

efficient use of the allocated frequencies.

NOTE.—Stations first licensed prior to January 10, 1977 must comply with the frequency assignment plan specified in paragraph (a) by August 31, 1978. If a licensee finds it necessary to change frequencies assigned prior to January 10, 1977 in order to comply with the restrictions of footnote 7 above, the licensee may without further authority substitute frequencies within Group N, or N₁. Licensees authorized to use 450.950 or 455.950 MHz may without further authority substitute frequencies within Groups N, N₁, 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 (l) are amended, and a new Note is added at the end of the section to read as follows:

§ 74.432 Licensing requirements and procedures.

(c) * * *

(2) Base stations may be authorized to provide one-way or two-way voice communications between the studio and transmitter of a broadcast station, the licensee of which is also the licensee of an aural or television broadcast STL station used for program transmission between the same two points, or to provide such voice communications between the point of origin and the termination of an aural or television intercity relay system. One or more fixed stations operated for these purposes will be licensed as a system and a single license will be issued for each such system. Automatic relay stations will not be authorized for use with these systems. Operation of these systems shall be limited to the frequencies listed in Groups I and J of § 74.402(a).

(l) Applications for renewal of authority to operate remote pickup broadcast stations filed after August 31, 1976, shall include information which identifies the stations to be included in each system designated by the licensee in accordance with the procedures set forth in this section.

NOTE.—Licensees of remote pickup broadcast stations licensed prior to August 31, 1976, should not file applications to consolidate individually licensed transmitters under a single system license until the renewal application of the associated broadcast station is filed. Applications filed between August 31, 1976, and the date of filing of the renewal applications to obtain authorization to use additional transmitters or modification of existing stations shall be restricted to a single system application necessary to accomplish the desired change, but may include consolidation of previously-licensed transmitters within the system license. Applications submitted for system licensing prior to the time when renewal applications would normally be filed which are unnecessary for either administrative or operational purposes will be returned as unacceptable for filing.

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

§ 74.451 Type acceptance of equipment.

(a) Applications for new remote pickup broadcast stations or systems or for

changing equipment which are tendered after September 1, 1977, will not be accepted unless the equipment specified therein has been type-accepted for use pursuant to provisions of this subpart, or which has been type-accepted for licensing under Parts 21, 89, 91, or 93 of this chapter and which does not exceed the output power limits specified in § 74.461(b).

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.

NOTE.—All stations, regardless of date of original licensing must meet the frequency tolerance specifications contained in this section by August 31, 1978.

[FR Doc.77-764 Filed 1-7-77;8:45 am]

Title 49—Transportation

CHAPTER 1—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. MH-108/112; Amdt. Nos. 171-32B, 172-29B, 173-94B, 174-26B, 175-1B, 176-1B]

HAZARDOUS MATERIALS REGULATIONS AND MISCELLANEOUS AMENDMENTS

Consolidation

Correction

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 “§ 173.348” should read: “§ 173.384”.

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, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION 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”, respectively) 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, South Carolina, and Texas. 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 due to their similarity in appearance to the Endangered alligators (40 FR 44412-44429)). This Rulemaking also authorizes limited, lethal removal of dangerous alligators to protect human lives and authorizes controlled takings for scientific or conservation purposes in restricted areas under a Cooperative Agreement pursuant to section 6(c) of the Act, 16 U.S.C. 1535, all to enhance long-range conservation objectives for this species as a renewable, natural wildlife resource.

This Rulemaking is identical to the Proposal published on April 8, 1976 (41 FR 14886-14888) except that in response to a comment submitted by the State of Louisiana, the boundary between Threatened and Endangered alligators has been slightly revised in the western part of that State.

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 habitat usurpation 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 29, 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 throughout the remainder of the State, the classification of the American alligator remain unchanged.

This petition, as amplified by other available information, was found by the Director to present substantial information warranting a review of the status of the alligator throughout its range. A notice to that effect was placed in the FEDERAL REGISTER on July 16, 1974 (39 FR 26050). Simultaneously, the Governors of States in which alligators are resident were notified of the review and were requested to supply data relative to the

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 historical 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, Georgia, 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 commerce 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 tolerable 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 all other parts of its range.

Accordingly, the Director proposed such a rulemaking on July 8, 1975 (40 FR 23712-23720). Despite reservations 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 announced that it would re-study the distribution and density of alligator populations in the southeastern coastal areas and the problems of enforcement and administration. Based on this study, the Service would soon propose a reclassification of the endangered populations into threatened and endangered, with a new boundary line separating the classifications (40 FR 44412).

As a result of the study, the Director found that there was sufficient data to

warrant 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, Code of Federal Regulations. A notice of this Proposed Rulemaking was published in the FEDERAL REGISTER on April 8, 1976 (41 FR 14886-14888).

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 Arkansas, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Tennessee, Oklahoma, Louisiana, and Texas 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 List: Now Classified Threatened" which advised that "public comments are invited through June 7, 1976."

The Service received a total of thirty-two 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 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 McDiarmid of the University of Florida and the Florida Committee on Rare 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.

Ten comments were received opposing any reclassification of alligators to Threatened status at the present time. These included Monitor, Inc. (representing the Audubon Naturalist Society of the Central Atlantic States, Inc., the Fund for Animals, Defenders of Wildlife, National Parks and Conservation Association, the Wilderness Society, and Friends of the Earth), 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 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:

Our information is that the status of the alligator has indeed improved within this portion of its range. Since reclassification from endangered to threatened would serve to advance sound scientific management of this resource, we support reclassification as proposed.

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:

The evidence available to our staff zoologists, coupled with that supplied by 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 declassified totally.

The State of Louisiana supported the reclassification as proposed, but indicated the State has additional data indicating a possible need for further reclassification of populations in the southern 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 State also questioned the classification of the alligator in Cameron, Vermilion, and Calcasieu Parishes, indicating a misunderstanding about the meaning of the classification T(S/A). While it is true that the alligators from these three parishes are not totally delisted, 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 harvest is specifically provided for in 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, nor 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 classification is necessary until new, more reliable evidence is submitted.

The State of Georgia also requested extension of the Threatened status to include the whole State, rather than just the coastal areas proposed, submitting a new population estimate of 86,892 alligators in the whole State, a 129 percent increase since 1974. However, no evidence was submitted to indicate how this population increase is distributed between proposed Endangered and Threatened areas. Until data become available documenting a substantial population increase north and west of the current proposed Threatened area, the Endangered-Threatened division within the State will remain as proposed.

The State of Texas also requested reclassification of the alligator to Threatened throughout the State, submitting new estimates of population densities of 37.10 alligators per square mile in the Threatened area and 5.33 per square mile in the Endangered area. The Service recognizes that the alligator is making substantial gains within the State of Texas. However, the figures submitted appear to justify reclassification as proposed, rather than modification to extend Threatened status to all alligators within the State. Fewer than six alligators per square mile is substantially less than the reported densities of 15-37 alligators per square mile in the areas proposed as Threatened.

The Zoological Action Committee, Inc. (Zoo Act) opposed the reclassification of the alligator into "make-believe separate populations when exactly the same control could be exercised over 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 En-

dangered status in any part of the alligator's range.

In contrast, Monitor, Inc. representing six conservation organizations stated that:

In view of the facts presented in the Director's notice, the wisdom of the proposed reclassification is subject to serious question. Although the notice indicates that alligator populations in the affected areas are increasing as a result of strict federal and state protection, the notice also contains a very sober assessment of the long term prospects for survival of the alligator, because of the threatened loss of its habitat.

Thus, while agreeing with the basic facts presented in the proposal, these two organizations drew exactly opposite conclusions about the appropriate status classification for the species.

The Service maintains that the data currently available support neither complete retention of Endangered status nor complete reclassification to Threatened status throughout the species' range. The best available comprehensive estimate of the total alligator population is 734,384, with over 570,000, or approximately 75 percent, within the area of proposed reclassification. These figures are derived from a report prepared in 1974 by Ted Joanen of the Louisiana Wildlife and Fisheries Commission. The Service recognizes that the figures contained in this report must be used with care. It 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 Forests, government and private research institutions, and various states 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 cannot be justified. On the other hand, reclassification of these populations to Threatened status 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 tolerance, 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 misuse of the category over a large part of the area involved.

The National Audubon Society supported the reclassification of alligators in the designated portions of South Carolina, Georgia, Louisiana, and Texas.

However, the Society strongly opposed the "wholesale" reclassification of alligators in the entire State of Florida, stating the data available are insufficient to establish that the alligator is in fact a Threatened species throughout the State. The Society questioned the validity of the estimate of 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 later version of the report makes recommendations for reclassification of alligators in the whole State of Florida which were adopted in the proposed rulemaking. The changes which were made in 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 summarizes the alligator situation in Florida as follows:

The situation is geographically complex and defies simple summarization except to note 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 excerpt include data being collected annually by the Service (at the Gainesville Field Station of the National Fish and Wildlife Laboratory, and Loxahatchee 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, 55 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-

creasing in number annually, fully qualifying 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 from Threatened alligators. 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 and west 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 the species.* Seven 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". This reclassification in no way relieves Federal agencies of this responsibility. At the present time, the Service does not have sufficient biological data on hand to determine which areas 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 relevant in determining "critical habitat" for a given species:

- (1) Space for normal growth, movements, or 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 requirements."

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 enough such data to determine which areas, if any, qualify as Critical Habitat will require considerable research and time.

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 § 17.42(a) on the Threatened alligators. In particular, the Florida Audubon Society, supported by Drs. Carr, 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 in which private agents 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, these organizations maintained, 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 transplantation.

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 crocodilian 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 stimulation 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:

§ 17.42 *Special rules—reptiles.*

(a) *American alligator (Alligator mississippiensis).*—(1) *Prohibitions.* The fol-

lowing 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.

(D) Any employee or agent of the 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 purposes, may, when acting in the course of his official duties, take American alligators to carry out scientific research or conservation programs.

(F) When American alligators are taken by Service or State officials in accordance with paragraph (a) (1) (i) (D) of this section the hides may be sold by State or Federal officials: *Provided*, That the hides have first been tagged by the State of origin with a noncorrosible numbered tag inserted no more than six inches from the tip of the tail; the tag number and a description of the hide, including its length and the date and place of taking are recorded; and a shipping tag or label is affixed to the outside of any packages showing the name and address of the consignor and consignee, identifying the contents as alligator hides, and showing the number of hides in the package: *Provided further*, That such hides may be sold only 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.

In a letter to the Service dated September 22, 1976, Dr. O. E. Frye, Jr., Director of the Florida Game and Freshwater Fish Commission, enclosed a copy of a document entitled "Research Proposal. A Pilot Test for Alligator Management. (Revised July 1976 from draft of 21 June 1976)." Basically, the pilot plan outlined in this proposal provides for one-year comparative study of three different types of control methods in three different, limited areas of the State: licensed agents using lethal control, regular State employees using lethal control, and State reservists using transplantation only without lethal control. All hides of alligators taken by the first two methods would be turned over to the State for later sale, in accordance with § 17.42(a) (i) (D) and (F). The Service has carefully reviewed this plan and feels that it is justifiable under provisions of the Special Rules cited above and should yield valuable information about the most efficient methods for alligator control with minimum harm to wild populations. On the basis of the data produced by this study, Florida, and other States as well, will be able to make better decisions about how to manage alligators in the future. In no way is this plan a commercial harvest under the guise of nuisance alligator control; it is a carefully planned, limited management experiment. As presently designed, the Service feels this plan obviates many of the objections cited above. Furthermore, the Service will annually review all conservation programs, including those for the alligator, to be instituted under each Cooperative Agreement with a State. This will give the Service the opportunity to seek modifications, or in the extreme case termination, of any Cooperative Agreement

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, neither the reclassification nor institution 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.

In addition, 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 Article III, section 3(c), 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 implementation of its provisions has begun; 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 of the world have joined in the enforcement of the Convention.

For crocodilians as a whole, the Service feels that the best long-run hope for their conservation lies in development 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 Thailand and Papua 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 enhancement of propagation or survival." 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 crocodilians. Such treatment, when final, will throw a burden of proof on all importers to establish that any crocodilian 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 these areas are as follows: South Carolina, 32,500; Georgia, 15,853; Florida, 407,585; Louisiana (excluding Cameron, Vermilion, and Calcasieu Parishes), 94,779; Texas, 19,292. Altogether, 570,009 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 (734,384). By contrast, alligator numbers in areas where they will remain classified as Endangered are significantly lower. The following population numbers pertain to such areas: South Carolina, 16,200; Georgia, 14,101; 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 reclassified 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 habitat of the species. Although the alligator in this region is now numerous enough and sufficiently legally protected not to warrant Endangered status, the past history of its decline and the prospects for future habitat loss justify a Threatened classification.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Although the alligator now 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 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 § 17.92(a)(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 animals if done in a humane manner, to include killing only if live-capturing is not possible. Finally, employees or agents of States operative under Cooperative Agreements with the Service may take alligators for scientific research or conservation programs, and hides from such alligators may be sold, provided that they are correctly tagged and sold only to licensed buyers.

RULES AND REGULATIONS

This determination of Threatened status makes the alligators in the specified areas eligible for continued protection provided by section 7 of the Act which reads as follows:

INTERAGENCY COOPERATION

Sec. 7. 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 and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out pro-

grams for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species 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.

(Endangered Species Act of 1973 (U.S.C. 1531-1543; 87 Stat. 884).)

The amendments shall become effective on February 7, 1977.

Dated: January 3, 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.

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened			
REPTILES							
Alligator, American	<i>Alligator mississippiensis</i>	Wherever found in the wild, except in those areas where it is listed as threatened, as set forth below.	Southeastern United States	Entire	E	11	NA
Do	do	In the wild in Florida and in certain areas of Georgia, Louisiana (except in Cameron, Vermillion, and Calcasieu Parishes), South Carolina, and Texas, as set forth in sec. 17.42(a)(2)(iv).	United States (Florida and certain areas of Georgia, Louisiana (except Cameron, Vermillion, and Calcasieu Parishes), South Carolina, and Texas).	do	T	18	17.42(a)
Do	do	In the wild in Cameron, Vermillion, and Calcasieu Parishes in Louisiana.	United States (Cameron, Vermillion and Calcasieu Parishes in Louisiana).	NA	T(SA)	11	17.42(a)
Do	do	In captivity, wherever found	Worldwide	NA	T(SA)	11	NA

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)(i) (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 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(D) Any employee or agent of the 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 purposes, may, when acting in the course of his official duties, take American alligators to carry out scientific research or conservation programs.

(E) Any person may take American alligators in Cameron, Vermillion and Calcasieu parishes in accordance with the laws and regulations of the State of Louisiana, including that State's marking and tagging requirements: *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)(i)(D) of this section the hides may be sold by State or Federal officials: *Provided*, That the hides have first been tagged by the State of origin with a non-corrosable numbered tag inserted no more than six inches from the tip of the tail; the tag number and a description of the hide, including its length and the date and place of taking are recorded; and a shipping tag or label is affixed to

the outside of any packages showing the name and address of the consignor and consignee, identifying the contents as alligator hides, and showing the number of hides in the package: *Provided further*, That such hides may be sold only 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.

(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.

(iv) *Commercial transactions.* 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 American alligators lawfully obtained from the State of Louisiana prior to December 28, 1973, may be sold or offered for sale in interstate (not foreign) commerce if the Director of the State wildlife conservation agency certifies to the Director that all such hides were lawfully obtained and can be identified; and such hides are sold, offered for sale, delivered, carried, transported, or shipped only to a person holding a valid Federal license, issued under this subsection, as a buyer of hides.

(2) *Definitions.* For the purposes of this paragraph (a)