



**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 23**

**[Docket No. FWS–HQ–ES–2013–0052]**

**RIN 1018–AZ53**

**Notice of Intent to Include Four Native U.S. Freshwater Turtle Species in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

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

**ACTION:** Proposed Rule: Notice of Intent to Amend CITES Appendix III

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to include the common snapping turtle (*Chelydra serpentina*), Florida softshell turtle (*Apalone ferox*), smooth softshell turtle (*Apalone mutica*), and spiny softshell turtle (*Apalone spinifera*) in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention), including live and dead whole specimens, and all readily recognizable parts, products, and derivatives. Listing these four native U.S. freshwater turtle species (including their subspecies, except *Apalone spinifera atra*, which is already included in Appendix I of CITES) in Appendix III of CITES is necessary to allow us to adequately monitor international trade in these species; to determine whether exports are occurring legally, with respect to State and Federal law; and to determine whether further measures under CITES or other laws are required to conserve these species.

**DATES:** To ensure that we are able to consider your comment on this proposed rulemaking action, you must send it by [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–HQ–ES–2013–0052.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2013–0052; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Craig Hoover, Chief, Wildlife Trade and Conservation Branch, Division of Management Authority, U.S. Fish and Wildlife Service Headquarters, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703–358–2095; facsimile 703–358–2298. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We intend that any final action resulting from this proposal will be based on accurate information and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) Biological, trade, or other relevant data concerning any threats (or lack thereof) to these species (including subspecies) and regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population size of these species (including subspecies).

(3) Any information on the biological or ecological requirements of these species (including subspecies).

(4) Any information regarding legal or illegal collection of or trade in these species (including subspecies).

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not consider comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via [http:// www.regulations.gov](http://www.regulations.gov), your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at: U.S. Fish and Wildlife Service Headquarters, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703–358–2095.

## **Background**

CITES, an international treaty, regulates the import, export, re-export, and introduction from the sea of certain animal and plant species. CITES was negotiated in 1973 in Washington, D.C., at a conference attended by delegations from 80 countries. The United States ratified the Convention on September 13, 1973, and it entered into force on July 1, 1975, after it had been ratified by the required 10 countries. Currently 180 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

The text of the Convention and the official list of all species included in its three Appendices are available from the CITES Secretariat's website at <http://www.cites.org> or upon request from the Division of Management Authority at the address provided in **FOR FURTHER INFORMATION CONTACT** above.

Section 8A of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the U.S. Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Convention and on amendments to the list of species in the CITES Appendices. The last major revision of U.S. CITES regulations was in 2014 (79 FR 30399, May 27, 2014) and incorporated provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the fifteenth meeting (CoP15), which took place in 2010. In 2008, through a

direct final rule, we incorporated certain provisions adopted at CoP14 regarding international trade in sturgeon caviar (73 FR 40983, July 17, 2008).

The Service's International Wildlife Trade Program convened a freshwater turtle workshop in St. Louis in September 2010 to discuss the pressing management, regulatory, scientific, and enforcement needs associated with the harvest and trade of freshwater turtles in the United States. As a follow up to one of the recommendations put forth at the St Louis Workshop in 2010 the Service hosted a workshop in Baton Rouge, LA in November 2011 for all 16 States with turtle farms to develop best management practices for turtle farms operating in the United States. Information on these workshops can be found on our website at <http://www.fws.gov/international/animals/freshwater-turtles.html> or from DMA (see **FOR FURTHER INFORMATION CONTACT**).

#### CITES Appendices

Species covered by the Convention are listed in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that must be regulated so that trade in other listed species may be brought under effective control (e.g., because of similarity of appearance to other listed species). Appendix III includes native species, identified by any Party, that are regulated to prevent or restrict exploitation, where the Party requests the help of other Parties to monitor and control the trade of the species.

To include a species in or remove a species from Appendices I or II, a Party must propose an amendment to the Appendices for consideration at a meeting of the CoP. The adoption of such a proposal requires approval of at least two-thirds of the Parties present and voting. However, a Party may add a native species to Appendix III independently at any time, without the vote of other Parties, under Articles II and XVI of the Convention. Likewise, if the status of an Appendix-III species improves or new information shows that it no longer needs to be listed, the listing country can remove the species from Appendix III without consulting the other CITES Parties.

Inclusion of native U.S. species in Appendix III provides the following benefits:

(1) An Appendix-III listing ensures the assistance of the other CITES Parties, through the implementation of CITES permitting requirements in controlling international trade in these species.

(2) Listing these species in Appendix III enhances the enforcement of State and Federal conservation measures enacted for the species by regulating international trade in the species. Shipments containing CITES-listed species receive greater scrutiny from border officials in both the exporting and importing countries. When a shipment containing a non-listed species is exported from the United States, it is a lower inspection priority for the Service than a shipment containing a CITES-listed species. Many foreign countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these importing countries the legal basis to inspect such shipments, and to deal with CITES and national violations when they detect them.

(3) Another practical outcome of listing a species in Appendix III is that better records are kept and international trade in the species is better monitored. We will gain and share improved information on such trade with State fish and wildlife agencies, and others who have jurisdiction over resident populations of the Appendix-III species. They will then be able to better determine the impact of trade on the species and the effectiveness of existing State management activities, regulations, and cooperative efforts. International trade data and other relevant information gathered as a result of an Appendix-III listing will help policymakers determine whether we should propose the species for inclusion in Appendix II, or remove it from or retain it in Appendix III.

(4) When any live CITES-listed species (including an Appendix-III species) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival and health of the animals when they are shipped internationally.

#### Criteria for Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of CITES states that “Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.” Article XVI, paragraph 1, of the Convention states further that “any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for

inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I.”

At the ninth meeting of the Conference of the Parties to CITES (CoP9), held in the United States in 1994, the Parties adopted Resolution Conf. 9.25 (amended at the 10<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> meetings of the CoP), which provides further guidance to Parties for the listing of their native species in Appendix III. The Resolution, which is the basis for our criteria for listing species in Appendix III provided in our regulations at 50 CFR 23.90(c), recommends that a Party:

(a) Ensure that (i) the species is native to its country; (ii) its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade, or possession and provisions for confiscation; and (iii) its national enforcement measures are adequate to implement these regulations;

(b) Determine that, notwithstanding these regulations and measures, circumstances indicate that the cooperation of the Parties is needed to control illegal trade; and

(c) Inform the Management Authorities of other range States, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion.

Therefore, we apply the following criteria in deciding to list U.S. species in Appendix III as outlined in 50 CFR 23.90(c):

(1) The species must be native to the United States.

(2) The species must be protected under State, Tribal, or Federal regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and circumstances indicate that the cooperation of other Parties would help to control illegal trade.

(4) We must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that we are considering the listing and seek their opinions on the potential effects of the listing.

CITES does not allow the exclusion of particular parts or derivatives for any species listed in Appendix I or the exclusion of parts or derivatives of animal species in Appendix II. However, Article XVI of the Convention allows for either all specimens of a species or only certain identifiable parts or derivatives of a specimen (in addition to whole specimens) to be listed in Appendix III. For example, the current listing in CITES Appendix III of Cedrela odorata (Spanish cedar) by Brazil, Bolivia, Colombia, Guatemala, and Peru includes only logs, sawn wood, and veneer sheets. Therefore, if the criteria listed above are met, we could designate specific parts or products (e.g., turtle meat) of a species for inclusion in Appendix III, rather than inclusion of all parts and derivatives, if we inform the CITES Secretariat of the limited listing.

#### U.S. Procedure and Submission of Information to the CITES Secretariat

For this listing proposal of four native U.S. freshwater turtle species, we will consult with and solicit comments from all States and Tribes where the species occurs and all other

range countries pursuant to 50 CFR 23.90(e)(1). After reviewing the information submitted in response to this proposal, we will make a final decision on whether to include these four species in CITES Appendix III. We will publish our decision in the **Federal Register**. If we decide to list these four species in CITES Appendix III, we will notify the CITES Secretariat. The listings will take effect 90 days after the CITES Secretariat informs the CITES Parties of the listings.

#### Change in Status of Appendix-III Species Based on New Information

We monitor the trade of all species listed in Appendix III by the United States and periodically evaluate whether each species continues to meet the listing criteria contained in 50 CFR 23.90(c). If the following occurs, we will consider removing the species from Appendix III: (1) We determine that international trade in the species is very limited (as a general guide, fewer than 5 shipments per year or fewer than 100 individual animals or plants); and (2) we determine that trade (legal and illegal) in the species is not a concern. If, after monitoring the trade of any species listed in Appendix III by the United States and evaluating its status, we determine that the species meets the CITES criteria for listing in Appendix I or II, based on the criteria contained in 50 CFR 23.89, we will consider whether to propose the species for inclusion in Appendix I or II.

#### Practical Effects of Listing a Native U.S. Species in Appendix III

Permits and other requirements: The export of an Appendix-III species listed by the United States requires an export permit issued by the Service's Division of Management Authority (DMA). DMA will issue a permit only if the applicant obtained the specimen(s)

legally, in compliance with applicable U.S. laws, including relevant State and Tribal wildlife laws and regulations, and live specimens are packed and shipped in accordance with the IATA Live Animals Regulations to reduce the risk of injury, damage to health, or cruel treatment. DMA, in determining if an applicant legally obtained a specimen, may consult relevant State, Tribal, and Federal agencies. Since the conservation and management of these species is primarily under the jurisdiction of State and Tribal agencies, we may consult those agencies to ensure that specimens destined for export were obtained in compliance with State and Tribal laws and regulations. Unlike species listed in Appendices I and II, no scientific non-detriment finding is required from the Service's Division of Scientific Authority (DSA) for export of an Appendix-III species. However, DSA will monitor and evaluate the trade, to decide if there is a conservation concern that would require any further action on our part. With a few exceptions, any shipment containing wildlife must be declared to a Service Wildlife Inspector upon import, export, or re-export, and must comply with all applicable regulations.

Permits, Findings, and Fees: To apply for a CITES permit, an individual or business is required to submit a completed CITES export permit application to DMA (with check or money order to cover the application fee). You may obtain information about CITES permits from our website at <http://www.fws.gov/international/> or from DMA (see **FOR FURTHER INFORMATION CONTACT**). We will review the application to decide if the export meets the criteria in 50 CFR 23.60.

In addition, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES requirement by stating clearly on all CITES permits that shipments must comply with the IATA Live Animals Regulations. The

Service's Office of Law Enforcement (OLE) is authorized to inspect shipments of CITES-listed species at the time of export to ensure that they comply with these regulations.

Additional information on permit requirements is available from DMA (see **FOR FURTHER INFORMATION CONTACT**); additional information on declaration of shipments, inspection, and clearance of shipments is available upon request from the OLE: U.S. Fish and Wildlife Service, Office of Law Enforcement, U.S. Fish and Wildlife Service Headquarters, MS: OLE; 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703-358-1949; facsimile 703-358-2271. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

### **Previous Federal Actions**

In a notice published in the **Federal Register** in 1975, we proposed listing the Cuatro Cienegas spiny softshell turtle (Trionyx ater, also known as Apalone spinifera atra) as endangered pursuant to the Endangered Species Act of 1973 (40 FR 44329, September 26, 1975), since this softshell turtle was already included in Appendix I of the Convention. In a subsequent notice published in the **Federal Register** (41 FR 24062, June 14, 1976), we listed the Cuatro Cienegas spiny softshell turtle as endangered pursuant to the Endangered Species Act of 1973. In a notice published in the **Federal Register** a few years later (47 FR 39219, September 7, 1982), we invited comments on a proposal to delist the T. ater (also known as A. s. atra) from Appendix I. The basis of the proposal was that T. ater was becoming genetically swamped by T. spiniferus, currently known as A. spinifera. In a follow-up notice (47 FR 57524, December 27, 1982), we decided it would be premature to propose removal of the Cuatro Cienegas spiny softshell turtle from Appendix I and it

currently remains in that Appendix.

In a 2002 **Federal Register** notice (67 FR 19207, April 18, 2002), we stated our tentative positions on recommendations for species proposals for the United States to consider for submission for CoP12. Pending additional information and consultations, the United States was undecided on a proposal to include the Florida softshell turtle (Apalone ferox), the smooth softshell turtle (Apalone mutica), and the spiny softshell turtle (Apalone spinifera) in Appendix II. In a notice published in the **Federal Register** in 2009 (74 FR 33460, July 13, 2009), the United States was undecided, pending additional information and consultations, on submitting a proposal at CoP15 to include these three species of North American softshell turtles in Appendix II. Ultimately, we did not propose to include any of the softshell species in the CITES Appendices at CoP15.

In a notice published in the **Federal Register** on April 11, 2012 (77 FR 21798), we stated our tentative positions on recommendations for species proposals for the United States to consider submitting at CoP16. Pending receipt of additional significant information, we indicated that the United States was not likely to submit for consideration at CoP16 a proposal to include the Florida softshell turtle, the smooth softshell turtle, and the spiny softshell turtle in Appendix II. We also stated that we would not submit a proposal to include the common snapping turtle (Chelydra serpentina) in Appendix III because inclusion of a species in Appendix III is a unilateral decision and does not require a proposal to be brought forward to the CoP. Ultimately, we did not propose to include any of the softshell species in the CITES Appendices at CoP16.

## **Summary of Threats**

*Common snapping turtle*

Populations are known to be robust throughout much of the species' range, and the common snapping turtle is among the most widely distributed turtle species in the United States. Threats to the common snapping turtle, besides habitat degradation and destruction, include (in no particular order) collecting, the impact on eggs and newly emerged hatchlings (primarily) of subsidized predators (i.e., predation magnified as a result of human activity, e.g., cats, dogs, raccoons), road mortality, and pollution (van Dijk, 2011, no pagination). The reproductive parameters of the species are such that populations are "severely constrain[ed]" in their ability to recover from long-term and persistent off-take (Congdon, Dunham, and Sels 1994, p. 397). In general the species is marked by a life-history strategy of slow recruitment, late maturity, long lifespan, and high adult survivorship. Any given population's persistence is dependent on high adult survivorship, which makes the species vulnerable to directed anthropogenic activities, such as collecting (Congdon, Dunham, and Sels 1994, p. 397).

Table 1 shows recent trends in exportations of live common snapping turtles and meat harvested from these turtles.

TABLE 1.—*U.S. exportations of live common snapping turtles and common snapping turtle meat 2009–2011.*

	2009	2010	2011
Live common snapping turtles exported from the United States	655,549	709,869	811,717
Common snapping turtle meat (in kg) exported from the United States	36.29	27.22	46.52

Although a significant proportion of these live specimens and meat originated from turtle farms, the level of wild harvest necessary to maintain farm production is unknown. While

export levels vary from year to year, since at least 1990, the trend has been a significant increase in common snapping turtle exports over an extended period of time (Hoover, C. 1998 and USFWS, LEMIS database as cited in Weissgold, B., unpublished, 2010).

*Florida softshell turtle*

Eggs are vulnerable to predation by a variety of terrestrial species, and hatchlings are equally vulnerable to predation by other turtles, birds, and fish. Adults are less vulnerable, but may be taken by alligators. The species is considered vulnerable to (in no particular order) overcollection for human consumption, the impact of subsidized predators (i.e., predation magnified as a result of human activity, e.g., cats, dogs, raccoons), habitat destruction, and road mortality, and as by-catch from freshwater fishing activities (Buhlmann, Tuberville, and Gibbons 2008; p. 119, and Bonin, Devaux, and Dupre 2006, p. 129; and Ernst and Lovich 2009, p. 612). While in Florida the species does not appear to be in danger, it is the most intensively harvested freshwater turtle in Florida, and locally severe declines or extirpations from over-fishing might be possible (Meylan and Moler 2006, p. 166).

Table 2 shows recent trends in exportations of Florida softshell turtles and eggs harvested from these turtles.

TABLE 2.—*U.S. exportations of Florida softshell turtles and Florida softshell turtle eggs 2009–2011.*

	2009	2010	2011
Live Florida softshell turtles exported from the United States	214,787	209,453	367,629
Florida softshell turtle eggs exported from the United States	67,200	66,100	130,624

Although a portion of these specimens and eggs were shipped from turtle farms, the level of wild harvest necessary to maintain farm production is unknown. While export levels vary from year to year, since at least 1995, the trend suggests that the potential remains for significant exports in the future for human consumption and stocking of farms in East Asia, particularly China. The Service is not aware of any evidence indicating that this trend will reverse.

#### *Smooth softshell turtle*

Both eggs and juveniles are vulnerable to a wide assortment of predators, although adults are generally only vulnerable to human and alligator predation (Buhlmann, Tuberville, and Gibbons 2008, p. 144). In recent years, smooth softshell turtle populations have declined due to river channelization, siltation, and water pollution (retrieved September 2, 2014, from the Minnesota Department of Natural Resources, Rare Species Guide at <http://www.dnr.state.mn.us/rsg/profile.html?action=elementDetail&selectedElement=ARAA G01020>).

U.S. export data show that 200 live smooth softshell turtles were exported in 2009 sourced from the wild, and none were exported in 2010 or 2011. While export levels vary from year to year, we believe that the potential remains for significant exports in the future based on overseas demand principally, but not limited to, China.

#### *Spiny softshell turtle*

Populations are in decline in many areas due to (in no particular order) pollution, habitat degradation, and collection as a food source (Buhlmann, Tuberville, and Gibbons

2008, p. 141; and Ernst and Lovich 2009, p. 634).

Table 3 shows the recent trend in exportations of spiny softshell turtles. While export levels vary from year to year, we believe that the potential remains for significant exports in the future. The Service is not aware of any evidence indicating that this trend will reverse.

TABLE 3.—*U.S. exportations of spiny softshell turtles 2009–2011.*

	2009	2010	2011
Live spiny softshell turtles exported from the United States	46,117	56,056	55,713

### **Species and Subspecies for Listing in Appendix III**

We propose to list these four native U.S. freshwater turtle species, including their subspecies, except *A. s. atra*: common snapping turtle, Florida softshell turtle, smooth softshell turtle, and the spiny softshell turtle in Appendix III of CITES, including live and dead whole specimens, and all readily recognizable parts and derivatives. The term “readily recognizable” is defined in our regulations at 50 CFR 23.5 and means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or 50 CFR part 23. Listing these four native U.S. freshwater turtle species in Appendix III of CITES is necessary to allow us to adequately monitor international trade in these species; to determine whether exports are occurring legally, with respect to State, Tribal, and Federal law; and to determine whether further measures under CITES or other laws are required to conserve these species.

#### *Common snapping turtle*

The common snapping turtle (Chelydra serpentina, Linnaeus 1758) is the second-largest freshwater turtle species native to the United States. Currently two subspecies are widely recognized: C. s. osceola (Stejneger, 1918), distributed in the Florida peninsula, and C. s. serpentina (Linnaeus, 1758), distributed throughout the remainder of the species range, which encompasses most of the eastern two-thirds of the United States and portions of southern Canada, including Nova Scotia. The species has been introduced into the wild outside its range both within and outside the United States, including into the wild in China and Taiwan, where it is also bred on turtle farms. The common snapping turtle is easily recognized by a roughly textured black to grey carapace (top shell), a long tail studded with large saw-toothed tubercles, large claws, and a large head with strong jaws and a sharp beak.

The species is readily distinguished from the alligator snapping turtle (Macrochelys temminckii) because the latter has a larger head, hooked beak, a smooth tail, and three distinct keels on the carapace. There are other morphological differences as well. The common snapping turtle inhabits a wide variety of freshwater habitats, including rivers, ponds, lakes, swamps, and marshes, although it prefers slow-moving aquatic habitats with mud or sand bottoms, abundant vegetation, and submerged tree branches, trunks, and brush. Common snapping turtles feed on a wide variety of both plants and animals (Ernst and Lovich 2009, pp. 9, 132–133).

Irrespective of the taxonomic differentiation of the common snapping turtle, all currently recognized common snapping turtle subspecies would be included in the CITES Appendix-III listing.

*Florida softshell turtle*

The Florida softshell turtle (Apalone ferox, Schneider 1783) is one of three species of softshell turtle native to the United States. The Florida softshell, the largest North American softshell turtle, occurs from southern South Carolina, through southern Georgia and Florida, and west into the extreme southern portions of Alabama. No subspecies are currently recognized. Females may reach a Maximum Carapace Length (SCLmax) of 67.3 centimeters, over twice the size of males, which may reach 32.4 centimeters SCLmax. The leathery skin-covered carapace has rough, rounded tubercles (bumps) on its front edge; the limbs are grey to brown with lighter-colored mottling. The feet are webbed, and the species has an extended nose tip. In large specimens, the head can grow disproportionately large compared to the body. The Florida softshell inhabits calm waters, including rivers, swamps, marshes, lakes, and ponds. The species may spend extended periods of time submerged, buried in the silty or sandy bottom. The Florida softshell is largely carnivorous, eating a variety of aquatic and sometimes terrestrial animals, although vegetation may also be consumed (Ernst and Lovich 2009, p. 611).

#### *Smooth softshell turtle*

The smooth softshell turtle (Apalone mutica, Le Sueur 1827) is the smallest of the three softshell species native to the United States. The species is generally found in streams, rivers, and channels. It inhabits the Ohio River drainage (Ohio, Indiana, and Illinois), the upper Mississippi River watershed (Minnesota and Wisconsin), the Missouri River in the Dakotas, south through the watershed and eventually spreading to the western Florida Panhandle, and west to Central Texas (including all States between these areas). The smooth softshell is considered extinct in Pennsylvania, where it previously inhabited the Allegheny

River. An isolated population exists in New Mexico's Canadian River drainage. Two subspecies are recognized: the smooth softshell turtle (*A. m. mutica*; Le Sueur 1827) and the Gulf Coast smooth softshell turtle (*A. m. calvata*; Webb 1959). Females may reach 35.6 centimeters SCLmax and males may reach 26.6 centimeters SCLmax. The carapaces of males may have blotchy dark markings, and a yellow stripe is present on each side of the head; females have darkly mottled carapaces, and the yellow head stripe may be faint or nonexistent in older animals. The smooth softshell has webbed feet and an extended nose tip. The species is fully aquatic, only leaving the water to nest or bask. Smooth softshells consume insect larvae, other aquatic invertebrates, small fish, and plant material (Ernst and Lovich 2009, pp. 619–620).

Irrespective of the taxonomic differentiation of the smooth softshell turtle, all currently recognized smooth softshell turtle subspecies would be included in the CITES Appendix-III listing.

### *Spiny softshell turtle*

The spiny softshell turtle (*Apalone spinifera*, Le Sueur 1827) is a small softshell with webbed feet and large claws. It has a leathery shell colored from brown to sand to grey, with dark black ocelli or blotches and a pair of light stripes on the side of its head. Limbs are grey and may have dark streaks or spots. The population of the spiny softshell in the United States is divided into six subspecies: the spiny softshell turtle (*A. s. spinifera*, Le Sueur 1827), Gulf Coast spiny softshell (*A. s. aspera*, Agassiz 1857), Texas spiny softshell (*A. s. emoryi*, Agassiz 1857), Guadalupe spiny softshell (*A. s. guadalupensis*, Webb 1962), western spiny softshell (*A. s. hartwegi*, Conant and Goin 1948), and pallid spiny softshell (*A. s.*

pallida, Webb 1962). An additional subspecies, the Cuatro Ciénegas spiny softshell (A. s. atra [= Apalone atra], Webb and Legler 1960), occurs in Mexico and is listed in Appendix I of CITES and as endangered under the U.S. Endangered Species Act (as Trionyx ater) (50 CFR 17.11(h)).

The spiny softshell inhabits the largest range of the three softshell turtles of North America, occurring from New York, south to Florida, west through Texas to New Mexico, and over most of the midwestern United States, including to the States bordering the Great Lakes, and extreme southern portions of Canada, and naturally in northern portions of Mexico. It has also been introduced widely in other parts of Mexico. Disjunct populations also are found from New Mexico to California and in Montana and Wyoming. Isolated populations are found in a number of States. The spiny softshell inhabits creeks and rivers, but also occurs in other types of water bodies, including artificial bodies, so long as the bottom is sandy or muddy to support its burrowing behavior. The species is almost entirely aquatic and largely carnivorous; its reported list of food items is extensive and includes insects, molluscs, and other invertebrates, fish, amphibians, and small snakes. It will also consume plant material (Ernst and Lovich 2009, pp. 632–633).

#### Conservation

The common snapping turtle (since 2012) and spiny softshell turtle (since 2011) are considered to be of “Least Concern” by the International Union for Conservation of Nature (IUCN) with the population trend being stable. The Florida softshell turtle (since 2011) and the smooth softshell (since 2011) turtle are also considered to be of “Least Concern” by the IUCN, but with the population trend being unknown.

These four native U.S. freshwater turtle species are protected to varying degrees by State and Tribal laws within the United States, with significant differences in levels and types of protection.

*Common snapping turtle*

Personal collection and commercial harvest of the common snapping turtle (Chelydra serpentina) is permitted in Alabama, Arkansas, Georgia, Iowa, Maryland, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, and Wyoming.

In Arizona, where the species has been introduced, an unlimited number may be collected. In Colorado, Indiana, Kansas, Maine, Michigan, Montana, New Hampshire, Oregon, and West Virginia, collection for personal use is permitted; however, commercial harvest and trade is not permitted. In Connecticut and Massachusetts, collection and trade is allowed, with a 4 inch and 6 inch minimum shell length requirement for trade, respectively. Delaware requires limits on take to individuals with 8 inches or greater curved carapace length along with harvest equipment restrictions in place. North Dakota allows for harvest as specified on the appropriate permit.

Personal harvest and commercial trade are prohibited in the District of Columbia, and Florida prohibits harvest from the wild (including eggs) or commercial trade in wild-caught specimens. In Illinois, commercial harvest is prohibited; however, aquaculture is allowed, and limited harvest for personal use is permitted in some areas.

*Florida softshell turtle*

Commercial harvest and trade of the Florida softshell turtle is permitted in Alabama, Georgia, and South Carolina. In Florida, one specimen per day per person may be taken from the wild, but commercial sale is not permitted. There are exceptions with specific requirements and limitations for commercial aquaculture.

*Smooth softshell turtle*

Personal collection and commercial harvest of the smooth softshell turtle are permitted in Alabama, Arkansas, Iowa, Kentucky, Louisiana, Missouri, New Mexico, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

Collection for personal use is permitted in Indiana, Kansas, Mississippi, and West Virginia; however, commercial harvest and trade are not permitted.

In Florida, State regulations allow one specimen per day per person to be taken from the wild, but commercial sale is not permitted; there are exceptions with specific requirements and limitations for commercial aquaculture. In Illinois, commercial harvest is prohibited; however, aquaculture is allowed as well as limited harvest for personal use in some areas.

*Spiny softshell turtle*

Collection for personal use and commercial harvest of the spiny softshell turtle are permitted in Alabama, Arkansas, Georgia, Iowa, Kentucky, Louisiana, Minnesota, Missouri, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Vermont, Wisconsin, and Wyoming.

In Arizona, where the species has been introduced, an unlimited number may be collected. Collection for personal use is permitted in Colorado, Indiana, Kansas, Maryland, Michigan, Mississippi, Montana, and West Virginia; however, commercial harvest and trade are not permitted. In Florida, one specimen per day per person may be taken from the wild, but commercial sale is not permitted. There are exceptions with specific requirements and limitations for commercial aquaculture. In Illinois, commercial harvest is prohibited; however, aquaculture is allowed, as well as limited harvest for personal use in some areas.

### **Federal Status**

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States. This prohibition would apply in instances where these four native U.S. freshwater turtle species were unlawfully collected from Federal lands, such as those Federal lands within the range of these four native U.S. freshwater turtle species that are managed by the U.S. Forest Service, the National Park Service, U.S. Fish and Wildlife Service, or other Federal agency.

It is unlawful under section 3372(a)(2)(A) of the Lacey Act to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State. Because many State laws and regulations regulate the take of these four native U.S. freshwater turtle species, certain acts with these four native U.S. freshwater turtle species

acquired unlawfully under State law could result in a violation of the Lacey Act Amendments of 1981 and thus provide for Federal enforcement action due to a violation of State law.

### **Decision To Propose To List Four Native U.S. Freshwater Turtle Species**

Based on the recommendations contained in Resolution Conf. 9.25 (Rev. CoP16) and the listing criteria provided in our regulations at 50 CFR 23.90, these four native U.S. freshwater turtle species, including all subspecies, qualify for listing in CITES Appendix III. Declines have been documented or locally severe declines may be possible in at least some portions of the range of these four native U.S. freshwater turtle species, although the Florida softshell seems to be resistant to high levels of commercial harvest. Its' take in Florida is regulated and it is a species of special concern in South Carolina. Although snapping turtle populations are known to be vigorous throughout much of the species' range, long-term persistent take makes the species vulnerable to decline. Existing laws have not been completely successful in preventing the unauthorized collection and trade of these four native U.S. freshwater turtle species. Listing these four native U.S. freshwater turtle species, including their subspecies, except the Cuatro Ciénegas spiny softshell turtle which is already listed in Appendix I, in Appendix III is necessary to allow us to adequately monitor international trade in these taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve these species and subspecies. An Appendix-III listing would lend additional support to State wildlife agencies in their efforts to regulate and manage these species, improve data gathering to increase our knowledge of trade in these species, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal

trade. Furthermore, listing these species in Appendix III would enlist the assistance of other Parties in our efforts to monitor and control trade in these species and subspecies.

### **Required Determinations**

#### Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rulemaking in a manner consistent with these requirements.

#### Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is

required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Department of the Interior certifies that this action would not have a significant effect on a substantial number of small entities for the reasons discussed below.

This proposed rule establishes the means to monitor the international trade in species native to the United States and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of these four native U.S. freshwater turtle species, we estimate that the costs to implement this rule will be less than \$100,000 annually due to the costs associated with obtaining permits.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. This proposed rule:

- (a) Would not have an annual effect on the economy of \$100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings: (a) This rulemaking would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments,” with two exceptions. It excludes “a condition of federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or Tribal governments “lack authority” to adjust accordingly. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from

participation in a voluntary Federal program.” This proposed rule would not impose a legally binding duty on non-Federal Government entities or private parties and would not impose an unfunded mandate of more than \$100 million per year or have a significant or unique effect on State, local, or Tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information that we would collect under this proposed rule on FWS Form 3–200–27 is covered by an existing OMB approval and has been assigned OMB control number 1018-0093, which expires on May 31, 2017. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

The Service has analyzed this proposed rule in accordance with the National Environmental Policy Act of 1969 (NEPA). The Council on Environmental Quality's (CEQ) regulations implementing NEPA, at 40 CFR 1508.4, define a “categorical exclusion” as a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on the human

environment. CEQ's regulations further require Federal agencies to adopt NEPA procedures, including the adoption of categorical exclusions for which neither an environmental assessment nor an environmental impact statement is required (40 CFR 1507.3). The Service has determined that this rulemaking is categorically excluded from further environmental analysis under NEPA in accordance with the Department's NEPA regulations at 43 CFR 46.210(i), which categorically excludes “[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.” In addition, the Service has determined that none of the extraordinary circumstances listed under the Department's regulations at 43 CFR 46.215, in which a normally excluded action may have a significant environmental effect, applies to this proposed rule.

#### Takings (Executive Order 12630)

In accordance with Executive Order (E.O.) 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have determined that this proposed rule would not have significant takings implications since there are no changes in what may be exported.

#### Federalism (Executive Order 13132)

In accordance with E.O. 13132 (Federalism), this proposed rule would not have significant Federalism effects. A Federalism assessment is not required because this proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this proposed rule would

generate information that would be beneficial to State wildlife agencies, we do not anticipate that any State monitoring or control programs would need to be developed to fulfill the purpose of this proposed rule. We have consulted the States, through the Association of Fish and Wildlife Agencies, on this proposed action. The CITES Technical Work Group, comprising representatives from States in different regions of the United States, of the Association of Fish and Wildlife Agencies has concluded that including these four native U.S. freshwater turtle species in CITES Appendix III is warranted in order to help ensure conservation of these species in the wild and to assist State agencies in regulating harvest and trade.

Further, formal and informal consultation with various interested parties regarding this proposal has generally resulted in support for the proposal. These proposed changes will help us more effectively conserve these species and will help those affected by CITES to understand how to conduct lawful international trade in wildlife and wildlife products.

#### Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rulemaking, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to

communicate meaningfully with Federally recognized Indian Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that this proposed action will not interfere with the Tribes' ability to manage themselves or their funds or to regulate these turtle species on Tribal lands.

#### Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, and use. This proposed action is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### Clarity of the Rule

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;

- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### **References Cited**

A complete list of all references cited in this proposed rule is available on the Internet at <http://www.regulations.gov> or upon request from the Division of Management Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

### **Author**

The primary author of this proposed rule is Clifton A. Horton, Division of Management Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

### **Proposed Amendment to CITES Appendix III**

Our regulations at 50 CFR 23.90 require us to publish a proposed rule and, if appropriate, a final rule for a CITES Appendix-III listing, even though the final rule would not result in any changes to the Code of Federal Regulations. Accordingly, for the reasons

provided in this document, we propose to ask the CITES Secretariat to amend Appendix III of CITES to include for the United States these four native U.S. freshwater turtle species, including their subspecies (except the Cuatro Cienegas spiny softshell turtle, which is in Appendix I): the common snapping turtle (Chelydra serpentina), Florida softshell turtle (Apalone ferox), smooth softshell turtle (Apalone mutica), and spiny softshell turtle (Apalone spinifera).

After analysis of any comments received on the proposed rule, we will publish our final decision in the **Federal Register**. If we adopt a final rule, we will contact the CITES Secretariat prior to publishing the rule to clarify the exact time period required by the Secretariat to inform the Parties of the listing, so that the effective date of the final rule coincides with the effective date of the listing in Appendix III. The listing would take effect 90 days after the CITES Secretariat informs the Parties of the listing.

Dated: October 7, 2014.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

**BILLING CODE 4310-55**

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