

the State of Texas and the U.S. Fish and Wildlife Service. This action is a formal recognition by the Service of the biological recovery of the alligator in Texas. The State may now institute comprehensive management plans for the alligators on a statewide basis in accordance with Section 4(e) of the Endangered Species Act of 1973, as amended, and with the Service's special rule on Threatened American alligators (50 CFR 17.42(a)).

DATE: This rule becomes effective on November 14, 1983.

ADDRESS: The complete file for this rule is available for inspection during normal business hours by appointment at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3372).

FOR FURTHER INFORMATION CONTACT:

Mr. David Bowman, Region 2, Endangered Species staff (see **ADDRESS** above) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The population density of the American alligator (*Alligator mississippiensis*) in the United States varies in the Southeast. Its range includes all or parts of the States of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.

The American alligator was first classified as Endangered throughout its range in 1967 because hunting and poaching had substantially reduced alligator numbers. Subsequently, in response to strict Federal and State protection, the alligator recovered rapidly in many parts of its range. Its recovery then enabled the Service to undertake the following reclassification actions: (1) Reclassification to Threatened due to Similarity of Appearance in three coastal parishes of Louisiana that reflected complete recovery (September 26, 1975—40 FR 44412); (2) reclassification to Threatened that reflected partial recovery in all of Florida and certain coastal areas of Georgia, Louisiana, South Carolina, and Texas (January 10, 1977—42 FR 2071); (3) reclassification to Threatened due to Similarity of Appearance, again reflecting complete recovery, in nine additional parishes of Louisiana (June 25, 1979—44 FR 37132); (4) elimination of the permit requirement for fabricators of alligator products from lawfully taken alligators, so long as the fabricators

comply with the laws and regulations of, (a) the State in which the taking occurs, and (b) the State in which the sale occurs (November 25, 1980—45 FR 78153); and (5) reclassification to Threatened due to Similarity of Appearance throughout the State of Louisiana reflecting complete recovery of the species in the State (August 10, 1981—46 FR 40664).

Alligators in Texas have been studied by Crouch (1974), Smith (1975a,b; 1976a,b,c), Potter (1974, 1975, 1981), Dixon and Staton (1976) and Kroll (1976). Summaries of these studies were provided in the Service's proposed rule (47 FR 40196) to reclassify this species in Texas. The data accumulated by these university, State, and private biologists point to increased numbers of alligators in coastal marsh and inland habitats through increased nesting and nesting success. In addition, Service data indicate four National Wildlife Refuges along the Texas coast showed an increase in alligator populations during studies conducted from 1977 to 1979. Alligator populations doubled at Anahuac, Aransas, and Laguna Atascosa Refuges and slightly increased at the Brazoria Wildlife Refuge (Klett, pers. comm., 1981).

Based on a status report on the American alligator in Texas (Potter, 1981), the Texas Parks and Wildlife Department on January 29, 1981, petitioned the Fish and Wildlife Service to review the status of the American alligator in Texas.

Potter (1981) accumulated data on population parameters of Texas alligators by questionnaires, by aerial surveys of alligator nests, by night line-transect counts in marsh and inland waters, and by other means. Whereas Crouch's, Kroll's, and Dixon and Staton's studies were of short duration (1 to 2 years), Potter maintained annual counts of alligators by line-transects, aerial surveys, and survey questionnaires for 7 years (1975-1981). Potter (1981) indicated that the alligator populations in prime Texas habitat have doubled in the past 5 years, based upon a census technique supplied by Taylor (1980). He also noted that the number of nests per square mile in census areas increased from 1.95 in 1976-78, to 4.05 per square mile in 1979-80. Furthermore, recent surveys indicated that nest densities appear to be near maximum and population growth may have reached optimum proportions (Potter, 1981). This is consistent with recent data from Louisiana which indicate that the alligator population structure in Louisiana is stable and is limited by the support capability of the habitat;

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Change the Status of the American Alligator in the State of Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is reclassifying the status of the American alligator (*Alligator mississippiensis*) throughout the State of Texas, where the species was classified as Endangered or Threatened, to Threatened due to Similarity of Appearance as provided for by the Endangered Species Act of 1973, as amended. This change is based on evidence that the species is no longer biologically Endangered or Threatened in Texas and has recovered from former low numbers in response to complete protection afforded by effective enforcement of laws and regulations by

consequently, no further significant increases in Louisiana alligator numbers can be expected (Taylor, 1980).

The Service has concluded that the best scientific data available indicate that the Texas population of American alligators has recovered and is no longer biologically Endangered or Threatened. Commercial data of a biological nature, which is also utilized in any determination of Threatened or Endangered status, is not available since no legal commerce in alligator products from Texas has occurred since 1973.

However, because of the similarity of appearance of Texas American alligator hides and parts to the appearance of hides and parts of other protected crocodylians, it is necessary to restrict commercial activities involving alligator specimens taken in Texas to ensure the conservation of other alligator populations, as well as other crocodylians that are Threatened or Endangered. Recent amendments to the Texas Parks and Wildlife Code, i.e., addition of Chapter 65, gives the Texas Parks and Wildlife Department authority to regulate the taking, possession, and sale of alligators or any part of an alligator. In addition, Section 4(e) of the Endangered Species Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an Endangered or Threatened species even though it is not otherwise biologically threatened with extinction if it is found: (a) That the species so closely resembles in appearance an Endangered or Threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the Endangered or Threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act. Therefore, although the Service believes the American alligator in Texas to be fully recovered biologically, it is being retained on the Federal list in the reclassified status of Threatened due to Similarity of Appearance, and any commercial trade in legally harvested alligators must be in conformance with the Service's special rule for American alligators found at 50 CFR Section 17.42(a).

American alligators in Texas are presently listed as Threatened or Endangered; thus, commercial take of alligators in Texas under any condition is illegal. This has facilitated the recovery and conservation of alligators

and other crocodylians. This final rule now permits regulated commercial harvest of alligators in Texas as part of the State's alligator management, in a manner authorized by Texas law and compatible with conservation of Endangered or Threatened populations of alligators and crocodylians and with the Service's special regulations on alligators (50 CFR 17.42(a)).

Summary of Comments and Recommendations

In the September 13, 1982, **Federal Register** proposed rule (47 FR 40197) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. A letter was sent to the Governor of Texas notifying him of the proposed rule and soliciting his comments and suggestions. Seventeen comments were received and are discussed below.

Seven individual citizens—six from Texas and one from Oklahoma—expressed support for the proposed reclassification based upon their personal experiences with locally abundant American alligators. A seventh Texas citizen was "opposed to the issue of hunting alligators in the state (sic) of Texas" and did not express an opinion on the proposed reclassification specifically. Mr. Frank Collazo, Jr., Member of the Texas House of Representatives, expressed the opinion that there is need to manage American alligator populations in the coastal areas of Texas, especially in Jefferson County. Mr. Jerry H. Lacy commented that members of the Koon Kreek Klub of hunters and fishermen in Henderson County believed American alligators to be a nuisance and potential hazard in the club's lakes, and he urged allowing the State of Texas to manage American alligators in Texas. Mr. James Glass, President of the Wildlife Legislative Fund of America (WLFA), stated that the WLFA strongly supported the proposed reclassification because the American alligator had made a strong comeback in Texas and because the State should have authority to manage alligators within its borders. Mr. Howard S. Hoover, President of the Brazos River Club (BRC) stated that the 41 members of the BRC would strongly recommend harvest of alligators, but he did not express an opinion on the proposed reclassification specifically.

The Service received comments expressing opposition to the proposed reclassification from the Defenders of Wildlife, the New York Zoological Society, and from the American Society of Ichthyologists and Herpetologists. All

three organizations expressed doubts that biological information presented in the **Federal Register** proposed rule adequately demonstrates recovery of the American alligator in Texas. Also, the three organizations urged approval of an alligator "management plan" before reclassification of the American alligator to Threatened due to Similarity of Appearance.

The Governor of Texas made the following comments:

I wish to express my total support for this proposed action as it provides the necessary recognition that the Texas alligator population has recovered suitably and no longer fits the criteria for endangered or threatened classification.

I would emphasize that the State of Texas has specifically recognized the alligator as an important natural resource and has mandated its appropriate management by statute as contained in Chapter 65, Parks and Wildlife Code. Under this authority, the Parks and Wildlife Department is developing a management and research program that will ensure the conservation of the alligator as a renewable resource in Texas.

The Service's response to the comments received on the proposed reclassification of the American alligator in Texas (from Threatened and Endangered to Threatened due to Similarity of Appearance) falls into four general categories.

First, individuals expressed concern about the potentially hazardous nature of locally abundant American alligators and the immediate need, in their opinions, for control of potentially dangerous or nuisance American alligators. The Service believes that the sightings of, and encounters with, alligators by Texans and their pets, livestock, etc. are a consequence of contemporaneously burgeoning human and American alligator populations in Texas. A comprehensive State management plan ought to help resolve these conflicts in the future.

Second, and closely associated with the first category of comments, individuals and organizations expressed the opinion that legal harvest through a hunting or trapping season on American alligators would benefit both people and the American alligator. With publication of this final rule, a regulated harvest of American alligators is again the prerogative of the State of Texas. The Service recognized in the proposed rule that the State would likely initiate a regulated harvest of American alligators as early as the Fall of 1983. The Service believes that such a harvest would be an appropriate management practice consistent with the present status of the American alligator in Texas and would, in fact, help reduce conflicts between

alligators and humans by allowing the State to implement, if it so chose, expanded nuisance alligator control programs or geographically targeted harvests that focus on areas of chronic conflicts.

Third, comments from three organizations expressed the opinion that a "management plan" should be prepared by the Texas Parks and Wildlife Department before reclassification of the American alligator in Texas occurs. The Endangered Species Act of 1973, as amended, clearly dictates that listing actions, including reclassification, shall be based solely on the biological status of the species being listed or reclassified. However, although a "management plan" is not required for reclassification, a procedure for regulating international commerce in American alligator hides, parts, or products is required under the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) prior to allowing legally taken hides, parts, or products of alligators to be exported. Use of Texas alligator parts and products in foreign commerce, therefore, will not be allowed under CITES requirements until such time as the State develops a tagging and marking program for harvested alligators, which is consistent with the Service's special regulations for American alligators (50 CFR 17.42(a)) and which meets CITES criteria.

The fourth type of comments indicated that the respondents thought there was not sufficient biological data to justify reclassification of the American alligator in Texas. Studies of individual populations of alligators in Texas have documented large increases in those populations (Crouch, 1974; Dixon and Staton, 1976; Kroll, 1976; Potter, 1974, 1975, 1981). The increases in those populations are considered to be representative of the American population in Texas as a whole. Therefore, the Service continues to believe that all biological evidence clearly indicates that the American alligator is neither threatened nor endangered within the borders of the State of Texas.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the American alligator throughout the State of Texas, where the species is now classified as Endangered or Threatened, should be reclassified as Threatened due to Similarity of

Appearance. The Service's listing regulations (50 CFR 424.11(d)) state that a species may be removed from the Federal list of Threatened and Endangered species, if the best scientific and commercial data available to the Service substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

(1) *Extinction*: Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly ensure that the species is in fact extinct.

(2) *Recovery of the species*: The principal goal of the Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if evidence shows that it is no longer Endangered or Threatened.

(3) *Original data for classification in error*: Subsequent investigations may produce data that show the best scientific or commercial data available at the time the species was listed were in error.

The American alligator in Texas is being removed from Federal listing by virtue of reason (2), recovery of the species. It is, however, being retained as a Threatened Species due to Similarity of Appearance because of the need to regulate commercial activities in products from American alligators from Texas in order to ensure continued law enforcement protection in those areas where the species is still considered as biologically Threatened or Endangered.

Section 4(a)(1) of the Endangered Species Act and implementing regulations (50 CFR 424.11(b)) set forth five factors which shall be used in determining the need for listing, reclassifying or removing a species from the Federal list of Threatened and Endangered species. These factors, and their application to the American alligator in Texas, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range*. The total size of alligator populations in Texas is influenced greatly by the amount of available aquatic or wetland habitats. Examples of these habitats are rivers, bayous, canals, lakes, ponds, marshes, and swamps. The amount of good American alligator wetlands in Texas was conservatively estimated by Potter (1981) from unfinished analysis of satellite photographs to be 1,088,720 acres (439,968 hectares); the total aquatic habitat suitable for American alligators in Texas could be as much as 3.7 million acres (1,497,976 hectares) made up of fresh, intermediate, and

brackish waters. Taylor (1980) indicated nonmarsh, permanently flooded habitat in Louisiana with woody and herbaceous cover dominated by bald cypress and tupelo gum apparently produces higher densities of American alligators in many instances than do marshland habitats. This cypress-tupelo habitat type extends into and is common in southeastern Texas (Potter, 1981).

The estimated 9,649 miles of streams in historical American alligator range in Texas support American alligators to the extent permitted by the presence of oxbows and marshlands associated with the streams. Streams without adjacent, permanently inundated cypress-tupelo or marshland habitat areas constitute poor quality habitat and support insignificant numbers of American alligators. A minimum estimate of nonmarsh American alligator habitat in Texas consists of 736,000 acres (297,976 hectares) of all vegetation associations with permanent water levels, and 31,754 shoreline miles of private and public waters in the form of ponds and lakes (Potter, 1981).

Prime coastal American alligator habitat in the Chenier Plain was reduced by 20.0 percent during 1952-1974 (Gosselink *et al.*, 1979). However, permanently flooded cypress-tupelo association and open water acreages are changed slowly by water management practices.

The overall picture of statewide habitat is good, because much of the prime habitat is under State and Federal control and because water storage activities are increasing habitat availability (Potter, 1981). Therefore, habitat alteration and loss pose no serious threat to American alligator populations in Texas within the foreseeable future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes*. The commercial demand for products from American alligators, including hides, teeth, and meat, is high. This demand, and the harvest generated by the demand, were responsible for a decline in American alligators throughout their range in the 1950's and 1960's (with some exceptions, such as on sanctuaries and wildlife refuges). This decline was reversed by the following actions: (1) The State of Texas closed American alligator harvest seasons in 1969; (2) The Lacey Act was amended in 1969 to include control of interstate commerce in reptiles; (3) The Endangered Species Act was passed in 1973; (4) State and Federal authorities vigorously enforced these protective measures.

Taylor (1980) and Potter (1981) provide convincing evidence that under strict protection, the reproductive capability of the species provides for rapid recovery.

Experience in Louisiana clearly documented the impact of controlled harvest on American alligators. A comparison between size-class frequencies found in nonmarsh night counts and hide measurements from harvested areas shows no statistical difference in population structure. Furthermore, a comparison of population structure from a series of time specific views (1975-80), shows no trend towards shrinkage or increase of adult/subadult size-class ratios, either of which would be indicative of populations moving away from stability. Since American alligator population in Texas is adjacent to that of Louisiana (very similar ecological parameters exist in the adjacent areas), much of the information from Texas (Potter, 1981) and from Louisiana (Chabreck, 1980; Taylor, 1980) applies equally to the populations of American alligators in both States. These data indicate American alligators are not being detrimentally affected by legal harvests in Louisiana marshlands. Some illegal taking undoubtedly continues to occur, but the State's and Service's law enforcement efforts have reduced this to insignificant levels. The inaccessibility of nonmarsh habitats further helps to protect the species in these areas (Kroll, 1976; Crouch, 1974; Potter, 1981).

C. *Disease or predation.* American alligators suffer various types of disease and predation, but these factors are not excessive and are not known to have hindered American alligator recovery.

D. *The inadequacy of existing regulatory mechanisms.* The following State and Federal laws and regulations adequately protect the American alligator in Texas: (a) Chapter 65 of the Texas Parks and Wildlife Code regulates harvest, possession, and sale of American alligators; (b) the 1969 amendment to the Lacey Act extends Federal law enforcement authority to include interstate movement of reptiles; (c) special rules promulgated by the Service for Threatened (due to Similarity of Appearance) American alligators govern commerce in alligator products; (d) the annual findings of the Scientific and Management Authorities of the Service govern the export of species, including American alligator, listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The success of efforts by State and Federal agencies to stop illegal activity

involving American alligators is evidenced by the recovery of American alligator populations throughout the State of Texas.

E. *Other natural or manmade factors affecting its continued existence.* Although other factors occasionally may have an effect on some American alligators, e.g., freezes and flooding of nests, none of these factors are known to have limited recovery of the American alligator in Texas nor are they expected to become threatening factors in the future.

Effects of this Final Rule

This rule will change the status of the American alligator in Texas from Endangered or Threatened to a statewide status of Threatened due to Similarity of Appearance. The rule formally recognizes the biological recovery of the American alligator in Texas. This rule removes Federal agency responsibilities under Section 7 of the Endangered Species Act. Responsibility and authority for management and protection of the American alligator will revert to the State of Texas under recently enacted State statutes. No adverse effects to the status of this species are expected to occur as a result of this rule.

This rule gives the State an option to allow American alligator harvests in specified counties. The economic value of the American alligator resource under a sustained yield scheme may result in significant economic benefits to Texas trappers and others participating in the commercial process. The value of American alligators also may help reduce indiscriminate, illegal killing of American alligators. Harvests would be expected to increase the workloads of the personnel of Texas Parks and Wildlife Department, the Texas Department of Health, and the Service's Division of Law Enforcement. Conversely, the harvests would be expected to reduce the number of nuisance American alligator complaints which are increasing rapidly (Bill Brownlee, Texas Parks and Wildlife, pers. comm.) and result in a corresponding reduction in manpower commitments devoted to handling nuisance alligators. Local governments involved in catching and removing nuisance alligators would receive some relief if the number of larger, more dangerous alligators were reduced in areas with human-alligator conflicts.

Harvest of American alligators in Texas would create the potential for an increased volume of American alligator exports. The Service has previously expressed its concern about the effects of increased exports on Endangered

crocodilians that occur in international trade. A determination by the Service (October 21, 1980-45 FR 69844) on this subject concluded that the export of American alligators taken during the 1980-81 season in Florida and the 1980 season in Louisiana was not detrimental to the survival of the American alligator or other Endangered crocodilians. The service will continue to review this possible impact and will take appropriate action, if evidence indicates that restrictions are warranted. International trade in American alligator products is presently allowed under the provisions of CITES, with certain restrictions in the form of licensing and permit requirements for buyers and tanners. Reclassification of the American alligator in Texas would not automatically allow use of hides, parts, and products from American alligators harvested there in international commerce. Once the State of Texas develops a "management plan" that spells out procedures for a controlled harvest that meets CITES criteria and is consistent with the Service's special regulations for American alligators, the export of American alligator parts and products will be allowed.

This action will not be an irreversible commitment on the part of the Service. The action is reversible and relisting would be possible should changes occur in management, habitat, or other factors which result in new threats to the species' recovery or recovery of crocodilians.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Regional Office of Endangered Species, 421 Gold S.W., Albuquerque, New Mexico, and may be examined by appointment during regular business hours. A determination has been made that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented 40 CFR Parts 1500-1508).

References

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technical collaboration by Dr. James Dixon, Texas A&M University, College Station, Texas 77840.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, fish, marine mammals, plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; and Pub. L. 97-304, 96 Stat. 1411 [18 U.S.C. 1531, *et seq.*]

§ 17.11 [Amended]

2. Amend § 17.11(h) by revising the entries for the American alligator, under "Reptiles," to read as follows:

Author

The principal author of this rule is David Bowman, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505/766-3972), with

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Reptiles:							
Alligator, American	<i>Alligator mississippiensis</i>	Southeastern U.S.A.	Wherever found in wild except those areas where listed as threatened as set forth below.	E	1, 11, 51, 60, 111.	NA	NA
Do	do	do	U.S.A. (FL and certain areas of GA, SC).	T	20, 47, 51, 60, 111.	NA	17.42(a).
Do	do	do	U.S.A. (LA, TX)	T (S/A)	11, 47, 51, 60, 111.	NA	17.42(a).
Do	do	do	In captivity wherever found	T (S/A)	11, 47, 51, 111	NA	17.42(a).

§ 17.42 [Amended]

3. Paragraph (a)(1) of 17.42 is revised to read as follows:

* * * * *

(a) American alligator (*Alligator mississippiensis*).

(1) Definitions. For the purpose of this paragraph (a): "American alligator" shall mean any member of the species *Alligator mississippiensis*, whether alive or dead, and any part, product, egg, or offspring thereof occurring: (i) in captivity wherever found; (ii) in the wild wherever the species is listed under § 17.11 as Threatened by Similarity of Appearance (T[S/A]); or (iii) in the wild in Florida and in the coastal areas of Georgia and South Carolina, contained within the following boundaries: From Winyah Bay near Georgetown, South Carolina, west on U.S. Highway 17 to Georgetown; thence west and south on U.S. Alternate Highway 17 to junction with South Carolina State Highway 63 south of Walterboro, South Carolina;

thence west on State Highway 63 to junction with U.S. Interstate Highway 95; thence south on U.S. Interstate Highway 95 (including incomplete portions) across the South Carolina-Georgia border to junction with U.S. Highway 82 in Liberty County, Georgia; thence southwest on U.S. Highway 82 to junction with U.S. Highway 84 at Waycross, Georgia; thence west on U.S. Highway 84 to the Alabama-Georgia border; thence south along this border to the Florida border and following the Florida border west and south to its termination at the Gulf of Mexico.

"Buyer" shall mean a person engaged in buying a raw, green, salted, crusted or otherwise untanned hide of an American alligator.

"Tanner" shall mean a person engaged in processing a raw, green, salted, or crusted hide of an American alligator into leather.

* * * * *

Dated: September 26, 1983.

G. Ray Arnett,
Assistant Secretary for Fish and Wildlife and Parks.

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