

approval if a satisfactory parent company or similar guarantee is provided?

(6) Any other aspect of this issue.

By Order of the Maritime Administrator.

Dated: September 18, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98-25408 Filed 9-22-98; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on 90-Day Finding and Commencement of Status Review for a Petition To List the Westslope Cutthroat Trout as Threatened; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: In document 98-21995 beginning on page 43901 in the issue of Monday, August 17, 1998, make the following corrections:

On page 43902, at the end of the first paragraph in the second column, insert the following sentence: "However, in accordance with the current Service Listing Priority Guidance (63 FR 25502, May 8, 1998) the Service will require 9 months from the date of the finding (June 10, 1998) to complete a thorough biological status review and issue a 12-month finding."

On page 43902, third column, in the third sentence of the first full paragraph, the word "not" should be changed to "now."

Dated: September 15, 1998.

Terry Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 98-25250 Filed 9-22-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD67

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Yacaré Caiman in South America From Endangered to Threatened, and the Listing of Two Other Caiman Species as Threatened by Reason of Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the yacaré (*Caiman yacare* also known as *Caiman crocodilus yacare*) from its present endangered status to threatened status under the Endangered Species Act (Act) because the endangered listing does not correctly reflect the present status of this animal. The Service also proposes to list the common caiman (*Caiman crocodilus crocodilus*) and the brown caiman (*Caiman crocodilus fuscus*) as threatened by reason of similarity of appearance. The yacaré is native to Argentina, Brazil, Paraguay, and Bolivia, and the other two caiman occur in Mexico and Central and South America. These three taxa are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Listing the two taxa as threatened by reason of similarity of appearance will assist in protecting the yacaré caiman from uncontrolled use.

A special rule is also proposed for these three species that would allow U.S. commerce in caiman skins, other parts and products from individual countries of origin and countries of re-export if certain pre-trade conditions are satisfied for those countries. The several conditions largely pertain to the implementation of a CITES resolution on the universal tagging of crocodilian skins (adopted at the ninth meeting of the Conference of the Parties) as well as conditions complementing the intent of this resolution and provisions to support the sufficiency of management of yacaré populations so that populations will be sustained through time.

In the case where tagged caiman skins and other parts are exported to a second country, usually for tanning and manufacturing purposes, and the processed skins and finished products are exported to the United States, the United States will prohibit imports of skins and products if it determines that

either the country of export or the country or countries of re-export are engaging in practices that are detrimental to the conservation of caiman populations.

The purpose of the special proposed rule is twofold. One is to promote the conservation of the yacaré caiman by ensuring proper management of the commercially harvested caiman species in the range countries and through implementation of trade controls as described in the CITES tagging resolution to reduce commingling of caiman specimens. The rule is also intended to relieve the burden on U.S. law enforcement personnel who must screen difficult to distinguish caiman products to exclude products from endangered or improperly identified species from U.S. commerce.

DATES: Comments from all interested parties must be received by December 22, 1998. Public hearing requests must be received by November 9, 1998.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 750, Arlington Square; 4401 North Fairfax Drive; U.S. Fish and Wildlife Service, Arlington, Virginia 22203. Fax number (703) 358-2276. Comments and other information received will be available for public inspection, by appointment, from 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Arlington, Virginia, address.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, at the above address, by phone at (703) 358-1708, or by E-mail at: Susan_Lieberman@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) recognizes that substantial populations of crocodilians that are managed as a sustainable resource can be utilized for commercial purposes while not adversely affecting the survival of individual populations of the species. When certain positive conservation conditions have been met, the Service has acted to allow utilization and trade from managed populations of the American alligator (*Alligator mississippiensis*), and has allowed the importation of commercial shipments of Nile crocodile (*Crocodylus niloticus*) skins, other parts, and products from several southern and eastern African countries and similar shipments of saltwater crocodile (*Crocodylus porosus*) specimens from Australia (61 FR 32356; June 24, 1996).

Management activities were reviewed by the CITES Parties prior to transferring certain populations from CITES Appendix I to Appendix II (thereby allowing commercial trade) and included assessments of population status, determination of sustainable harvest quotas (or approval of ranching programs), and the control of the illegal harvest. Management regulations imposed after harvest included the tagging of skins and issuance of permits to satisfy the requirements for CITES Appendix II species.

The Service is also proposing a special rule with this proposed rule to ensure implementation of the CITES controls over trade in skins, parts, and products of certain populations of the genus *Caiman*. Populations of *Caiman* spp. are widespread in Mexico and Central and South America, and have high reproductive potential; indeed, the species have survived in spite of a past substantial legal and illegal harvests. The Service believes that commercial utilization of yacaré caiman should involve trade from controlled harvest only from well managed populations, and that trade controls need to be effective in order to protect threatened crocodilian populations. If this proposed rule and its accompanying special rule are finalized as proposed, the Service believes that this will only allow commerce in yacaré specimens and products into the United States that will facilitate sound management practices to regulate the legal harvest and control illegal trade in range countries, so that caiman populations are being sustained at biologically sound levels. Furthermore, the Service does not intend to allow imports of caiman specimens and products with those intermediary countries that do not properly control trade in crocodilian skins, other parts, and products, so as to ensure that illegal skins, other parts, and products are not exported to the United States.

This rule proposes to reclassify the yacaré (*Caiman yacare* = *C. crocodilus yacare*) from endangered to threatened status under the Act, and to list two additional taxa, the common caiman (*C. crocodilus crocodilus*) and the brown caiman (*C. crocodilus fuscus* including *C. crocodilus chiapasius*), as threatened by reason of similarity of appearance. When traded as skin pieces in products, the yacaré is similar in appearance to the common caiman and the brown caiman that are listed as CITES Appendix II species, but have no comparable status under the Act. Other caiman species will be retained as endangered under the Act, including the black caiman (*Melanosuchus niger*) and

the broad-snouted caiman (*Caiman latirostris*). This proposed rule does not affect the endangered or threatened status, under the Act, of any other crocodilian species in the Western Hemisphere.

The original listing for the yacaré caiman (under the provisions of the Endangered Species Conservation Act of 1969) was *C. yacare*, which is the presently accepted taxonomic name for the species (King and Burke 1989) and the name used throughout this proposed rule. Some authors treat the taxon as a subspecies, *C. c. yacare*, and this is the taxonomic name presently included in the List of Endangered and Threatened Wildlife (50 CFR part 17.11). King believes (in litt.) that *C. yacare* should be considered biologically as a subspecies or at the end of a morphological cline, but indicates that nomenclaturally it is recognized as a full species.

A recent study, including an analysis of mitochondrial DNA variation, indicates that the *C. yacare* of Argentina, Bolivia, Brazil, and Paraguay comprise an taxonomic unit with substantial genetic, morphological, and zoogeographical similarities (Brazaitis et al. 1993). Those authors indicate that *C. yacare* populations are effectively separated from *C. c. crocodilus* populations by mountains and highlands that limit nesting habitat and the migration of individual animals between southern and northern river systems. *Caiman yacare*, *C. c. crocodilus* and *C. c. fuscus* are considered, on the basis of base changes in their DNA sequences, to be diagnostically distinct populations of a widespread and related taxa (Amato 1992) with *C. yacare*, apparently having greater genetic differences from *C. c. crocodilus* than *C. c. crocodilus* has in relationship to *C. c. fuscus* (Brazaitis et al. 1993). Additional analysis of DNA information by Brazaitis and others supports the interpretation that "*Caiman yacare*, *C. c. crocodilus*, and *C. c. chiapasius* (probably *C. c. fuscus*) are each phylogenetic species, as per the criteria of Davis and Nixon (1992)" (Brazaitis et al. 1997a, Brazaitis et al. 1997b). However, recent work (Busack and Pandya 1996) suggests that *C. c. crocodilus* and *C. c. fuscus* comprise a single genetic population at the subspecies level, while confirming that yacaré is a distinct subspecies, *C. c. yacare*. There is no biochemical evidence, at this time, that recognizable subgroups of *C. yacare* occur within the distributional limits of *C. yacare* in the river systems of Argentina, Bolivia, Brazil, or Paraguay (Brazaitis et al. 1993)

and no such subgroups are recognized in this proposed rule.

Since the initial listing of the yacaré caiman, there has been controversy associated with defining the ranges of caiman species, especially that of *C. yacare* in southern South America. To assist in the clarification of the status of *C. yacaré*, the CITES Secretariat, in conjunction with the World Conservation Union/Species Survival Commission (IUCN/SSC) Crocodile Specialist Group (CSG), undertook a survey (starting in late 1986 and early 1987) and the development of a conservation program for the crocodilians of the genus *Caiman*. These surveys were conducted under the auspices of CITES and were carried out by the CSG, and the Governments of Brazil, Bolivia, and Paraguay. The available data from these studies (Brazaitis 1989A; Brazaitis et al. 1990; King and Videz Roca 1989; and Scott et al. 1988 and 1990) on the distribution, ecology, and status of *C. yacare* indicate that this species is not endangered in its entirety and is not in danger of extinction in any significant portion of its range.

Caiman yacare is widely distributed throughout the lowland areas and river systems of northeastern Argentina, southeastern and northern Bolivia, Paraguay, and the western regions of the Brazilian States of Rondonia, Mato Grosso, and Mato Grosso do Sul (Brazaitis et al. 1990). The range includes: the entire Guapore River (= Itenes River) drainage, including its head waters in the Brazilian State of Mato Grosso, and its tributaries in northeastern Bolivia; eastern Bolivia and western Brazil throughout the drainage of the Paraguay River and the Pantanal of Brazil; Paraguay River and southern Pilcomayo River in Paraguay; and the lower Salado River, the Paraná River east to the Uruguay River, and south to the mouth of the Paraná River in Argentina (Brazaitis et al. 1993).

The common caiman, *C. c. crocodilus*, occurs in the drainage basins of the Amazon and Orinoco Rivers in French Guiana, Surinam, Guyana, Venezuela, eastern Ecuador, Colombia, Peru, and Brazil. A narrow zone of intergradation exists between *C. yacare* and *C. c. crocodilus* along the northern border of Bolivia and Brazil in the State of Acre in the Acre River and Abuna drainages, northward to approximately Humaita on the Madeira River in the Brazilian State of Amazonas (Brazaitis et al. 1990).

The brown caiman, *C. c. fuscus* (including *C. c. chiapasius*), occurs from Mexico through Central America to Colombia (west of the Andes), along the coastal and western regions of

Venezuela, and south through Ecuador to the northwestern border of Peru. The CITES Secretariat and several authors consider *C. c. chiapasius* a synonym of *C. c. fuscus* and it is so considered in this proposed rule.

The yacaré has been listed as endangered under the Act since 1970 and was placed in Appendix II of CITES on July 1, 1975. It has never been listed in CITES Appendix I. The endangered listing under the Act prohibited all commercial imports of the species into the United States. However, the Appendix II listing allowed for regulated commercial trade elsewhere in the world. A substantial U.S. law enforcement problem has occurred because of the different listing status under the Act and under CITES. All commercial imports of yacaré into the United States are prohibited under the Act, including shipments originating from countries of origin with valid CITES export documents. Commercial imports of products from the common and brown caiman are legal, with appropriate CITES documents. Products manufactured from the yacaré, common caiman, and the brown caiman are often indistinguishable as to species they are made from, and there is evidence that products from the prohibited yacaré have been commingled with products from non-prohibited taxa among commercial shipments into the United States. The unauthorized entry of prohibited yacaré products constitutes a violation of the Act, and if the yacaré is legally protected in individual range countries, then Lacey Act violations may also have occurred.

Argentina, Bolivia, Brazil, and Paraguay prohibited, until relatively recently, the export of caiman products (Brazaitis in comments on the October 29, 1990, **Federal Register** notice [55 FR 43389], see below). CITES Notification to the Parties No. 781, issued on March 10, 1994, indicated that Brazil's CITES Management Authority had registered 75 ranching operations for producing skins of *C. c. crocodilus* and *C. yacare*. These ranching operations were established under provisions of Article 6 B of Brazilian Wildlife Law No. 5.197, of November 3, 1967. Some of the ranching operations have begun the export of crocodilian products under CITES procedures including the use of security tags. *Caiman yacare* from Brazilian ranches is now legally traded in the international marketplace, except into the United States. Paraguay has also expressed an interest in the legal marketing of *C. yacare* skins, and a restricted legal hunt was held in 1994 (King et al. 1994).

The Service, on March 15, 1988, received a petition requesting the reclassification of the yacaré caiman (*C. c. yacaré*) from endangered to threatened status. The Service reviewed the petition and concluded that it did not present sufficient scientific or commercial information to indicate that a reclassification was warranted (55 FR 43387 published October 29, 1990). However, the Service, in the October 29, 1990, **Federal Register** notice, also solicited relevant data, comments, and publications dealing with the current status and distribution, biological information, and bioconservation measures pertaining to the yacaré caiman. The Service also requested comments about the advisability and necessity of treating the subspecies *C. c. crocodilus* and *C. c. fuscus* as endangered or threatened due to its similarity of appearance to the listed *C. c. yacaré*. The Service noted that while living yacaré caiman are usually distinguishable from the common and the brown caiman, portions of the skin and products manufactured from cut skins of any of these taxa may be difficult to distinguish as to taxon of origin.

Comments Received

Thirty-eight written comments, from 31 individuals and organizations, were received in response to the October 29, 1990, **Federal Register** notice, of which 24 were received during the formal comment period. Ten received during the formal comment period were from government officials or residents of South America (Argentina {3}, Brazil {4}, Colombia {1}, Peru {1}, and Paraguay {1}); 10 were from the scientific community, including 4 from the IUCN/SSC Crocodile Specialist Group (CSG); and one each was received from the trade industry, the CITES Secretariat, the German Scientific Authority, and TRAFFIC-USA. Some of the additional comments received outside the formal comment period are also cited herein because they are believed to provide important information relevant to this proposed listing determination. The spectrum of interest expressed in the comments received ranged from requests for the total removal of *C. c. yacaré* from the "List of Endangered and Threatened Wildlife" to listing the taxa as "threatened or endangered." Many of the comments referred to the presence of yacaré caiman at various locations but did not provide any field data or information on population levels, trends or productivity. However, the Service acknowledges such anecdotal information as being useful to reinforce

its information on the distribution of the species.

Dr. F. Wayne King, Deputy Chairman of the CSG, commented that the original 1970 endangered listing was unjustified in that data available at the time of listing indicated that *C. yacare* was under no greater threat than *C. c. crocodilus* or *C. c. fuscus*, which were not listed. In preparing his comments in response to the October 29, 1990, **Federal Register** notice, King relied upon the status reports prepared for the CITES Secretariat (Brazaitis 1989a; Brazaitis et al. 1990; King and Vides Roca 1989; Scott et al. 1988 and 1990). He concluded that *C. yacaré* is neither endangered nor threatened and is not in danger of extinction in any significant portion of its range.

King further concluded that the "endangered" listing denies yacaré range countries an opportunity to profit from implementing successful management programs for the species. Mr. Juan Villalba-Macias, Vice Chairman for Latin America section of the CSG, agreed with King that this species should not be considered as endangered in the different range countries and that it is not appropriate to keep yacaré listed under the Act. He considered its inclusion in Appendix II of CITES the most appropriate listing.

Mr. Dennis David, North American Deputy Vice Chairman of the CSG, indicated that the species does not meet the criteria for listing as endangered or threatened, and that a downlisting action would greatly influence the ability of Latin American countries to pursue the establishment of sound management programs. According to Mr. David, many of these countries are actively seeking to establish regulated harvests that would provide economic incentives for the conservation of crocodilian species and their wetland habitats. The most destructive action, in his view, would be to maintain or establish obstacles to the development of regulated harvest programs in this region. He stated that the CITES Appendix II classification provided ample control over trade.

Dr. Valentine A. Lance, Vice Chairman for Science of the CSG, opposed any decision to list other caiman species as endangered under "similarity of appearance" because of his belief that none of the caiman species are endangered.

Dr. Obdulio Menghi, Scientific Coordinator of the CITES Secretariat, commented that after having reviewed the comments made by Latin American countries regarding the distribution of populations of the species and based upon his own experience in the region,

he believed that yacaré should be removed from the U.S. endangered species list. This, he wrote, would improve compliance with CITES by allowing legal trade. Dr. Menghi also opposed adding *C. c. crocodilus* and *C. c. fuscus* to the list of endangered and threatened species under the similarity of appearance provisions. Dr. Menghi noted that listing *C. c. crocodilus* and *C. c. fuscus* would discourage an entire region that has come a long and difficult way toward accomplishing the aims of CITES.

Dr. Dietrich Jelden, Deputy Head of the CITES Scientific Authority of Germany (currently Head of the Management Authority of Germany) commented that, based on the status of yacaré in its four range countries, virtually all populations had suffered severely from indiscriminate hunting. He recommended that any downlisting should be combined with improvements to the general management of the species. Furthermore, he believed that any downlisting should be combined with a commitment from the governments of Bolivia, Brazil, and Paraguay, to only ship tanned skins or flanks marked with self-locking tags, if they intend to start legally exporting yacaré skins.

Ms. Ginette Hemley of TRAFFIC-USA (now with World Wildlife Fund) commented that, in her view, the species does not qualify as endangered, and it is clearly not "in danger of extinction throughout all or a significant portion of its range." The high value of *C. crocodilus* products and the relative abundance of the species, including *C. yacare*, has prompted many range countries to develop, or begin developing, sustained-use management programs. Whereas a policy of strict protection once appeared to be the best way to conserve the species, many range countries now see that the most appropriate means of protecting the species is through farming, ranching, or controlled harvest, and trade. She added that Service policy on conservation and trade of the species, including *C. yacare*, should take these developments into consideration, as they are fully consistent with the purposes of CITES and the Act. Ms. Hemley stated that *C. yacare* should, at a minimum, be downlisted from endangered to threatened under the Act, and that the Service should use every resource and legal tool available to combat and control the illegal trade.

Mr. Jorge Hernandez Camacho of the Institute for Natural Renewable Resources (INDERENA) and the CITES Scientific Authority for Colombia, commented that four subspecies of *C.*

crocodilus (*apaporiensis*, *chiapasius*, *crocodilus*, and *fuscus*) occur in Colombia and that the Government has no interest in the commercialization of specimens or hides of *C. yacare*. Mr. Camacho wrote that the formal inclusion of *C. c. chiapasius*, *C. c. crocodilus*, and *C. c. fuscus* by similarity of appearance under the Act could have a drastic negative impact on the future of crocodilian management policies and practices in Colombia. He stated that there is no commercial hunting of any crocodilian species in Colombia and that management policy is oriented toward the establishment of captive breeding farms. Reportedly, INDERENA authorities allow the capture of animals from the wild for breeding purposes only. The control system for ranches includes the marking of individuals and legally-produced hides.

Mr. Tomas Uribe, Director of the Colombian Government Trade Bureau, on behalf of the Government of Colombia, submitted two responses (letters of February 26, 1991, and March 8, 1991) to the Service's notice. He observed that although *C. yacare* does not exist in Colombia, a main concern was the prospective listing, as endangered or threatened by similarity of appearance, of species native to their country, particularly *C. c. crocodilus* and *C. c. fuscus*. Mr. Uribe wrote that Colombia has a comprehensive and scientifically oriented system of protection and conservation of its natural and wildlife resources. He affirmed that the Government of Colombia recognized the importance of the caiman trade and its contribution to regional welfare, and instituted a program to ensure the conservation of the species involved. All caiman skins exported must be accompanied by a CITES export permit issued by the Institute for Natural Renewable Resources (INDERENA), Ministry of Agriculture.

Three comments were received from scientists who work for the Brazilian governmental agency, Empresa Brasileira de Pesquisa Agropecuária/Centro de Pesquisas Agropecuárias do Pantanal (EMBRAPA/CPAP), in the State of Mato Grosso do Sul. They contended that *C. yacare* remains common throughout its range despite extensive exploitation in the southern part of the Pantanal and in other regions. They stated that there is no reason to have the *C. yacare* listed as endangered, and that the Appendix II listing under CITES is sufficient for the United States to support any management decisions by the Brazilian Wildlife Management Authority (IBAMA). Mr. George Rebelo of the

Instituto Nacional de Pesquisas de Amazonia (INPA) commented that *C. yacare* is common over all of its range in Brazil, but in many places there are visibly depleted populations. He stated that *C. yacare* should not be downlisted until a feasible management plan to harvest skins under a sustained-yield model is developed, and until illegal hunting is stopped or greatly reduced.

In Argentina, one governmental agency (Ministerio de Economía, Buenos Aires) favored listing *C. yacare* as threatened to bring it in line with the CITES listing; while two agencies (Ministerio de Agricultura, Ganadería and Industria y Comercio—Provincia de Santa Fe and El Bagual Ecological Reserve—Formosa) opposed this listing until a recovery program has been developed.

Ms. Aida Luz Aquino-Shuster, Scientific Authority CITES-Paraguay, commented that *C. yacare* can still be found in large numbers in the Pantanal, but that they are less common in the lower Chaco region of Paraguay. Furthermore, in response to the October 1990 **Federal Register** notice, Ms. Aquino-Shuster observed that the control systems in all the range countries were very poor or non-existent at that time. She felt that a good strategy to enhance the survival of the species in the various range countries should be developed and implemented before the United States downlists *C. yacare*.

Ms. Ana Maria Trelancia de Lima, Peru, a member of the CSG, wrote that the 2-year survey on *C. yacare* conducted by competent researchers shows that this species can support sustainable use, and that the United States' prohibition on importation should be changed to bring it in line with CITES.

Dr. Marinus S. Hoogmoed of the National Museum of Natural History of Holland commented that the trade in products of caiman species should be allowed, provided the skins are legitimately taken and marked as such.

Three Zoological Institutions (Toledo Zoological Society, Riverbanks Zoological Park, and Zoo Atlanta) recommended that the Service list *C. c. crocodilus* and *C. c. fuscus* under the similarity of appearance provisions of the Act because small pieces of hides or finished products are difficult to distinguish from the listed species, *C. yacare*.

Extensive comments were received from Mr. Peter Brazaitis of the New York Zoological Society. Since 1985, Mr. Brazaitis has conducted field investigations on *Caiman* species in Brazil. His primary research focus has been the resolution of both taxonomic

issues and the determination of the status and distribution of caimans. In 1986, Mr. Brazaitis was Coordinator for the CITES Central/South America caiman survey in Brazil.

Mr. Brazaitis stated that the rampant illegal trade in crocodilians continued at an alarming rate. Due to the great similarity of appearance among the *Caiman* species, he noted that it is difficult to identify the species, especially when small pieces of skins and products, or even whole skins are involved. According to Mr. Brazaitis, the majority of skins involved in trade are *C. yacare*, and at the time of his writing there were no legal sources for these skins because each range country (Argentina, Bolivia, Brazil and Paraguay) had a ban on the export of all caimans. He further noted that while no legal sources existed for raw untanned skins, raw skins continually entered commercial trade and found their way into the United States.

Mr. Brazaitis commented that the lack of adequate trade controls and the lack of procedures for marking skins and products, compounded the problem of distinguishing the taxa yielding hides and products, because of the great similarity in appearance and morphology. He observed that the extensive trade in items made from *C. crocodilus* may include products made from the endangered species (*C. c. apaporiensis* and *C. c. yacare*) that pass unaltered into the United States due to similarity of appearance. According to King (pers. comm.), there have been no reports of *C. c. apaporiensis* still occurring in the wild over the last 20 years.

Mr. Brazaitis urged the Service to include listing *C. c. crocodilus*, *C. c. fuscus* and *C. latirostris* under the similarity of appearance provision of the Act. [Note that *C. latirostris* is already listed as endangered under the Act.] Apart from the similarity of appearance issue, Mr. Brazaitis wrote that sufficient grounds exist to elevate *C. c. crocodilus* in Brazil to endangered status.

A group of scientists (M. Watanabe, J. Mahony, W. Tramontano, and E. Odierna) from Manhattan College in New York have assayed heavy metal content in tissues taken from caimans (all species) in Brazil. These scientists report that populations surveyed by the field team in Brazil suggest very low numbers in many regions of the Amazon Basin, and surveys in northern Brazil found few adult animals.

Summary of Factors Affecting Caiman Yacare

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations

promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their applicability to populations of the yacaré caiman in South America are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The yacaré caiman may occur over 500,000 square kilometers (sq km) in Brazil of which 175,000 sq km is in the Pantanal, which is a primary habitat (Brazaitis *et al.* 1988). The Pantanal is a complex region which lies in the basin of the Paraguay River in the Brazilian States of Mato Grosso and Mato Grosso do Sul. The region is composed of permanent swamp, seasonal swamp, gallery forest, marginal scrub, savannah, and semi-deciduous forest. The yacaré is the only caiman in the Pantanal (Brazaitis 1989a). The yacaré, in the Pantanal and elsewhere, is found in a wide variety of habitats including those that are altered by humans. The species occurs in vegetated and non-vegetated large open rivers, secondary rivers and streams, flooded lowlands and forests, roadside ditches and canals, oxbows, large and small lakes and ponds, cattle ponds and streams (Brazaitis *et al.* 1988). The yacaré is found throughout the Bolivian Departments of Beni, Pando, and Santa Cruz, and the lowland portions of Chuquisaca, Cochabamba, La Paz, and Tarija (King and Videz Roca 1989). King and Videz Roca (1989) also indicate that the yacaré may occur in permanent wetland habitats that may total over 60,000 sq km in area and in seasonal wetland habitats that may total an additional 70,000 sq km in area. The yacaré occurs throughout the Chaco of western Paraguay wherever there are permanent water refuges during the dry season (Scott *et al.* 1990). The species inhabits the flat seasonally flooded lands west of the Paraguay River in the southern Chaco, marshes and oxbows along the isolated streams and river valleys in eastern Paraguay, and the extensive marshes at the confluence of the Paraguay and Parana rivers in southern Paraguay (Scott *et al.* 1990).

The expansion of cattle grazing and the concurrent construction of permanent water sources for cattle has increased the dry season freshwater habitats available to caiman in some areas, and has diminished habitat in other areas by increasing the salinity of waterways (King *et al.* 1994). Habitat destruction and deterioration has taken place and continues to occur throughout

the range of the yacaré. Transportation improvements destroy relatively small amounts of habitat but increase the access of poachers to some yacaré habitats. Increasing human populations, the development of hydroelectric projects, the draining of wetlands, and deteriorating water quality due to siltation or the extensive dumping of pollutants has caused habitat degradation. However, yacaré habitat is very extensive and yacaré habitation is so widespread that it is very unlikely that the species is presently endangered or threatened because of the destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The status of the yacaré has been of concern. Each of the four range countries has some populations that are adequate, and each has other populations that are reported to be depleted or extirpated (Groombridge 1982). Hunting for hides, both legal and illegal, has in the past been the major threat to the survival of populations of the species. The species is either provided protection by domestic legislation (Paraguay, Argentina, and Brazil) or the legal harvest is regulated by established hunting seasons and limits on the size of animals that can be legally killed for the commercial trade (Bolivia). Questions about the taxonomy, distribution, and population status of the species prompted the CITES Secretariat in conjunction with the CSG to undertake a survey (starting in late 1986 and early 1987) and to help develop a conservation program for the crocodilians of the genus *Caiman*. These surveys were conducted under the auspices of CITES and were carried out by the CSG, and the Governments of Brazil, Bolivia, and Paraguay. The available data from these studies (Brazaitis 1989a; Brazaitis *et al.* 1990; King and Videz Roca 1989; and Scott *et al.* 1988 and 1990) on the distribution, ecology, and status of *C. yacaré* are reviewed below to assess Factor B under the Act.

In the past, large numbers of caiman per year, particularly those of *C. yacaré*, were taken from Brazil, in violation of Brazilian law (Brazaitis *et al.* 1988). Yacaré populations declined in many areas, although the species can be found, in varying population densities in most areas where suitable habitat remains. Yacaré found in some surveys almost a decade ago appeared small, extremely wary, and exhibited a high male sex ratio. It was suggested that females might be more heavily

harvested at a time when they might be very vulnerable while protecting their nests (Brazaitis 1989a). Brazilian yacaré have historically been illegally taken by Bolivian and Paraguayan traders. Local landowners in Bolivia and Paraguay, and the exotic foreign leather interests provided a basis for illegal hunting and a market for skins. The illegal harvest was the direct result of illegal hide buyers operating with the tacit approval of authorities in Bolivia and Paraguay (King and Videz Roca 1989), although there is reason to believe that situation, prevalent almost a decade ago, has improved recently. Habitats may be remote and inaccessible during the wet season but easily accessible during the dry season when most harvest occurs (Brazaitis 1989a).

The yacaré remain widely distributed in Bolivia (King and Videz Roca 1989), with management of populations improving in recent years. The average length of certain measured caiman was about 1.25m which suggests a disproportionately young age structure. Caiman populations in some rivers were extirpated, but caiman survive in Bolivia due to abundant habitat and their rapid growth to sexual maturity. Minimal size lengths and legal hunt seasons have been established. A sustainable harvest will occur, with effective enforcement of existing laws governing the yacaré. Almost a decade ago, it was reported that the long-term continuation of the status quo could lead to the endangerment of the species in Bolivia (King and Videz Roca 1989); it is believed that situation has improved, with new, more effective management in Bolivia.

The yacaré persists in good numbers throughout the Chaco region of Paraguay, wherever there are permanent water refuges during the dry season. The yacaré is subject to intense hunting pressures for both hides and meat in many locations, although populations may be dense where the species is protected. Some caiman populations, until recently, were heavily exploited. The fact that small residual populations exist in many areas suggest that the yacaré should be able to recover where they and their habitats are protected (Scott et al. 1990). King et al. (1994) reported that large populations of yacaré can still be found in suitable habitats. In some cases, however, populations consist of smaller animals suggesting that extensive hunting occurred in the recent past.

The CSG did not conduct a survey and assessment in Argentina. Fitch and Nadeau (1979) indicated that yacaré were relatively abundant in northern Argentina. Using a combination of

census methods and interviews with hunters and hide dealers, they estimated that 1,400,000 animals remained in the swamps of western Argentina. This preliminary estimate was later revised downward to 200,000 (King in litt).

The Service believes there is sufficient cause to find, at this time, that some populations of the yacaré caiman still may be threatened by trade in portions of its extensive range. In some cases, harvest numbers could exceed the sustainable yield.

C. Disease or Predation

The eggs of *C. yacare* are eaten by a variety of predators, which in some localities include humans, and hatchlings are consumed by a variety of predators including crocodilians. However, there is no evidence, at this time, that disease or predation are significant factors affecting *C. yacare* populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The yacaré is protected in Argentina by a total ban on commercial hunting, and on the export of raw and tanned hides, and other products. Domestic laws ban the export of wildlife and wildlife products from Brazil, except from approved ranching programs. The yacaré is nominally protected in Paraguay by Presidential decree which prohibits hunting, commerce, and the import and export of all species of wildlife and their parts and products, although a restricted harvest was held in 1994 (King et al. 1994). Bolivia permits the hunting of yacaré from January 1 to June 30, and imposes a 1.5m size limit on all harvested caiman. The yacaré was listed as endangered by the Pan American Union in 1967 (Groombridge 1982). The yacaré was additionally listed as endangered under the U.S. Endangered Species Conservation Act of 1969 and was added to Appendix II of CITES in 1975.

The several pieces of domestic and international legislation and individual Presidential decrees were meant to restrict the harvest and commercial trade of yacaré to a sustainable harvest from wild populations of yacaré legally killed in Bolivia. Yacaré skins, other parts and products from this legal harvest, with proper CITES export permits from Bolivia, have been able to enter international trade with countries other than the United States. In some cases, existing legislation and decrees have been inadequately or unevenly enforced. The yacaré is apparently illegally killed in Argentina, Bolivia, Brazil, and Paraguay, and reportedly may be illegally exported with real or

forged CITES export permits from some South American countries. Furthermore, some countries of manufacture, knowingly or unknowingly, apparently accepted illegally killed and illegally exported yacaré, used these materials in the production of leather goods, and shipped the resulting finished products to the United States. Although a live or whole yacaré caiman can be distinguished from other caiman species, the products from tanned or processed skins are often very difficult to distinguish caiman species. U.S. Fish and Wildlife Service Wildlife Inspectors, by clearing crocodilian products from these leather good manufacturing countries, could inadvertently have allowed the import of parts and products from illegally harvested yacaré. Such imports would constitute violation of the U.S. Lacey Act and the Endangered Species Act, and would be detrimental to the conservation of the yacaré, by not effectively promoting the management of the species.

The CITES Secretariat, in conjunction with the CSG, and with the permission and cooperation of the range countries, conducted a survey of the status of the yacaré and discovered, during the course of those surveys, major inadequacies associated with the existing regulatory mechanisms. All available information indicates that some of the regulations and laws have been improved since the survey.

The yacaré in Paraguay is subject to intensive hunting pressures for meat and hides (Scott et al. 1990). Until recently the level of exploitation of caimans was uncontrolled and many populations were over-exploited. The combination of increased difficulty in marketing hides, an increased awareness of conservation needs, reduced caiman populations, reduced prices, and increased action by government and international agencies may have relieved some of the pressure on the caiman resources (Scott et al. 1990). King et al. (1994) report that the traffic in yacaré skins was virtually nonexistent in Paraguay in 1993, and interest exists in developing sustainable harvest programs.

In the 1980s, the yacaré in Bolivia supported a legal export trade of 50,000–200,000 hides annually, and an illegal trade that brought total exports to about 400,000 hides annually (King and Videz Roca 1989). The yacaré was considered to be suffering from a lack of conservation management because of a lack of enforcement of existing wildlife laws. The establishment and implementation of an adequate bureaucracy to conduct wildlife

management and to enforce conservation laws was considered an imperative if wildlife resources were to survive and flourish.

A 1961 Presidential decree prohibited the hunting of yacaré less than 1.5 meters (m) in length, and additional decrees closed the caiman hunting seasons from July 1 to December 31. Unfortunately, there was no effective enforcement of either the hunting season restriction or of the minimum size limit restriction. About two-thirds of the hides inspected in warehouses were less than the 1.5 m legal length. In 1986 and 1987, Bolivia reputedly sold CITES export permits, in the amount equal to the annual CITES quotas, to skin exporters in Paraguay (King and Videz Roca 1989). This provided an outlet for poached skins through Paraguay which apparently enhanced the illegal kill and sanctioned and encouraged the trans-national movement of illegal wildlife products in violation of CITES. The Standing Committee of CITES recommended, in October 1986, that the Parties to the Convention no longer accept export permits from Bolivia, but further study would be required to determine if effective regulatory mechanisms may presently be in place in Bolivia.

Large numbers of caiman skins were illegally taken every year, largely from south central Brazil, despite Brazilian laws (Law No. 5.197, January 3, 1967) which prohibit the commercial hunting of all wildlife (Brazaitis et al. 1988). The illegal hunting of caiman in south-central Brazil was well organized, well funded, and widespread. The endemic crocodilians, in some areas, however, are beginning to be perceived as a valuable renewable natural resource and state governments and the private sector have begun some conservation initiatives. A Federal wildlife bureaucracy has been established, and regional and local offices have been established in states and major cities. Brazaitis et al. (1988) considered the Brazilian biologists and law enforcement personnel as competent, interested, and eager to participate in crocodilian wildlife conservation. These Brazilian personnel, however, were ill equipped to face poachers that were both better equipped and better armed. A further weakness has been that the judiciary has not supported the enforcement of wildlife regulations with appropriate penalties for violators. Presumably, the success and effectiveness of future conservation programs for crocodilians will depend on the cooperation and financial support of an interested private sector.

The Service believes there is sufficient cause to find that the yacaré is presently threatened by the inadequacy of the existing regulatory mechanisms. Sufficient laws and decrees may be published but they have been insufficiently enforced to successfully promote the conservation of the yacaré.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Wildlife, such as the yacaré caiman, can be advantageously utilized in commerce if management is sufficient to maintain satisfactory habitats, and harvest is at a level that allows maintenance of healthy and sustainable populations. The yacaré, under such conditions, can provide revenue to pay for its own management and to stimulate local economies. CITES works well to regulate exports under conditions where all parties share the same conservation goals and provide adequate resources to properly manage the species and control trade.

Currently, pressures exist to distort this ideal management model. In many areas, within the range of the yacaré, the goal has been to exploit rather than conserve the species. Within the range countries, there have been insufficient funds to protect, enhance, and manage wildlife resources, and there are tremendous demands for land and the products from that land to provide subsistence living to an increasing human population. CITES implementation is challenging when countries do not have the will or resources to prevent the over-exploitation of natural resources. The unfortunate reality is that over exploitation minimizes per item resource values in the short-term and may destroy long-term resource values.

International trade in certain crocodilians has presented significant problems for the CITES Parties; several resolutions have been adopted at previous meetings of the Parties in an effort to establish management regimes to benefit conservation of particular species. The United States, in conjunction with Australia, Germany, and Italy, submitted a resolution (Conf. 8.14) for consideration at the eighth meeting of the Conference of the Parties in Kyoto in 1992, which called for a universal tagging system for the identification of crocodilian skins in international trade. Additional controls were incorporated into a revised resolution prepared by the CITES Animals Committee and adopted by the CITES Parties at the ninth meeting of the Conference of the Parties held in Fort Lauderdale, Florida, in November

1994. Resolution Conf. 8.14 was repealed with the adoption of the new resolution Conf. 9.22 on the Universal Tagging of Crocodilians. Requirements of this new resolution are incorporated into this proposed rule and will also be incorporated into a future revision of 50 CFR part 23 on CITES implementation in the United States. Adherence to the new marking requirements should minimize the potential for substitution of illegal skins and reduce the trade control problems with the similarity in appearance of skins and products from different species of crocodilians.

The CITES resolution on the universal tagging system for the identification of crocodilian skins requires, in part: (1) the universal tagging of raw and processed crocodilian skins with non-reusable tags for all crocodilian skins entering trade or being reexported, unless they have been further processed and cut into smaller pieces; (2) the tagging of transparent containers of crocodilian parts; (3) that the non-reusable tags include as a minimum the International Organization for Standardization two-letter code for the country of origin, a unique serial identification number, a standard species code and the year of production or harvest, and further that such non-reusable tags be registered with the CITES Secretariat and have the required information applied by permanent stamping; (4) that the same information as is on the tags be given on the export permit, re-export certificate or other Convention document, or on a separate sheet which shall be considered an integral part of the permit, certificate or document and which should be validated by the same issuing authority; and (5) that re-exporting countries implement an administrative system for the effective matching of imports and re-exports and ensure that the original tags are intact upon re-export unless the pieces are further processed and cut into smaller pieces.

The Service has carefully assessed the best available biological and conservation status information regarding the past, present, and future threats faced by the yacaré in proposing this rule. Based on this evaluation, the proposed action is to reclassify yacaré caiman populations from endangered to threatened. The Service has concluded that an extensive but not yet completely adequately managed population of yacaré still exists over large and seasonally inaccessible areas within the four South American range countries. There seems to be solid and well-supported information documenting the extensiveness of the distribution of this species. The Service recognizes that

little quantified field work has been performed to assess the population trends over time, and this is due to the inaccessibility of the habitat, the high costs of performing field work in such locations, and physical risks to researchers in some areas. The best available information does indicate that this species is surviving despite unregulated harvests.

Criteria for reclassification of a threatened or endangered species, found in 50 CFR 424.11(d) include extinction, recovery of the species, or error in the original data for classification. The original listing did not encompass the survey information, such as Medem's 1973 work, which documented an extensive range for this species. Given the reproductive capabilities of crocodilians, this species should more properly be considered as not in danger of extinction throughout all or a significant portion of its vast range, but as threatened due to inadequately regulated harvest and commercialization. Therefore, if measures to better regulate its harvest and commercialization are successfully implemented, the yacaré caiman should be able to achieve stable and sustainable population levels.

Similarity of Appearance

In determining whether to treat a species as endangered or threatened due to similarity of appearance, the Director shall consider the criteria in section 4(e) of the Endangered Species Act. Section 4(e) of the Act and criteria of 50 CFR 17.50 set forth three criteria in determining whether to list a species for reasons of similarity of appearance. These criteria apply to populations of common caiman (*C. c. crocodilus*) in South America, and the brown caiman (*C. c. fuscus*) in Mexico and Central and South America.

The Service has intercepted numerous shipments of manufactured items with documents identifying them as a lawfully tradable Appendix II species (most often *C. c. crocodilus* and *C. c. fuscus*) and have determined that they are, in fact, made from yacaré caiman. There have also been instances when products from other endangered species, such as *M. niger*, have been declared as *C. c. fuscus*. One reason for this is that many vendors, buyers and traders in South and Central America have deliberately misidentified yacaré caiman by obtaining documents purporting to permit export of other Appendix II species. In addition, representatives of the manufacturing industry and others have indicated that it is a common practice in the trade to commingle skins at the tanning, cutting

and assembly stages of the manufacturing process so that inadvertent commingling frequently occurs. While some affirmative yacaré identifications can be made in manufactured products, there are numerous instances when proper identifications are not made and significant quantities of yacaré are probably being imported unlawfully. This occurs because a positive yacaré identification depends upon whether certain indicator patterns are present on a piece of skin and a large proportion of commercially useful pieces of skins do not bear the key patterns.

In his comments submitted in response to the October 29, 1990, **Federal Register** notice, Mr. Brazaitis provided extensive information on the similarity of appearance amongst six caiman and crocodilian species or subspecies as they occur in manufactured products and some hides. He discussed in detail the indicator characteristics on live or whole, untanned animals for *C. yacaré*, *C. c. crocodilus*, *C. c. fuscus*, *C. c. apaporiensis*, *C. latirostris*, and *M. niger*, the characteristics remaining after tanning and cutting, and how frequently similar characteristics found on pieces of skin preclude affirmative identification.

The three criteria for listing of other caiman by similarity of appearance are discussed below:

(1) The degree of difficulty enforcement personnel would have in distinguishing the species, at the point in question, from an endangered or threatened species (including those cases where the criteria for recognition of a species are based on geographical boundaries). *Caiman yacaré*, *C. c. crocodilus* and *C. c. fuscus* superficially resemble each other and are difficult to distinguish, even for a trained herpetologist. They are distinguishable as live animals because of different markings and coloration in the head region, but manufactured products (shoes, purses, belts, or watchbands, etc.) are extremely difficult even for an expert to identify as to the species of origin (Brazaitis 1989b). Products from the three crocodilians cannot readily be distinguished by law enforcement personnel, which means that under present conditions commingled products from U.S. listed and unlisted species may occur in U.S. commerce.

(2) The additional threat posed to the endangered or threatened species by loss of control occasioned because of the similarity of appearance.

The inability to adequately control commerce in caiman products has likely allowed losses to occur to other

endangered species like *C. latirostris* and *M. niger*. For example, the Service has records of leather goods manufactured from *M. niger* being included in product shipments declared as *C. c. fuscus*.

Another problem occurs when unlawfully harvested yacaré enter commerce in non-range South American countries and then are re-exported with documents describing the export as native caiman. Some non-yacaré countries have ineffective controls over their caiman exports. The Service has intercepted a number of shipments of yacaré from Colombia despite domestic laws that only permit the export of caiman produced through captive breeding programs, and despite the fact that the yacaré does not occur in Colombia. Other caiman countries have little control over their domestic caiman harvests, and have exported yacaré despite the fact that the species does not occur in their country. The proposed rule allows for cessation of commercial trade to the United States if CITES bans are imposed for failure to implement appropriate trade control measures.

A secondary effect of the proposed rule may be to enhance the management of the three caiman species, to facilitate commerce in products of caiman species that can tolerate a managed commercial harvest, and to more effectively protect the endangered species of caiman or of other taxa that cannot sustain a managed commercial harvest.

(3) The probability that so designating a similar species will substantially facilitate enforcement and further the purposes and policy of the Act.

The Division of Law Enforcement presently inspects caiman shipments to determine the validity of the proffered Appendix II CITES documents and consults herpetologists to evaluate specimens when warranted. Due to the problems of commingling and identification, a substantial number of seizures, forfeitures and penalty assessments have been contested. Judicial decisions have affirmed the validity of the Service's identifications, but the expenditure of funds and resources is disproportionate to that devoted to other species. An earlier judicial forfeiture action was concluded after 6 years, a full trial, and the employment, by both parties, of several expert witnesses. One of the purposes of this proposed rule is to shift the inquiry from one of evaluating a particular shipment, to one of supporting the effectiveness of the CITES crocodilian skin control system and the effectiveness of yacaré management programs in countries of origin and re-export, thereby enhancing the

management of the species while permitting other allocations of enforcement resources.

The improved management of trade should enhance the conservation status of each species, and the proposed listing action and the proposed special rule should help CITES Parties control the illegal trade in caiman skins, products, and parts.

Processing of this proposed rule conforms with the Service's Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists; processing new proposals to add species to the Lists; processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of the degree of endangerment, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed to be listed or listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. No critical habitat is being proposed for designation with this proposed rule.

With respect to *C. yacare*, no Federal activities, other than the issuance of CITES export permits, are known that would require conferral or consultation.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or

useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Sections 4(d) and 9 of the Act, and implementing regulations found at 50 CFR 17.31, (which incorporate certain provisions of 50 CFR 17.21), set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within U.S. territory or on the high seas), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific, enhancement of propagation or survival, economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the Act. All such permits must also be consistent with the purposes and policy of the Act as required by section 10(d). Such a permit shall be governed by the provisions of section 17.32 unless a special rule applicable to the wildlife (appearing in sections 17.40 to 17.48) provides otherwise.

Threatened species are generally covered by all prohibitions applicable to endangered species, under section 4(d) of the Act. The Secretary, however, may propose special rules if deemed necessary and advisable to provide for the conservation of the species. The special rule proposed here for § 17.42 would allow commercial importation into the United States of certain farm-reared, ranch-reared, and wild-collected specimens of threatened caiman species (which are listed in CITES Appendix II). Importation could be restricted from a particular country of origin or re-export if that country is not complying with the CITES tagging resolution, or if that country has been singled out for a recommended suspension of trade by

the CITES Standing Committee or Secretariat. Interstate commerce within the United States in caiman parts and reexport will utilize CITES Appendix II documents and will not require additional U.S. threatened species permits.

Effects of the Proposed Rule

This proposed rule, if finalized, would revise § 17.11(h) to reclassify the yacaré from endangered to threatened, so that the regulations specifically pertaining to threatened species (50 CFR 17.31, 17.32, 17.51 and 17.52) would apply to it. The Apaporis River caiman (*C. c. apaporiensis*), the black caiman (*M. niger*), and the broad-snouted caiman (*C. latirostris*) will retain their endangered status under the Act. *C. c. crocodilus* and *C. c. fuscus* including *C. c. chiapasius* would be listed as threatened by reason of similarity in appearance.

Consistent with the requirement of sections 3(3) and 4(d) of the Act, this proposed rule also contains a special rule that would amend 50 CFR 17.42 to allow for the commercial importation, under the certain conditions, of whole and partial skins, other parts and finished products thereof of populations of yacaré without a threatened species import permit otherwise required by 50 CFR part 17, if all requirements of the special rule are met and if proper CITES export permits or re-export certificates accompany the shipments.

The proposed reclassification to "threatened" and accompanying special rule that would allow commercial trade into the United States without endangered species import permits does not end protection for the yacaré, which will remain on Appendix II of CITES. Furthermore, the special rule is proposed to complement the CITES resolution on universal tagging of crocodilian skins by allowing imports only from those range countries properly managing this species and controlling exports, and only from those intermediary countries properly implementing the tagging resolution. This special rule is proposed because most yacaré would enter the United States as finished products that are largely indistinguishable from products from other caiman taxa; thus, measures to discourage commingling of illegal caiman specimens in the manufacturing process should be implemented in the countries of re-export and manufacture.

Effects of the Proposed Special Rule

The proposed special rule will only allow importation into the United States of caiman products from countries effectively implementing the

crocodilian tagging resolution of CITES, and only from countries that have not been singled out by the CITES Parties for inadequate implementation of the CITES Convention. The intent of this proposed special rule is to support those countries properly managing caimans and to provide encouragement through open markets to range countries to develop and maintain sufficient management so they can compete in the caiman market of the United States.

The degree of endangerment of the many crocodilian species varies by species and specific populations. Some caiman species are listed on Appendix I of CITES, and the remaining species and populations are included in Appendix II. Some species are listed as endangered on the U.S. List of Endangered and Threatened Wildlife, while other species are not included. In addition, actions have been taken by several countries to protect their wild populations but allow trade in specimens bred or raised in captivity under appropriate management programs.

Thus, trade in specimens from some properly managed populations is not detrimental to the wild population, and commercial trade is allowed under CITES with proper export permits from certain countries of origin and intermediary or re-exporting countries. The Service's concern has been that trade in non-endangered species has in the past provided the opportunity for specimens of the endangered or threatened species or populations to be commingled with legal trade, especially during the manufacturing process. Numerous U.S. law enforcement actions as well as past actions by the CITES Parties attest to this concern. The underlying premise behind this special rule is that the current management systems in some range countries of the yacaré are being sufficiently sustained or managed through ranching or captive breeding programs to support controlled commercial use. The key risk to these populations, as well as other similar-appearing crocodilians, is inadequate controls in countries of re-export, especially in those countries in which manufacturing occurs.

The CITES Parties have adopted and are implementing provisions of a universal tagging system for crocodilian skins, and the Service supports these efforts, including the most recent clarifications of the resolution resulting from the Animals Committee meeting held in September 1996. Furthermore, at the CITES meeting of the Conference of the Parties in Zimbabwe in 1997, the CITES Secretariat reported that to its knowledge all range countries were

effectively implementing the universal tagging resolution. Adherence to the CITES tagging requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with the similarity of appearance of skins and products among different species of crocodilians. Further, this special rule contains other steps designed to restrict or prohibit trade from countries that are not effectively implementing the tagging resolution and thus to ensure that the United States does not become a market for illegal trade in crocodilian species and to encourage other nations to control illegal trade.

In summary, the proposed special rule allowing trade in yacaré specimens should provide incentives to maintain wild populations, as well as encourage all countries involved in commerce in crocodilian species to guard against illegal trade.

The United States will not allow the commercial import of skins, products, and parts of CITES Appendix I crocodilian taxa or of crocodilians listed as endangered under the Act, and will require appropriate CITES permits or permits under the Act for non-commercial imports of these species.

Allowing the commercial import of specimens from properly managed yacaré populations is expected to benefit the conservation of wild populations. Furthermore, the proposed special rule would complement the CITES tagging requirements and would help ensure that only legally taken specimens are traded, and thus benefiting the conservation of the species.

Description of the Proposed Special Rule

The intent of the proposed special rule is to enhance the conservation of the yacaré and the other endangered and threatened caiman species through support for properly designed and implemented programs for yacaré and for enforcement of tagging requirements in the countries of origin and re-export.

Furthermore, as discussed earlier in this rule, the Service is concerned about: (1) the illegal harvest and inadequate trade controls for those caiman species, including the yacaré, on Appendix II of CITES; (2) the commingling and misidentification of legal and illegal skins in intermediary trading, processing, and manufacturing countries; and (3) the sustainable management of the yacaré in those countries allowing a legal harvest.

The proposed special rule is intended to support proper implementation of the tagging resolution by restricting or

prohibiting importation of caiman skins and products from countries that are not effectively implementing the CITES tagging resolution. Therefore, the United States will not allow the import of CITES Appendix II caiman if the countries of origin or the countries of manufacture or re-export are not effectively implementing the CITES tagging resolution including, but not limited to, the use of properly marked tamper-proof tags on all skins and both halves of chalecos and on transparent parts containers, with the same information that is on the tags also appearing on the permit, an effective administrative system for matching imports and re-exports; or have failed to designate Management Authority or Scientific Authorities; or have been identified by the Conference of the Parties to the Convention, the Convention's Standing Committee or in a Notification from the Secretariat as a country from which Parties should not accept permits.

The proposed special rule is intended to complement and strengthen the universal crocodilian tagging system in the CITES resolution adopted at the 1994 Fort Lauderdale meeting (COP9). Proper implementation of the CITES tagging system will represent a significant step towards eliminating misidentification of skins. Measures to reduce commingling within the countries of manufacture include effective inspection of shipments to determine if the CITES country-of-origin tag is intact for skin imports and exports and implementation of an effective administrative system for tracking skins and pieces through intermediary countries.

This special rule is proposed with the goal of ensuring adequate control in the manufacturing countries to deter intermingling of the protected species of caiman, as well as the endangered populations of other crocodilians, without imposing the overburdensome requirement of tracking each piece through the production process, and recording all incoming tag numbers of the re-exporting permit for products.

It is the Service's understanding that Brazil is allowing the export of yacaré specimens from ranches and that the egg harvest program is conservative and/or that periodic populations indices are obtained. If Brazil limits the exports of yacaré to those approved facilities and does not allow export of wild-harvested specimens, the United States will restrict import to those specimens from the approved facilities and will judge any intermediary country accepting unauthorized skins as a country not effectively implementing the tagging

resolution and will prohibit/restrict parts and products from that country.

Commerce with the United States in caiman products, if the proposed special rule is adopted as final at the conclusion of the regulatory process, will only be allowed with those exporting or re-exporting countries provided that the specimens are properly tagged and accompanied by proper CITES documents and the countries are effectively implementing the CITES tagging resolution and have designated CITES Management and Scientific Authorities, and the countries are not subject to a Schedule III Notice of Information. In a limited number of situations where the original tags from the country of export have been lost in processing the skins, whole skins, flanks, and chalcos will be allowed into the United States if CITES-approved re-export tags have been attached in the same manner as the original tags, and provided proper re-export certificates accompany the shipment. If a shipment contains more than 25 percent replacement tags the re-exporting country must consult with the U.S. Office of Management Authority prior to clearance of the shipment, and such shipments may be seized, if the Service cannot determine that the requirements of the tagging resolution have been observed.

In the case where tagged caiman skins are exported to a second country, for manufacturing purposes, and the finished products are re-exported to the United States, then neither the country of origin nor the country of re-export can be subject to Schedule III Notice of Information based on the criteria described in the special rule if imports are to be allowed. The Service will initially presume that intermediary countries are effectively implementing the tagging resolution, but the special rule has provisions to impose bans if convincing evidence to the contrary is presented.

The U.S. Management Authority will provide on request the list of those countries subject to a Schedule III Notice of Information to those manufacturers in the country of re-export and to importers so that they may be advised of restrictions on yacaré skins, products, and parts that can be utilized in products intended for U.S. commerce. The Management Authority of the country of manufacture should ensure that re-export certificates provided for manufactured goods, intended for the United States, are not for products and re-exports derived from countries subject to a Schedule III Notice of Information. Commerce in finished products from a re-export

country, in compliance with these rules, would be allowed with only the required CITES documentation and without an endangered or threatened species permit for individual shipments otherwise required under 50 CFR part 17.

Many parts of the proposed rule are modeled after the special rule for the saltwater and Nile crocodiles published in the **Federal Register** (61 FR 32356; June 24, 1996), including provisions for implementation of the CITES universal tagging system. The special rule for the saltwater and Nile crocodiles may be merged with the special rule for the yacaré when the final special rule is promulgated.

This proposed special rule allows trade through intermediary countries. Countries are not considered as intermediary countries or countries of re-export if the specimens remain in Customs control while transiting or being transshipped through the country and provided those specimens have not entered into the commerce of that country. However, the tagging resolution presupposes a system for monitoring skins be implemented by the countries of re-export.

Furthermore, this special rule is written to allow the Service to respond quickly to changing situations that result in lessened protection to crocodilians. Thus, the criteria described in the special rule establish specific, non-discretionary bases for determining whether CITES provisions are being effectively implemented. Therefore, approval can be denied and imports into the United States can be prohibited from any country that fails to comply with the requirements of the special rule simply by the publication of such notice in the **Federal Register**. Denial for subjective and discretionary reasons may require proper notice and comment before implementing action can be taken.

In a separate rule-making proposal, amending 50 CFR part 23, the Service will propose implementation of the CITES tagging system for all crocodilians. The rule proposed here will adopt the CITES-approved tags as the required tag for all caiman skins, including chalcos and flanks, being imported into or exported from any re-exporting country if the skin is eventually imported into the United States. For the reasons noted above, the Service finds that the proposed special rule for caiman species, including the yacaré, includes all of the protection that is necessary and advisable to provide for the conservation of such species.

Public Comments Solicited

The Service intends that any action resulting from this proposal be as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning biological or commercial trade impacts on any caiman population, or other relevant data concerning any threat (or lack thereof) to the wild populations of caimans in Mexico and Central and South America. Comments are also solicited on the question of whether the listing of common caiman and brown caiman as threatened by reason of similarity of appearance and the provisions of the special rule will provide adequate protection to the yacaré. Also, the Service solicits comments as to whether the allowance of trade in yacaré will overstimulate the trade in other *Caiman* species thereby having a detrimental effect on caiman populations that may not be properly managed.

Final action on the proposed reclassification of the yacaré, the classification of the common and brown caiman, and the promulgation of the special rule will take into consideration the comments and any additional information received by the Service. Such communications may lead to adoption of final regulations that differ from those in the proposed rule.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Determinations

The Service invites comments on the anticipated direct and indirect costs and benefits or cost savings associated with this proposed special rule, for yacaré caiman. In particular, we are interested in obtaining information on any significant economic impact of the proposed rule on small public and private entities. Once we have reviewed the available information, we will determine whether we need to prepare

an initial regulatory flexibility analysis for the special rule. We will make any such analysis or determination available for public review. Then, we will revise, as appropriate, and incorporate the information in the final rule preamble and in the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Under the criteria in Executive Order 12866, neither the proposed downlisting from endangered to threatened nor the special rule are significant regulatory actions subject to review by the Office of Management and Budget.

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Authors

The primary author of this proposed rule is the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the current entry for the yacaré caiman and by adding entries for the brown and the common caimans under “Reptiles” on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*		*
Caiman, brown	<i>Caiman crocodilus fuscus</i> (includes <i>Caiman crocodilus chiapasius</i>).	Mexico, Central America, Colombia, Ecuador, Venezuela, Peru.	Entire	T(S/A)	_____	NA	17.42(g)
*	*	*	*	*	*		*
Caiman, common	<i>Caiman crocodilus crocodilus</i> .	Brazil, Colombia, Ecuador French Guiana, Guyana, Surinam, Venezuela, Bolivia, Peru.	Entire	T(S/A)	_____	NA	17.42(g)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Caiman, yacaré	* <i>Caiman yacare</i>	* Argentina, Bolivia, Brazil, Paraguay.	* Entire	* T	* 3, _____	N/A	* 17.42(g)
*	*	*	*	*	*		*

3. Section 17.42 is amended by adding a new paragraph (g) as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(g) *Threatened Caiman*. This paragraph applies to the following species: Yacaré caiman (*Caiman yacare*), the common caiman (*Caiman crocodilus crocodilus*), and the brown caiman (*Caiman crocodilus fuscus* including *Caiman crocodilus chiapasius*). These taxa will be collectively referred to as “caiman.”

(1) *Definitions of terms for purposes of this paragraph (g)*.

(i) *Caiman skin* means whole or partial skins, flanks, bellies or chalecos (whether salted, crusted, tanned or partially tanned or otherwise processed).

(ii) *Caiman product* means fully manufactured products (including curios), which are ready for retail sale without further processing or manufacture and which are composed, totally or in part, of yacaré caiman, brown caiman or common caiman.

(iii) *Caiman parts* means body parts with or without skin attached (including tails, throats, feet, and other parts, except skulls) and small cut skins pieces.

(iv) *Country of re-export* means those intermediary countries that import and re-export caiman skins, parts and/or products, except that those countries through which caiman skins, parts and/or products are transshipped while remaining under Customs control will not be considered to be a country of re-export.

(v) *Tagging resolution* means the CITES resolution entitled “Universal Tagging System for the Identification of Crocodilian Skins” and numbered Conf. 9.22 and any subsequent revisions.

(2) *Prohibitions*. The following prohibitions shall apply to yacaré caiman (*Caiman yacare*), the common caiman (*Caiman crocodilus crocodilus*) and the brown caiman (*Caiman crocodilus fuscus* including *Caiman crocodilus chiapasius*):

(i) *Import, export, and re-export*. Except as provided in paragraph (g)(3) of this section it is unlawful to import, export, re-export, or present for export

or re-export any caiman or their skins, other parts or products, without valid permits required under 50 CFR parts 17 and 23.

(ii) *Commercial activity*. Except as provided in paragraph (g)(3) of this section, it is unlawful, in the course of a commercial activity, to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce any caiman, caiman skins or other parts or products.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (g)(2)(i)–(ii) of this section.

(3) *General exceptions*. The import, export, or re-export of, or interstate or foreign commerce in caiman skins, meat, skulls and other parts or products may be allowed without a threatened species permit issued pursuant to 50 CFR 17.32 when the provisions in 50 CFR parts 13, 14, and 23, and the requirements of the applicable paragraphs set out below have been met.

(i) *Import, export, or re-export of caiman skins and parts*. The import, export, or re-export into/from the United States of caiman skins and parts must meet the following conditions:

(A) All caiman parts must be in a transparent, sealed container, and each container imported into or presented for export or re-export from the United States:

(1) Must have a parts tag attached in such a way that opening of the container will preclude reuse of an undamaged tag;

(2) This parts tag must contain a description of the contents and total weight of the container and its contents; and

(3) This parts tag must reference the number of the CITES permit issued to allow the export or re-export of the container.

(B) Each caiman skin imported into or presented for export or re-export from the United States after the effective date of the final rule must bear: *either* an intact, uncut tag from the country of origin meeting all the requirements of the CITES tagging resolution, *or* an intact, uncut tag from the country of re-

export where the original tags have been lost or removed from raw, tanned, and/or finished skins. The replacement tags must meet all the requirements of the CITES tagging resolution, except showing the country of re-export in place of the country of origin, provided those re-exporting countries have implemented an administrative system for the effective matching of imports and re-exports consistent with the tagging resolution. If a shipment contains more than 25 percent replacement tags, the re-exporting country must consult with the U.S. Office of Management Authority prior to clearance of the shipment, and such shipments may be seized if the Service determines that the requirements of the tagging resolution have not been observed;

(C) The same information that is on the tags must be given on the export permit for all skins or re-export certificate for whole skins including chalecos, which will be considered an integral part of the document, carry the same permit or certificate number, and be validated by the government authority designated by the CITES document-issuing authority;

(D) The Convention permit or certificate must contain the following information:

(1) The country of origin, its export permit number, and date of issuance;

(2) If re-export, the country of re-export, its certificate number, and date of issuance; and

(3) If applicable, the country of last re-export, its certificate number, and date of issuance;

(E) The country of origin and any intermediary country(s) must be effectively implementing the tagging resolution for this exception to apply. If the Service receives persuasive information from the CITES Secretariat or other reliable sources that the tagging resolution is not being effectively implemented by a specific country, the Service will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(F) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a

particular shipment must not be subject to a Schedule III Notice of Information pertaining to all wildlife or any members of the Order Crocodylia that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, U.S. Fish and Wildlife Service, ARLSQ Room 700, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

(ii) *Import, export, or re-export of caiman products.* Import, export, or re-export into or from the United States of caiman products will be allowed without permits required by 50 CFR 17 provided the following conditions are met:

(A) The Convention permit or certificate must contain the following information:

(1) The country of origin, its export permit number, and date of issuance;

(2) If re-export, the country of re-export, its certificate number, and date of issuance; and

(3) If applicable, the country of previous re-export, its certificate number, and date of issuance.

(B) The country of origin and any intermediary country(s) must be effectively implementing the tagging resolution for this exception to apply. If the Service receives persuasive information from the CITES Secretariat or other reliable sources that the tagging resolution is not being effectively implemented by a specific country, the Service will prohibit or restrict imports

from such countries as appropriate for the conservation of the species.

(C) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a particular shipment must not be subject to a Schedule III Notice of Information pertaining to all wildlife or any member of the Order Crocodylia that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, ARLSQ Room 700, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(iii) *Shipment of eggs, skulls, processed meat, and scientific specimens.* The import/re-export into/ from the United States of eggs, skulls, processed meat, and scientific specimens of yacaré caiman, common caiman, and brown caiman will be allowed without permits otherwise required by 50 CFR 17, provided the requirements of 50 CFR part 23 are met.

(iv) *Noncommercial accompanying baggage.* The conditions of paragraphs (g)(3)(i) and (ii) for skins tagged in accordance with the tagging resolution, skulls, meat, other parts, and products made of specimens of yacaré caiman, common caiman and brown caiman do not apply to noncommercial accompanying personal baggage or household effects unless the country from which the specimens were taken

requires export permits as per 50 CFR 23.13(d).

(4) *Notice of Information.* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue a Schedule III Notice of Information banning or restricting trade in specimens of caiman addressed in this paragraph (g) if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as lacking designated Management and Scientific Authorities that issue CITES documents or their equivalent.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked to not accept shipments of specimens of any CITES-listed species from the country in question or of any crocodilian species listed in the CITES appendices.

(iii) The Service determines, based on information from the CITES Secretariat or other reliable sources, that the country is not effectively implementing the tagging resolution.

Dated: August 14, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife Parks.

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