DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
[ 50 CFR Part 17 ]
ENDANGEROED AND THREATENED
WILDLIFE AND PLANTS
Proposed Threatened Status for the Eastern Indigo Snake


ACTION: Proposed rulemaking.

SUMMARY: The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a proposed rulemaking, pursuant
to the Endangered Species Act of 1973 (16 U.S.C. 1531-1534; 87 Stat. 884; hereinafter the Act), which would determine the eastern indigo snake (Drymarchon couperi) to be a Threatened species. This snake presently occurs in Georgia and Florida; historically, it is also known from Alabama, Mississippi, and South Carolina.

DATE: All relevant comments and materials with regard to this proposed rulemaking received no later than October 30, 1977, will be considered by the Director, U.S. Fish and Wildlife Service.

ADDRESSES: Comments and materials concerning this proposed rulemaking, preferably in triplicate, should be sent to the Director (FWS/OBS), U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:
BACKGROUND

Section 4(a) of the Act states: 
"General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Overutilization for commercial, sporting, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanisms; or
5. Other natural or manmade factors affecting its continued existence."

This authority has been delegated to the Director.

The indigo snake, Drymarchon corais, is one of the largest snakes in the United States. The species ranges from the southeastern United States to northern Argentina and eight subspecies are currently recognized. Of these, eight occur in the United States. D. c. erebennus is known from Veracruz and Hidalgo, Mexico into southern Texas; D. c. couperi occurs only in Georgia and Florida at present although it is historically recorded from South Carolina, Alabama, and Mississippi.

Although erebennus and couperi are superficially similar, they can be distinguished by the following characteristics: (1) erebennus has prominent dark lines downward from the eye whereas couperi does not, (2) erebennus has a tendency for the forepart of the body to be brownish with some indication of a pattern whereas couperi is more uniformly blue-black in color and has no pattern, (3) erebennus has the third scale row on the hindmost part of the body whereas couperi has 15.

Many of these characteristics distinguish the eastern indigo snakes in trade from the western indigo snakes. However, although the eastern indigo snakes are as follows:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;—The eastern indigo snake inhabits a region that is experiencing rapid land-use development resulting in a considerable loss of available habitat. Its preferred habitat includes well-drained soils that are ideal for human settlement, resulting in a serious decline in the populations of Eastern indigo snakes in many areas.
2. Overutilization for commercial, sporting, scientific, or educational purposes.—The eastern indigo snake is in great demand by the pet trade with prime specimens selling for as much as $200-$250. The extremely docile nature of the snake and its large size make it highly desirable as a pet and therefore avidly sought by dealers. Commercial trade is probably the main cause for the decline of this species throughout its range.
3. Disease or predation.—Unknown.
4. The inadequacy of existing regulatory mechanisms;—The eastern indigo snake is strictly protected in both Georgia, Mississippi, and Florida. However, these States cannot effectively control the trade in snakes once they leave the State. If a species is taken in violation of a State's law and moved illegally across a State line, such action becomes a violation of the Lacey Act. However, it has been a common practice to claim that the indigo snakes in trade came from Alabama or South Carolina, where the snake has not been taken by experienced herpetologists in many years. This claim is virtually impossible to completely refute. Therefore, trade in illegally taken indigo snakes can continue in spite of strong State laws. There are no laws to protect the eastern indigo snakes in Alabama or South Carolina.
5. Other natural or manmade factors affecting its continued existence;—In many areas in the southeast, burrows, the gopher tortoise are gassed in order to drive out rattlesnakes that use tortoise burrows. Indigo snakes also use gopher tortoise burrows. Some research has indicated that eastern indigo snakes are harmed or killed by this practice.

EFFECT OF THE RULEMAKING

The effects of this determination at rulemaking include, but are not necessarily limited to, those discussed below under the Endangered Species Act. All of these prohibitions already published in Title 50 of the Code of Federal Regulations set forth series of general prohibitions and exceptions that apply to all endangered species. All of these prohibitions or exceptions also apply to any Threatened species unless a Special Rule pertains to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened species are found at §§ 17.21 and 17.31 of Title 50 and, for the convenience of the reader, are repeated below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

§ 17.21 Prohibitions.
(a) Except as provided in Subpart G of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to: (1) take, import, or export any endangered wildlife or plant without a permit authorizing such taking, importing, or exporting; (2) obtain, sell, or offer to sell any endangered wildlife or plant without a permit authorizing such activity; or (3) possess any endangered wildlife or plant which has been taken, imported, exported, or transported in violation of this section. The federal, state, and public lands are excluded from the provisions of this section.
(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unwanted, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19182, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

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

(d) Possession and other acts with unlawfully taken wildlife. (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane and gives it to a second person who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated section 9(a) (1) of this Act— the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d) (1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(5) Interstate or foreign commerce. It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) Sale or offer for sale. (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

§ 17.31 Prohibitions.

(a) Except as provided in Subpart A of this Part, or in a permit issued under this Subpart, all of the provisions in § 17.21 shall apply to threatened wildlife.

(b) In addition to other provisions of this Part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating under a Cooperative Agreement with the Service or with the National Marine Fisheries Service, in accordance with section 6(c) of the Act, who is designated by his agency for such purpose, may, when acting in the course of his official duties, take any endangered wildlife to carry out scientific research or conservation programs.

(c) Whenever a special rule in §§ 17.40 to 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions.

The determination set forth in these rules also makes this species eligible for the consideration provided by section 7 of the Act. That section reads as follows:

INTERAGENCY COOPERATION

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species or their habitat of such species which is determined to be critical or which would significantly affect the quality of the human environment within the meaning of section 102(2) (C) of the National Environmental Policy Act of 1969.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884) and was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, Washington, D.C. 20240, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2) (C) of the National Environmental Policy Act of 1969.


LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.
Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

It is proposed to amend §17.11 by adding in alphabetical order the following to the list of animals:

§ 17.11 Endangered and Threatened Wildlife.

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<th>Range</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Population</th>
<th>Known distribution</th>
<th>Portion of range where threatened or endangered</th>
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[PR Doc.77-21810 Filed 7-29-77; 8:45 am]