sightings) from farther away than a few meters. (Maehr 1993)

We believe the majority of population growth in the Big Cypress fox squirrel's range will occur in or near the I-75 corridor, mostly in and around the south Ft. Myers and Naples areas. Growth and development will generally occur west of the majority of Big Cypress fox squirrel potential habitat (WilsonMiller Inc. 2002). Habitat important to the Big Cypress fox squirrel in this area is under the greatest pressure to be developed for residential or commercial purposes. The highest density of roads in the Big Cypress fox squirrel's range occurs in this area. Roads, depending on the type, level of traffic, and location, may fragment Big Cypress fox squirrel habitat or hinder squirrel movement. However, no research has been conducted to determine to what degree roads may fragment squirrel habitat or hinder squirrel movement. We cannot conclude based on current information if road fragmentation constitutes a threat to this subspecies' habitat. Based on recorded sightings, we do believe squirrels cross some roads and are found near them. An area around the I-75 corridor that has been heavily studied includes golf courses, which have been found to provide a better green space than most development projects, but Big Cypress fox squirrels will persist on them only as long as suitable native habitat is contiguous to the golf courses (Ditigen 1999).

A large portion of the Big Cypress fox squirrel's range consists of lands purchased for conservation purposes. These lands are mostly in Collier, Monroe, and extreme western Miami-Dade Counties and are protected from development and have a low density of roads bisecting natural habitat. Our available information does not conclusively suggest that current management practices on these conservation lands constitute a threat to the Big Cypress fox squirrel. For example, Humphrey and Jodice (1992) explain that ground fires apparently are valuable to the habitats of Big Cypress fox squirrels because they slow plant succession, but this specific relationship has not been studied. We are encouraged by the efforts of both State and Federal agencies in fire planning and prescribed burning. This should result in a more open understory for the Big Cypress fox squirrel if burning is not hampered by drought conditions for continuous years.

Hendry County and eastern Lee County, where Wooding (1997) found the largest areas of Big Cypress fox squirrel habitat and where WilsonMiller Inc. (2002) found only 10 percent of the total potential Big Cypress fox squirrel habitat, are under private ownership and are not under high pressure to be developed for residential purposes (though native Big Cypress fox squirrel habitat here may be converted for different land uses, such as citrus production). Big Cypress fox squirrels have been reported to occur on ranches. In fact, much of the habitat described by Wooding (1997) is on ranches in southern Florida, and grazing by cattle may enhance the understory, improving the habitat for squirrels (Williams and Humphrey 1979). Even if we assume that Big Cypress fox squirrels are not able to use lands converted for citrus production or other agricultural purposes, the best available information does not indicate that the rate of conversion of native habitat in Hendry County poses a threat to this subspecies. According to WilsonMiller (2002), Collier, Lee, and Monroe counties, which contain 90 percent of the total Big Cypress fox squirrel habitat, nearly all of which is in conservation lands, have not undergone a significant agricultural expansion. Therefore, we also cannot conclude, based on the best available information, that the rate of land conversion in these counties poses a threat to this subspecies.

Mining for rock and sand also occurs in Collier and Lee Counties. Some of these operations destroy pine flatwoods or mixed pine-cypress areas. In some cases, it may be difficult to separate losses to mining from those due to agriculture, because lands are often cleared under agricultural permits prior to mining. Mines are an allowed use in agriculturally zoned areas in Lee and Collier Counties (K. Dryden and A. Eller, Fish and Wildlife Service, personal communication 2000). Mining is not a compatible land use if it destroys native squirrel habitat.

Our best available information indicates the Big Cypress fox squirrel has lost habitat in some areas to urbanization, agriculture, and mining. Nevertheless, conservation lands do cover 58 percent of this subspecies' historic range, and areas of habitat exist on private ranches and other urban areas. Based on the best available information, potential Big Cypress fox squirrel habitat appears to be more than twice what was previously estimated. In addition, the Big Cypress fox squirrel still occupies most of its historic range in southwest Florida and has shown itself to be adaptable, by residing in

altered habitats such as golf courses and residential areas where native habitat is preserved, and mobile in its native habitat. Furthermore, quantitative or substantial information on the Big Cypress fox squirrel, its status, and its habitat use and requirements is lacking. Therefore, based on uncertainties about how this fox squirrel uses its native habitat and on the actual status of the Big Cypress fox squirrel population, and due to the amount of available potential habitat to this fox squirrel, we cannot conclude that the Big Cypress fox squirrel is threatened or endangered due to the destruction or curtailment of its habitat or range.

2. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Big Cypress fox squirrel has been protected from hunting since 1973, when the State listed it as an endangered species. The State later reclassified the Big Cypress fox squirrel to threatened in 1979, but it retained protection as a nongame species. Elsewhere in Florida, fox squirrel hunting formerly was a popular activity, but interest dropped off (Wooding 1990), which is one factor that led to the closure of fox squirrel hunting statewide as of the 1996–1997 hunting season (Wooding 1997). Despite concerns that “people were still shooting” fox squirrels as discussed in the petition, we do not have evidence that poaching of fox squirrels constitutes a threat to this subspecies. Also, no information is available to confirm that Big Cypress fox squirrel populations may have suffered long-term reduction in size due to legal hunting.

3. *Disease or predation.* A skin fungus has been identified as a source of mortality for Big Cypress fox squirrels found in urban areas. During Ditgen’s (1999) study of fox squirrels on golf courses in southwest Florida, she noted at least eight individuals with a fungus causing heavy fur loss and a blackened crusting of the skin. Ditgen reported that two Big Cypress fox squirrels died as a result of the skin fungus during her study. One collared individual survived the fungus infestation and regained a thick, healthy coat. No researchers have suggested that this fungus threatens urban Big Cypress fox squirrel populations. A pox outbreak was reported in eight counties in southeast and central Florida outside the range of the Big Cypress fox squirrel during the 1990’s. Although no cases have been reported affecting Big Cypress fox squirrels, one infected Sherman’s fox squirrel was observed (T. Regen, Florida Fish and Wildlife Conservation Commission, personal communication 1999). Mosquitoes transmit the disease,

which only affects squirrels. No known treatment or vaccine is available. At this time, we have no evidence that pox is likely to pose a threat to the Big Cypress fox squirrel. In addition, Big Cypress fox squirrels, like other fox squirrels, are susceptible to parasites, but we have no evidence that parasites pose a threat to the Big Cypress fox squirrel. As the petitioners state, based on a study of fox squirrel parasites, the prevalences and intensities were much lower in Big Cypress fox squirrels.

Predation may limit the sizes of Big Cypress fox squirrel populations. All fox squirrels spend much of their time on the ground, where they are more vulnerable to predation than when in trees (Humphrey and Jodice 1992). Known predators of Big Cypress fox squirrels include bobcats (*Felis rufus*), gray and red foxes (*Vulpes vulpes*), and domestic cats (*Felis sylvestris*) (Ditgen 1999). Small mammals are inherently subject to predation. However, the best available information does not lead us to the conclusion that disease or predation has caused the species to meet the definition of threatened or endangered.

4. *Inadequacy of existing regulatory mechanisms.* The Big Cypress fox squirrel is listed as threatened by the Florida Fish and Wildlife Conservation Commission (Commission) under Rule 68A–27.004 (formerly 39–27.004) of the Florida Administrative Code. This rule provides that no one may take, possess, transport, molest, harass, or sell any threatened species, their parts, or their nests except as authorized by a permit from the Commission. Permits are issued for conservation purposes or scientific purposes only after the applicant shows the activity will not have a negative impact on the survival of the threatened species. The Commission typically has not authorized the take of animals, but does authorize take of nest trees and nests outside of nesting season when the nest is not active (J. Beever, Florida Fish and Wildlife Conservation Commission, personal communication 2000). The Commission also provides technical assistance and recommendations to other government agencies that regulate development activities in the Big Cypress fox squirrel range. According to Section 372.0725 of the Florida Statutes, it is unlawful for anyone to kill or wound a Big Cypress fox squirrel or to intentionally destroy the nest of a Big Cypress fox squirrel, except as provided for in the rules by the Commission. Most other State agencies have not promulgated specific regulations to protect this or other animals, but instead help enforce the Commission’s

regulatory protections for wildlife. On many State lands managed by agencies other than the Commission, the hunting season, including permits, is managed by the Commission under its Wildlife Management Area program. Such properties include Picayune Strand and Okaloacoochee State Forests. On these properties, the Commission has the lead responsibility for activities that involve the take of wildlife.

Under the Environmental Resources Permitting program (ERP) implemented by the South Florida Water Management District (SFLWMD), Big Cypress fox squirrels and Big Cypress fox squirrel habitat on private lands receive protection. The Big Cypress fox squirrel has been designated under this program as an aquatic or wetland-dependent species that uses upland habitat for nesting. In order to get a permit from SFLWMD to begin an activity, like converting land for agricultural purposes, the landowner must provide assurances that the activity will not adversely impact the value of wetlands and other surface waters for Big Cypress fox squirrels, the value of uplands for nesting (foraging areas or wildlife corridors are not included), and will not cause adverse secondary impacts to the Big Cypress fox squirrel. (Basis of Review for ERP applications, January 2001, as referenced in Chapter 40E–4, Florida Administrative Code). As such, its upland nest and wetland areas receive consideration during the wetland permitting review. Projects where this subspecies or its habitat have been observed through surveys are required to preserve onsite habitat, implement a Big Cypress fox squirrel management plan, and minimize the spread of exotic plants onsite.

On all properties under jurisdiction of the Florida Division of Recreation and Parks, collection of specimens is allowed only by permit. This includes Collier-Seminole State Park and Fakahatchee Strand State Preserve Park. This prohibition is in addition to the statewide prohibition of take of Big Cypress fox squirrels imposed by the Commission. Other State land-managing agencies have similar authority to regulate public access and to manage the vegetation and other natural resources. Lands managed by the Florida Department of Environmental Protection (FLDEP) are protected by State park regulations. Also, Big Cypress fox squirrels and other resources on Federal conservation lands are protected by rules imposed by land management agencies, such as the National Park Service for Big Cypress National Preserve, to generally protect resources. In both cases, use of motor vehicles is

regulated or restricted, and take of Big Cypress fox squirrels is prohibited.

Substantial areas of Big Cypress fox squirrel habitat are on conservation lands or on private lands not currently threatened by development. Regulatory mechanisms exist that prevent direct take, and ERP rules provide some protection to the species' habitat. Therefore, the available information does not lead us to conclude that the species is threatened or endangered due to inadequacy of existing regulatory mechanisms.

5. *Other natural or manmade factors affecting its continued existence.* Fox squirrel reproduction varies greatly from year to year in response to food supplies. There are few data on how Big Cypress fox squirrels utilize their native habitats and on how many squirrels exist in these habitats. Based on the best available information, we do not believe that food availability is currently a threat that could lead the fox squirrel toward extinction.

Based on current information and recorded sightings, we believe Big Cypress fox squirrels cross roads and are found near them. Road mortality is documented for the Big Cypress fox squirrel, but a very large portion of this subspecies' habitat has few, if any roads, so road mortality in these areas is likely to be minimal. While road mortality may cause declines in numbers of squirrels in certain urban areas or other areas with roads, in the absence of demographic data, we have no evidence that the subspecies is threatened by road mortality.

No studies have documented the effects of pesticides on Big Cypress fox squirrels, and we have no evidence that poisoning is a major cause of mortality for big Cypress fox squirrels on golf courses. Poisoning has not been documented sufficiently for us to consider it a threat to the continued existence of the species.

Hurricanes in 1935 (Labor Day), 1960 (Donna), and 1992 (Andrew) extensively damaged squirrel habitat (Moore 1956, Brown 1971). The 1960 hurricane toppled nearly all the suitable nesting trees in Everglades City and virtually eliminated a Big Cypress fox squirrel population that inhabited a public park (Brown 1971, Humphrey and Jodice 1992). None of the three catastrophic hurricanes since 1930 impacted more than a fraction of the squirrel's range. The range of the subspecies is large enough to ensure that catastrophic hurricane damage is unlikely throughout the range in any 1 year. The Big Cypress fox squirrel and other southeastern fox squirrel subspecies have evolved under conditions of

periodic hurricane disturbances, the most important of which for fox squirrels is probably large-scale destruction of trees. Therefore, we do not believe that hurricanes are a threat to the continued existence of the Big Cypress fox squirrel.

#### Finding

We have reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with species experts and other individuals familiar with the Big Cypress fox squirrel. On the basis of the best available scientific and commercial information, we find that the petitioned action is not warranted at this time. The status review revealed a lack of reliable data and information on the current status and any trend in density and abundance of Big Cypress fox squirrels in natural or seminatural habitats over time. In particular, we have no reliable information on the sizes of Big Cypress fox squirrel populations on conservation lands or private lands in southwest Florida, and the most recent information on Big Cypress fox squirrels on privately owned ranches in Lee and Hendry Counties is from a very brief survey conducted in 1989 (Wooding 1997). Studies as described in this finding and in our available literature indicate the Big Cypress fox squirrel has lost habitat in some areas to urbanization, agriculture, and mining. Nevertheless, conservation lands cover 58 percent of this subspecies' historic range, and areas of habitat exist on private ranches and other urban areas.

Based on the best available information, potential Big Cypress fox squirrel habitat appears to be more than twice what was previously estimated. In addition, the Big Cypress fox squirrel still occupies most of its historic range in southwest Florida and has shown itself to be adaptable, by residing in altered habitats such as golf courses and residential areas where native habitat is preserved, and mobile in its native habitat. Furthermore, quantitative or substantial information on the Big Cypress fox squirrel, its status, and its habitat use and requirements is lacking. Therefore, based on uncertainties about how this fox squirrel uses its native habitat and on the actual status of the Big Cypress fox squirrel population, and due to the amount of available potential habitat to this fox squirrel, we cannot conclude that the Big Cypress fox squirrel is threatened or endangered due to the destruction or curtailment of its habitat or range.

We found no evidence that the species is threatened by overutilization for commercial, recreational, or

educational purposes (i.e., poaching), nor by disease or predation. We also have no data to show that inadequacies in the existing regulatory mechanisms may threaten the survival of the Big Cypress fox squirrel. Thus, we cannot conclude that the Big Cypress fox squirrel qualifies for listing as an endangered or threatened species due to any of the five factors as defined in the Act. Because the available information does not demonstrate that the Big Cypress fox squirrel meets the definition of threatened or endangered, we find that listing the Big Cypress fox squirrel (*Sciurus niger avicennia*) as threatened is not warranted at the present time.

#### References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the South Florida Ecological Services Office (see **ADDRESSES** section).

#### Author

The primary author of this document is David L. Martin (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 15, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02-4336 Filed 2-22-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 011018255-1255-01; I.D. 071001F]

RIN 0648-AO51

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 11

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 11 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 11), as prepared and submitted by the Gulf of Mexico Fishery Management Council. This proposed