efficient use of the allocated frequencies.

Note.—Stations first licensed prior to January 10, 1977 must comply with the frequency assignment (graph (a) by August 31, 1978. If a licensee finds it necessary to change frequencies assigned prior to January 10, 1977 in order to conform to the restrictions of footnote 7 above, the licensee may without further authority substitute frequencies within Group N or R. A notification shall be sent to the Commission in Washington, D.C. upon beginning the use of the substitute frequencies reporting those being vacated and those being activated.

2. In §74.432, paragraph (c) (2) and paragraph (f) are amended, and a new Note is added at the end of the section to read as follows:

§ 74.432 Licensing requirements and procedures.

3. In §74.451 paragraph (a) is amended to read as follows:

§ 74.451 Type acceptance of equipment.

4. Section 74.464 is amended by adding the following Note to the end of the section to read as follows:

§ 74.464 Frequency tolerance.

Notwithstanding the above, the licensee may without further authority substitute frequencies within Group N or R. A notification shall be sent to the Commission in Washington, D.C. upon beginning the use of the substitute frequencies reporting those being vacated and those being activated.

5. In §74.464, paragraph (c) is amended to read as follows:

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION, DEPARTMENT OF TRANSPORTATION


HAZARDOUS MATERIALS REGULATIONS AND MISCELLANEOUS AMENDMENTS

Consolidation

In FR Doc. 76-38409, appearing at page 57018, in the issue of Thursday, December 30, 1976, the following changes should be made:

1. On page 57070, column 2 the section now reading "§ 172.348" should read: "§ 172.344."

2. On page 57071, column 1, in the heading for Part 174 the word "MAIL" should read "RAIL."

Title 50—Wildlife and Fisheries

CHAPTER 1—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Reclassification of American Alligator to Threatened Status in Certain Parts of Its Range

The Director, United States Fish and Wildlife Service (hereinafter "the Director", and "the Service") hereby issues a Rulemaking which reclassifies the American alligator (Alligator mississippiensis) from its present listing as an Endangered species to the status of a Threatened species (as defined by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884) hereinafter referred to as "the Act") in all of Florida and in certain coastal areas of Georgia, Louisiana, and Mississippi. This Rulemaking leaves the alligator classified as "endangered" throughout the remainder of its range (except for Cameron, Vermilion, and Calcasieu Parishes in Louisiana where, although the populations biologically are neither Endangered nor Threatened, the alligators have been treated as Threatened to date to the Scientific Authority to the end of the Act). This Rulemaking also authorizes limited, lethal removal of dangerous alligators to protect human lives and property and to control nuisance populations. The rules authorize removals for scientific or conservation purposes in restricted areas under a Cooperative Agreement between the Federal Government and the State(s).

BACKGROUND

In 1967, the U.S. Department of the Interior determined the American alligator to be an endangered species throughout its entire range. This determination reflected concern for alligator populations which had become drastically reduced after many years of excessive exploitation and persecution by man. Within recent years, however, alligators have increased considerably in some areas, mainly in response to intensive State and Federal protection. In 1972 and 1973, the State of Louisiana was able to allow a limited commercial hunting season on the species.

On December 28, 1973, the new Endangered Species Act (16 U.S.C. 1531-1543, 87 Stat. 884) went into effect. This Act made it a violation of Federal law to take any species listed as endangered, except under permit for scientific purposes or to enhance the propagation or survival of the species. The Act also established a new "threatened" classification, and authorized the Secretary of the Interior to issue such regulations as he deemed necessary and advisable for the conservation of such species.

On March 20, 1974, Governor Edwin Edwards of Louisiana submitted a petition to the Secretary of the Interior requesting that populations of the alligator in the southwestern coastal marshes (Chenier Plain) in the parishes of Cameron, Vermilion, and Calcasieu of Louisiana, be removed from the Secretary of the Interior's list of threatened and endangered species; that in the south-central and southeastern coastal Louisiana marshes, the American alligator be classified as a threatened species; and that the populations of the alligator in those areas of the State, the classification of the American alligator remain unchanged.

This petition, as amplified by other evidence and data submitted to the Secretary, is hereby found by the Director to present substantial information warranting a review of the status of the alligator throughout its range. A hearing was held at New Orleans, Louisiana, on June 26, 1974. The Director, United States Fish and Wildlife Service, hereinafter ("the Director", and "the Service") hereby issues a Rulemaking which reclassifies the American alligator from its present listing as an Endangered species to the status of a Threatened species (as defined by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884) hereinafter referred to as "the Act") in all of Florida and in certain coastal areas of Georgia, Louisiana, and Mississippi. This Rulemaking leaves the alligator classified as "endangered" throughout the remainder of its range (except for Cameron, Vermilion, and Calcasieu Parishes in Louisiana where, although the populations biologically are neither Endangered nor Threatened, the alligators have been treated as Threatened to date to the Scientific Authority to the end of the Act). This Rulemaking also authorizes limited, lethal removal of dangerous alligators to protect human lives and property and to control nuisance populations. The rules authorize removals for scientific or conservation purposes in restricted areas under a Cooperative Agreement between the Federal Government and the State(s).
status of the species in their respective States.

This review produced evidence that the American alligator is making encouraging gains in population over much of its known range, and that significant losses of populations have occurred only in geographically peripheral and possibly ecologically marginal areas. Population levels in parts of South Carolina, Florida, Louisiana, and Texas are high, and, in many areas over these regions are considered to be ecologically secure.

Available data indicate that the primary threats to alligator populations in areas named above are not biotic, but rather the absence of adequate regulatory and enforcement mechanisms: (1) to prevent malicious killing and illicit commercially-oriented killing and (2) to control the illegal commercial use of products. Malicious killing stems to a large degree from public hostility and fear, and to some extent could be ameliorated through public education. Illegal commercial killing currently is being held at a low level by rigid enforcement programs. These programs, may soon become inadequate in the face of burgeoning alligator populations and increasing human-alligator conflicts.

The Proposals

As a result of this review, the Director found that there were sufficient data to warrant a proposed rulemaking that (1) the alligator is neither endangered nor threatened in Cameron, Vermilion, and Calcasieu Parishes, Louisiana; (2) the alligator is a threatened species in Alabama, Georgia, Louisiana (except Cameron, Vermilion, and Calcasieu Parishes), Mississippi, South Carolina, and Texas; and the alligator is an endangered species in other parts of its range.

Accordingly, the Director proposed such a rulemaking on July 8, 1975 (40 FR 23712). In these comments on the part of some responders with respect to the impact of a classification change on the welfare of the American alligator, and on other endangered wildlife which also may be reclassified at some future date, the sum of all responses reflected a preponderance of opinion in general support of the proposed rulemaking. It was determined to retain the alligator in the endangered status in all of its range except Cameron, Vermilion, and Calcasieu Parishes in Louisiana (40 FR 44412-44429). Alligators in those three parishes were listed as threatened, due to their similarity in appearance to the endangered alligators. The Service staff also questioned the classification of the alligator as a "Threatened" species in several areas, and the State submits these new data. The State proposes a new Proposed Rulemaking that (1) the alligator is Threatened in all of Florida; and (2) the alligator is Threatened in certain coastal areas of Georgia, Louisiana (except for Cameron, Vermilion, and Calcasieu Parishes), South Carolina, and Texas contained within the boundaries specified in a proposed amendment to Section 17.42(a) of Title 50 of the Code of Federal Regulations. A notice of this Proposed Rulemaking was published in the Federal Register on April 8, 1976 (41 FR 14880-14888).

SUMMARY OF COMMENTS RECEIVED

Section 4(b)(1)(A) of the Act requires that the Governor of each State within which a resident species of wildlife is known to occur be notified and be provided 90 days to comment before any such species is determined to be a Threatened or Endangered Species. Accordingly, on April 14, 1976, the Service sent letters to the Governors of Florida, Georgia, Alabama, North Carolina, South Carolina, Louisiana, and Mississippi, advising them of the proposed action and requesting their comments. In addition, on April 11, 1976, the Service issued a news release entitled "Alligator Comeback Prompts Removal from Endangered Species List: Now Classified Threatened" which advised that "public comments are invited through June 7, 1976."

The Service received a total of thirty-nine comments regarding this proposed rulemaking, including responses from two Federal agencies, nine States, eleven private conservation organizations, one private trade association, three scientific researchers, and six private citizens. These comments may be broadly categorized as follows:

Ten comments were received endorsing the reclassification as proposed, including those from the U.S. Department of Agriculture's Forest Service, the States of New York, North Carolina, South Carolina, Florida, Louisiana, Arkansas, and Oklahoma, the American Association of Zoological Parks and Aquariums, the New York Zoological Society, and one private citizen. Several of these comments contained additional questions or objections to various specific points in the proposal which are discussed in detail below.

Four comments were received requesting that additional areas be included in the reclassification to Threatened status, including those comments from the States of Georgia, Alabama, and Texas, and the Zoological Action Committee, Inc. (Zoo Act).

Four comments were received supporting reclassification in some parts of the species' range, but opposing "wholesale" reclassification of alligators in the State of Florida. These included the Florida Audubon Society and three letters of support for its position from Drs. Archie Carr of the University of Florida, James N. Layne of the Archbold Biological Station, and Roy McDermid of the University of Florida and the Florida Commission on Wildlife and Endangered Plants and Animals.

Two comments were received from the National Park Service and a private citizen, neither opposing nor supporting the proposed rulemaking, but questioning other aspects of the Service's overall efforts for protecting the species. In addition, one comment expressed opposing any reclassification of alligators to Threatened status at the present time. These included Monitor, Inc. (representative of the American Naturalist Society of the Central Atlantic States, Inc, the Fund for Animals, Defenders of Wildlife, National Parks and Conservation Association, the Wilderness Society, and four private citizens.

One comment was received from the National Newspaper Association which was a solicitation of advertising irrelevant to the biological and management issues of the proposal.

In these comments, a number of significant issues were raised which the Service feels it should respond to in detail. These issues are discussed in turn below.

1. Biological justification for the proposed reclassification as proposed. As summarized above, ten comments were received endorsing the reclassification as proposed. In its comments, the Forest Service stated that within the area of the proposed reclassification:

   a) The evidence available to our staff zoologists would indicate that we will make a sound scientific case for advancing alligator populations to the level of Endangered Species.

   Similar comments were received from the States of South Carolina and Florida supporting the proposal. North Carolina, Arkansas, and Oklahoma, whose alligators would remain Endangered, also concurred with the proposal.

   In its support of the proposed rulemaking, the New York Zoological Society stated that:

   1. The evidence available to our staff zoologists and other authorities, as well as the statements of field biologists in the southeastern states, indicates that the wild populations of alligators have recovered sufficiently in much of Florida, Georgia, South Carolina, Louisiana, and Texas to warrant considering them Threatened, rather than Endangered. The populations have not yet become so abundant as to be declared totally.

   The State of Louisiana supported the reclassification as proposed, but indicated that the State has additional data indicating a possible need for further reclassification of populations in the southeastern parishes of the State in the future. The Service will consider the merits of such a further reclassification when the State submits these new data.

   The Service also questioned the classification of the alligator in Cameron, Vermilion, and Calcasieu Parishes, indicating a misunderstanding about the meaning of the classification (S/A). While it is true that the alligators from these parishes are not listed as Threatened, but rather are classified as Threatened because of similarity of appearance to a Threatened species, this classification in no way
interferes with conducting a regulated harvest under the laws of the State of Louisiana in these three parishes. This holds true specifically under Special Rule 17.42(a) (1)(E), 50 CFR 17.42(a) (1)(E), and the present reclassification does not alter the application of that Special Rule to alligators in the three parishes. Finally, the State brought to the attention of the Service a potential problem with placement of the boundary. This problem is discussed in item 2 below.

Three States and one private conservation organization submitted comments requesting that additional populations be included in the reclassification to Threatened status.

Alabama pointed out that the alligator is considered to be a Threatened species in that State by the Alabama Department of Conservation and Natural Resources and a recent symposium on endangered species within the State. However, the State submitted no information about what criteria were used in arriving at the Threatened classification. There were any new population data submitted. Current data available to the Service are insufficient to establish reliable population density figures or trends within the State; thus retention of the Endangered species in the State remains, however, the only comprehensive, state-by-state analysis of alligator population levels and trends. Since its preparation in 1974, additional data accumulated by National Wildlife Refuges, National Fish Hatcheries, private research institutions, and various agencies have been accumulating. While these data pertain only to local areas, they have almost without exception produced local population estimates even higher than those used in the Joanen Report. With these high and expanding population levels, retention of Endangered status is no longer justified. On the other hand, reclassification of these populations to Threatened species will bring the legal status of the species into correspondence with biological reality, and will allow for more flexible management of those individual alligators which are occasional menaces to human life. The resulting reduction in human-alligator conflicts will help foster increased public confidence, a key step in securing the future of the species. However, there is wide variation in its status in different parts of the range. It has been extirpated almost totally from Oklahoma and Virginia in historic times; it appears still severely depleted in North Carolina, Arkansas, Alabama, and Mississippi, and in parts of Georgia, South Carolina, Louisiana, and Texas. Thus the use of the Threatened category for this species throughout its entire range would be a misclassification. Thus, over a large part of the area involved.

The Zoological Action Committee, Inc. (Zoo Act) opposed the reclassification of the alligator to "make-believe separate populations when exactly the same criteria and standards are used on the animals by simply listing the entire species as Threatened." The Committee maintained that the Service's own data in the proposal do not support retention of Endangered status in any part of the alligator's range.

However, the Society strongly opposed the "wholesale" reclassification of alligators in the entire State of Florida, maintaining that the data do not suffice to establish that the alligator is in fact a Threatened species. This conclusion is further buttressed by the fact that in 1975, 407,585 alligators in Florida contained in the Joanen Report, and cited a Fish and Wildlife Service staff report they had examined which they maintained recommended a different reclassification in Florida based on geographic features. The Report which the Society cites, which was entitled "A Review of the Status of the American Alligator in the Southeastern United States, with Recommendations for a Federal Action," was prepared by Service staff biologists in 1974. It was a draft report and in 1975 it was rewritten with a new title, "Summary of the Status of the American Alligator in the Southeastern United States with Recommendations to Reclassify Certain Populations as Threatened Species." The latter version of the report was adopted in 1975 and recommended reclassification of alligators in the whole State of Florida which were adopted in the proposed rule making. The changes which were the basis for the later version of the report reflected the Service's biologists' views that, on the whole, the alligator does indeed qualify for Threatened status in the entire State of Florida. This report recommended that the alligator situation in Florida no follow:

The situation is geographically complex and defies simple summarization except to use that, in general, Florida supports moderate to large alligator populations throughout the State either increasing or remaining stable in the face of increasing urbanization except in intensive development centers. Considerable inter-observer bias in numerical population estimation is evident in Joanen's report, but the supplementary data indicate that the population levels are generally high. The question is, just how high. This should be considered a problem for local management decisions, not for overall status review.

The supplementary data referred to in this report include data being collected annually by the Service (at the Gainesville Field Station of the National Fish and Wildlife Laboratory, and Locahatchee and other National Wildlife Refuges), the National Park Service (Everglades National Park), the U.S. Department of Agriculture's Forest Service (Ocala and Osceola National Wildlife Refuges), graduate research at the University of Florida, and research by the alligator biologists of the Florida Game and Freshwater Fish Commission. All of these sources indicate that the population estimates contained in the original Joanen Report are conservative, and that current population levels are significantly higher. The Joanen Report itself estimated 407,585 alligators in the State of Florida, 56 percent of the entire estimated U.S. population of 734,384. Taken as a whole, these data show that alligators in Florida are more numerous than in any other State, and are in-
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creasing in number annually, fully qualifi-
cing for reclassification to Threatened status.

2. Placement of the line demarcating endangered and threatened populations.

The State of Louisiana questioned one portion of the line separating Endangered and Threatened populations. The proposed reclassification stated, that the northern boundary of the Threatened alligators was from Ragley, Louisiana west on Louisiana State Highway 12 to Texas State Highway 12 at Texas-Louisiana border. The State correctly pointed out that adoption of this line would include within the Endangered zone a small portion of Calcasieu Parish, where alligators have been previously reclassified as Threatened by Similarity of Appearance only. This portion of the boundary has been revised in this final rulemaking to read from Ragley, Louisiana “thence west on Louisiana State Highway 12 to the Beauregard-Calcasieu Parish border; thence north along this border to the Texas-Louisiana State border; thence south on this border to Texas State Highway 12.”

3. Need to determine critical habitat for several respondents, the six conservation organizations represented by Monitor, Inc., and one private citizen, stated that because of the continuing threats to alligator habitat, there is an urgent need for determination of Critical Habitat for the species.

A Critical Habitat determination may eventually be desirable to assist Federal agencies in meeting their obligations under section 7 of the Act. It should be noted, however, that with or without such a determination, all Federal agencies are charged by section 7 to “insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of Endangered or Threatened Species.” Such a reclassification in no way relieves Federal agencies of this responsibility. At the present time, the Service does not have sufficient biological data to determine whether some of the species’ range can be considered critical within the criteria outlined in the notice on Critical Habitat published on April 22, 1975 (40 FR 17764-17765). This notice stated that “Critical habitat” for any Endangered or Threatened species could be the entire habitat or any portion thereof, if and only if, any constituent element is necessary to the normal needs or survival of that species. The following vital needs are identified in determining “critical habitat” for a given species:

1. Space for normal growth, movement, territorial behavior;
2. Nutritional requirements, such as food, water, minerals;
3. Sites for breeding, reproduction, or rearing of offspring;
4. Cover or shelter; or
5. Other biological, physical, or behavioral needs or elements.

While sufficient data on population numbers and trends are available to determine its status, comparable data are not available on the specific ecological parameters and importance of different parts of its range. Collection of such data in each area is urgently needed.

4. Effects of implementation of the special rules on threatened alligator populations. Several respondents submitted comments questioning the effects of implementation of the Special Rules in § 1742(a) on the Threatened alligators. In particular, the Louisiana Audubon Society, supported by Drs. Charles Layne, and McDiarmid, and the six conservation organizations represented by Monitor, Inc., challenged the management plan submitted by the State of Florida under authorities granted in § 17.42 and its Cooperative Agreement with the Service for management of Endangered and Threatened species, signed on June 23, 1976. These respondents stated that they had information indicating that Florida planned to implement a system throughout the State which would be licensed for undertaking alligator control. Hides from the animals killed in the course of this program would be sold on the commercial market. Such a plan, if implemented, would lead to the following undesirable consequences:

a. It would place alligator control in the hands of private agents, rather than State employees, many of whom might be alligator poachers, since poachers would be the most likely individuals having the skill and desire to participate in the program.

b. It would emphasize lethal control in every alligator-human conflict situation, whereas in some cases the conservation of the species would be better served by transplanted.

c. It would be in essence a commercial harvest under the guise of nuisance control and scientific research, in a State which has not yet developed sufficient scientific data to determine how much and what kind of harvesting populations in different regions of the State can support.

d. It would “perpetuate and legalize the vogue for alligator hide products which conservationists are convinced need to be eliminated. If most species of crocodilians are to survive.”

The National Park Service also submitted comments questioning the effects of implementation of the Special Rules, stating that this could lead to threats to American alligators and crocodiles in Everglades National Park through impairment of the market for poached hides. Similarly, the American Association of Zoological Parks and Aquariums commented that implementation of the Special Rules could result in overemphasis on lethal control when transplantation might sometimes be a better alternative.

To clarify the ensuing discussion, reprinted below are the portions of the Special Rules already in force which would permit State management under a Cooperative Agreement:

§ 1742 Special rules—repeal:

(a) American alligator (Alligator mississippiensis).—(1) Prohibitions. The following prohibitions apply to the American alligator:

(i) Taking. Except as provided in this paragraph (a)(1)(i) of this section, no person may take an American alligator.

(ii) Possession, sale, or other transfer. (A) Any person in possession of an American alligator shall immediately cease possession of the animal. (B) No person shall sell, trade, or otherwise transfer American alligators to any person.

(C) Any person in possession of a permit to take, possess, sell, trade, transport, or otherwise transfer American alligators shall immediately cease to hold that permit.

(D) Any person in possession of an American alligator shall immediately cease possession of the animal.

(E) Any person in possession of a permit to take, possess, sell, trade, transport, or otherwise transfer American alligators shall immediately cease to hold that permit.

(F) Any person in possession of an American alligator shall immediately cease possession of the animal.

(ii) Transfer of permits. All permits for taking, possessing, selling, trading, transporting, or otherwise transferring American alligators shall be void and无效.
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which it feels violates the intent of the Act or the conservation of the resource.

Regarding the effects which institution of such a conservation program, with eventual sale of hides from legally taken alligators, could have on alligator poaching in the United States and smuggling of hides overseas, several points must be made. First, as emphasized elsewhere in this rulemaking, it is clear that enforcement of any State management plan will weaken the Service’s commitment to enforcement of alligator protection. Furthermore, the elaborate system of tagging and registering all hides, already successfully implemented in Louisiana in the course of its extensive commercial harvest, should ensure that only legally taken hides reach the American marketplace. This system, combined with vigilant enforcement, should keep alligator poaching to tolerably low levels.

Until the alligator is currently included on Appendix I of the International Convention on International Trade in Endangered Species of Wild Fauna and Flora. This prevents, under the provisions of that convention, the importation of any alligators or alligator products into a nation which has ratified or acceded to the convention unless “a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.” Thirty-one nations so far have ratified or acceded to the convention, and the intentions of its provision has been: as more nations join in this effort in the future, even better control of alligator trade in the international marketplace will result. The United States will oppose any effort to remove the alligator from Appendix I and lift such trade controls until all of the principal crocodilian-hide processing nations in the United States and in the enforcement of the Convention.

For crocodilians as a whole, the Service feels that the best long-run hope for their preservation is the development and enforcement of strong conservation programs. Such programs must include vigorous enforcement of protective laws, strong control of international trade, and economic as well as ecological incentives for the nations and peoples involved to institute such controls. Slow but steady progress is being made in each of these areas. The ecological importance of crocodilians to the aquatic ecosystems which they inhabit is being given increasing recognition by scientists and wildlife managers in many parts of the world. Several nations, including Australia, New Guinea, and Papan New Guinea, have made remarkable progress in development of crocodilian farms, from which future harvests may be possible with no drain on wild populations. All crocodilians of the world are included in either Appendix I or Appendix II of the Convention, with the most critically endangered species receiving the same import and export controls as the American alligator.

At the present time, 19 species and subspecies of foreign crocodilians are classified as Endangered by the United States, banning all import into this country unless a permit has been issued for “scientific purposes or for the enforcement of existing conservation laws.” To supplement this protection and that provided by the Convention, the Service is now in the final stages of preparation of a proposed rulemaking to treat all the remaining crocodilians of the world as Endangered because of Similarity of Appearance to Endangered crocodylians. Such treatment, when final, will throw a burden of proof on all importers to establish that any crocadilian or crocodilian product imported into the U.S. is not one of the Endangered species.

JUSTIFICATION FOR LISTING THE ALLIGATOR AS THREATENED IN THE Delineated Areas

In the delineated areas the alligator is relatively common. Population estimates for the alligator are as follows: South Carolina, 23,500; Georgia, 15,853; Florida, 407,500; Louisiana (excluding Cameron, Vermillion, and Calcasieu Parishes), 94,779; Texas, 19,232. All together, 570,584 alligators are found within the area proposed as Threatened. This is more than 75 percent of all the alligators estimated to occur in the United States (754,384). By contrast, alligator numbers in areas where they will remain classified as Endangered are significantly lower. The following population numbers pertain to certain areas: South Carolina, 64,101; Louisiana, 7,532; Texas, 7,492; Mississippi, 4,740; Alabama, 12,715; North Carolina, 1,314; Arkansas, 1,900; and Oklahoma, 10. In all areas where the alligator is proposed as a Threatened species, the population trend is reported to be increasing.

Despite these relatively high populations, alligators in the involved areas are considered “Threatened” within the definition of the Endangered Species Act of 1973. Section 4(a) of the Act states that the Secretary of the Interior may determine a species to be an endangered species, or a “Threatened” species, because of any of five factors. These factors, and their application to these populations of the American alligator, are as follows:

1) The present or threatened destruction, modification, or curtailment of its habitat or range. The alligator, even in those areas where it would be classified as Threatened, is not as abundant and widespread as in early times. Large parts of its range have been occupied by man or modified to such an extent as to be unusable to the species. The areas in which the reclassification would occur are entirely within the rapidly developing coastal section of the southeastern United States. Human population is increasing steadily in Florida and adjoining coastal areas, and the influx of man is sure to bring about conflicts that will threaten the survival of alligator populations. Industrial, commercial, recreational, and residential developments along the coast and major waterways of the region will take more and more of the alligator's habitat. Although the alligator in this region is now numerous enough and sufficiently legally protected not to warrant Endangered status, its past history of its decline and the prospects for future survival does not support classification.

2) Overutilization for commercial, sporting, scientific, or educational purposes. Although the alligator is Federally protected in those areas where it would be reclassified as Threatened, its past history of commercial exploitation gives cause for concern and warrants a Threatened classification. This species has high commercial value and can easily be wiped out over large areas in a relatively short time by determined hunters. In the past the alligator was greatly reduced by hide hunters. The potential for such destruction remains today, and actually is even more serious because of increased accessibility to alligator habitat.

3) Disease or predation. Not applicable.

4) Inadequacy of existing regulatory mechanisms. The dramatic comeback of the American alligator can be attributed to existing regulatory mechanisms. The success with respect to this species, which has little if any competition in nature, now requires that adjustments be made in the regulatory structure to provide for long-term protection. It is believed that the present regulations not only will protect current alligator populations but will permit their further enhancement, while allowing sufficient flexibility for the avoidance of or amelioration of dangerous intrusions by alligators into areas occupied by humans.

5) Other natural or manmade factors affecting its continued existence. Not applicable.

EFFECTS OF THE RULEMAKING

As alluded to in the preceding discussion, the principal effect of this rulemaking will be to bring the legal status of the American alligator into line with its biological status by reclassifying as Threatened those populations of alligators which occur in all of Florida and certain coastal areas of South Carolina, Georgia, Louisiana, and Texas contained within boundaries specified in a new §17.32(d)(2)(iv) of Title 50, Code of Federal Regulations. This action will bring into force for the alligators which have been reclassified to Threatened status the Special rules contained in §17.42(a). These Special Rules provide for taking of alligators without a permit under certain clearly specified circumstances. Anyone may take an alligator in defense of human life. Designated State or Federal agents may take alligators without a permit if they are sick, injured, orphaned, or dead, and may take problem alligators if done in a humane manner. To include killing only if live-capturing is not possible. Finally, employees or agents of States operating under Cooperative Agreements with the Service may kill alligators for scientific research or conservation programs. In addition, the sale of crocodilians of the world are included in either Appendix I or Appendix II of the Convention, with the most critically endangered species receiving the same import and export controls as the American alligator.

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This determination of Threatened status makes the alligators in the specified areas eligible for continued protection programs by section 7 of the Act and by taking such action necessary to assure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

No Critical Habitat is presently being proposed. That action, if and when it occurs, will be a separate rulemaking.

§17.42 Special Rules—reptiles.

2. §17.42, Special Rules—reptiles, is amended by the substitution of a new §17.42(a) (2) (iv), and is republished as follows:

§17.42 Special Rules—reptiles.

(a) American alligator (Alligator mississippiensis) — (1) Prohibitions. The following prohibitions apply to the American alligator.

(i) Taking: Except as provided in this paragraph (a) (1) (i) of this section, no person may take American alligators.

(A) Any person may take American alligators in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take American alligators without a permit if such action is necessary to:

(1) Aid a sick, injured or orphaned specimen; or

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study; or

(4) Remove specimens which constitute a demonstrable but non-immediate threat to human safety. The taking must be done in a humane manner, and may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(C) Any taking pursuant to paragraphs (a) (1) (1) (A) and (B) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 10185, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(ii) Unlawfully taken alligators. No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, American alligators taken unlawfully.

(iii) Import or export. No person may import or export any American alligator. Except as otherwise provided in this subsection or as may be authorized by a permit issued under authority of §17.32, no person may deliver, receive, carry, transport, ship, sell, or offer to sell in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any American alligator; Provided, That the hides of such alligators are only sold or offered for sale to a person holding a valid Federal license, issued under this subsection, as a buyer of hides; and that the meat and other parts are not sold or offered for sale.

(F) When American alligators are taken by Service or State officials in accordance with paragraph (a) (1) (1) (D) of this section the hides may be sold by State or Federal officials: Provided, That the hides have first been tagged and that the meat and other parts are not sold or offered for sale.

(G) Any person may take American alligators in Cameron, Vermillion and Calcasieu Parishes in Louisiana, in captivity, wherever found.

§17.42(a) In captivity, wherever found.

(H) Any taking pursuant to paragraphs (a) (1) (1) (A) and (B) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 10185, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(i) Import or export. No person may import or export any American alligator. Except as otherwise provided in this subsection or as may be authorized by a permit issued under authority of §17.32, no person may deliver, receive, carry, transport, ship, sell, or offer to sell in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any American alligator; Provided, That the hides of such alligators are only sold or offered for sale to a person holding a valid Federal license, issued under this subsection, as a buyer of hides; and that the meat and other parts are not sold or offered for sale.

(J) Any taking pursuant to paragraphs (a) (1) (1) (A) and (B) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 10185, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

The amendments shall become effective on February 7, 1977.

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

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

§17.11 Endangered and threatened wildlife.