
DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

**ENDANGERED AND THREATENED
WILDLIFE AND PLANTS**

**Proposed Threatened Status for the Eastern
Indigo Snake**

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a proposed rulemaking, pursuant

to the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884: hereinafter the Act), which would determine the eastern indigo snake (*Drymarchon corais couperi*) to be a Threatened species. This snake presently occurs in Georgia and Florida; historically, it is also known from Alabama, Mississippi, and South Carolina.

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

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

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

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 4(a) of the Act states:

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

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence."

This authority has been delegated to the Director.

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

Although *erebennus* and *couperi* are superficially similar, they can be distinguished by the following characteristics: (1) *erebennus* has prominent dark lines downward from the eye whereas *couperi* does not, (2) *erebennus* has a tendency for the forepart of the

body to be brownish with some indication of a pattern whereas *couperi* is more uniformly blue-black in color and has no pattern, (3) *erebennus* has the third from last upper labial scale reaching the scale above it where as *couperi* has the third from last upper labial scale wedged and cut off from above by contact between adjacent labial scales, (4) normally, *erebennus* has 14 dorsal scale rows on the hindmost part of the body whereas *couperi* has 15.

Because of its large size and docile nature and because it makes a good pet, natural population of *D. c. couperi* have been exploited extensively. There is little indication that *D. c. erebennus* populations, or those subspecies occurring outside the U.S., are either declining or significantly in trade. For these reasons, only *D. c. couperi*, the eastern indigo snake, is included in this proposed rulemaking.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the eastern indigo snake are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—The eastern indigo snake inhabits a region that is experiencing rapid development resulting in considerable loss of available habitat. Its preferred habitat includes well-drained soils that are ideal for human settlement, resulting in a serious decline in the populations of Eastern indigo snakes in many areas.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—The eastern indigo snake is in great demand by the pet trade with prime specimens selling for as much as \$200-\$250. The extremely docile nature of the snake and its large size make it highly desirable as a pet and therefore avidly sought by dealers. Commercial trade is probably the main cause for the decline of this species throughout its range.

3. *Disease or predation.*—Unknown.

4. *The inadequacy of existing regulatory mechanisms.*—The eastern indigo snake is strictly protected in both Georgia, Mississippi, and Florida. However, these States cannot effectively control the trade in snakes once they leave the State. If a species is taken in violation of a State's law and moved illegally across a State line, such action becomes a violation of the Lacey Act. However, it has been a common practice to claim that the indigo snakes in trade came from Alabama or South Carolina, where the snake has not been taken by experienced herpetologists in many years. This claim is virtually impossible to completely refute. Therefore, trade in illegally taken indigo snakes can continue in spite of strong State laws. There are no laws to protect the eastern indigo snake in Alabama or South Carolina.

5. *Other natural or manmade factors affecting its continued existence.*—In

many areas in the southeast, burrows the gopher tortoise are gassed in order to drive out rattlesnakes that use the tortoise burrows. Indigo snakes also use gopher tortoise burrows and recent research has indicated that eastern indigo snakes are harmed or killed by this practice.

EFFECT OF THE RULEMAKING

The effects of this determination of rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions that apply to all endangered species. All of these prohibitions and exceptions also apply to any Threatened species unless a Special Rule pertains to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened species are found at §§ 17.21 and 17.31 of Title 50 and, for the convenience of the reader, are reprinted below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

§ 17.21 Prohibitions.

(a) Except as provided in Subpart 17.22 of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c) (1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c) (1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

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

(ii) Dispose of a dead specimen; or

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

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

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

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

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

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

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

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in

interstate or foreign commerce any endangered wildlife.

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

§ 17.31 Prohibitions.

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

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

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

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

INTERAGENCY COOPERATION

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Although no Critical Habitat has yet been determined for this species, the other provisions of Section 7 are applicable.

Regulations published in the FEDERAL REGISTER of September 26, 1975 (40 FR 4412), provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to re-

lieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the Act, the Director will notify the Governors of Florida, Georgia, Alabama, Mississippi and South Carolina, with respect to this proposal and request their comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective in the conservation of any Endangered or Threatened species as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interest or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat, or the lack thereof, to the eastern indigo snake;

(2) The location of and reasons why any habitat of the eastern indigo snake should or should not be determined to be Critical Habitat as provided for by section 7 of the Act;

(3) Additional information concerning the range and distribution of the Eastern indigo snake.

Final promulgation of the regulations on the Eastern indigo snake will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street, N.W., Washington, D.C. 20240, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884), and was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (202-343-7814).

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 22, 1977.

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

PROPOSED RULES

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

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

§ 17.11 Endangered and Threatened Wildlife.

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Reptiles: Snake, Eastern indigo.	<i>Drymarchon corais couperi</i> .	NA.....	U.S.A. (Alabama, Florida, Georgia, Mississippi, South Carolina).	Entire.....	T	NA.

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