

under 49 U.S.C. 10502(d) does not automatically stay the exemption.

(d) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

§ 1150.43 Information to be contained in notice for small line acquisitions.

(a) The full name and address of the Class III rail carrier applicant;

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;

(2) The proposed time schedule for consummation of the transaction;

(3) The mileposts of the subject property, including any branch lines; and

(4) The total route miles being acquired;

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states; and

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.

§ 1150.44 Caption summary.

The caption summary must be in the following form. The information symbolized by numbers is identified in the key as follows:

Surface Transportation Board; Notice of Exemption; STB Finance Docket No. (1)—Exemption (2)—(3)

(1) Has filed a notice of exemption to (2) (3)'s line between (4). Comments must be filed with the Board and served on (5). (6). Key to symbols:

(1) Name of carrier acquiring or operating the line.

(2) The type of transaction, e.g., to acquire or operate.

(3) The transferor.

(4) Describe the line.

(5) Petitioner's representative, address, and telephone number.

(6) Cross reference to other class exemptions being used.

The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

§ 1150.45 Procedures and relevant dates—transactions under section 10902 that involve creation of Class I or Class II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board.

(b) The notice of intent must contain all the information required in § 1150.43 plus:

(1) A general statement of service intentions; and

(2) A general statement of labor impacts.

(c) The notice of intent must be served on:

(1) The Governor of each state in which track is to be sold;

(2) The state(s) Department of Transportation or equivalent agency;

(3) The national offices of the labor unions with employees on the affected line(s); and

(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data are available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of paragraph (b) of this section and of § 1150.44, and certify compliance with paragraphs (a), (b), and (c) of this section, attaching a copy of the notice of intent. In addition to the written submission, the notice must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(e) The exemption will be effective 21 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the Federal Register within 30 days of the filing.

(f) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the transaction. Stay petitions must be filed within 7 days of the filing of the notice of exemption. Replies will be due 7 days thereafter. To be considered, stay petitions must be timely served on the applicant.

(g) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AC30

Endangered and Threatened Wildlife and Plants; Reclassification of Saltwater Crocodile Population in Australia From Endangered to Threatened With Special Rule for the Saltwater and Nile Crocodiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The saltwater crocodile (*Crocodylus porosus*) in Australia is reclassified from endangered to threatened under the provisions of the U.S. Endangered Species Act (Act) of 1973. The saltwater crocodile had been listed as endangered throughout its range since 1979, except the Papua New Guinea population, which has never been listed. A special rule, included herein, allows for the importation into the United States of certain specimens of saltwater crocodiles from Australia and Nile crocodiles from those countries in which this latter species is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Such imports must be consistent with the requirements of CITES and certain other provisions.

EFFECTIVE DATE: July 24, 1996. However, compliance with § 17.42(c)(3)(i)(A) is not required until July 24, 1997.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; room 725, Arlington Square; 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service; Arlington, Virginia 22203. Fax number (703) 358-2276. Express and messenger delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 N. Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, or by phone at (703) 358-1708.

SUPPLEMENTARY INFORMATION:

Background

The saltwater or estuarine crocodile (*Crocodylus porosus*) ranges from southwest India and along its eastern

coast, throughout Southeast Asia and through the Pacific Islands as far east as Fiji and south to the northern coast of Australia. The majority of populations have been reported from the following countries: Australia, Bangladesh, Myanmar, Cambodia, India, Indonesia, Malaysia, Papua New Guinea, Sri Lanka, Thailand, the Philippines, and Vietnam. It is the largest crocodilian species, reaching lengths well over 20 feet (6.1 meters). The species inhabits estuaries, mangrove swamps, and tidal reaches of rivers (The World Conservation Union (IUCN) 1975).

At the 1979 meeting of the Parties to CITES, the saltwater crocodile was transferred from Appendix II to Appendix I, except for the population in Papua New Guinea which was retained on Appendix II. On December 16, 1979 (44 FR 75074), the U.S. Fish and Wildlife Service (Service) listed all saltwater crocodile populations outside of Papua New Guinea as endangered. Both of these actions were taken because the species had suffered serious losses of habitat throughout most of its range and it had been subject to extensive poaching for its hide. At their 1985 meeting, the CITES Parties voted to transfer the Australian population from Appendix I to Appendix II of CITES pursuant to resolution Conf. 3.15 (ranching). Under Australian law, the effect of this action was to allow trade in captive-bred specimens and specimens taken from approved crocodile farm operations based on controlled collecting of eggs or hatchlings or nuisance animals from the wild.

In June 1990, the Service received a petition from the Australian National Parks and Wildlife Service (ANPWS) requesting the reclassification of the captive (i.e., captive-bred and ranched) populations of saltwater crocodile in Australia from endangered to threatened. The petition contained information on the management of wild and captive populations, populations surveys, and legal status. The Service had previously reviewed almost the same information, which was considered substantial, and the Service was in the process of preparing a proposed rule based on the earlier information when the petition was received. On September 27, 1990, the Service, acting on this assessment but without issuing a formal finding on the petition, published a proposed rule (55 FR 39489) to reclassify the Australian population of the saltwater crocodile to threatened status.

The proposed rule included a special rule which would have allowed for the commercial import of parts and

products of ranched saltwater crocodiles from Australia directly into the United States, or through a third party if that country was a CITES member, had not taken a reservation on saltwater crocodiles, had filed annual CITES trade reports, and the specimens were traded in accordance with Australian laws and CITES requirements. In the absence of a required universal tagging system for crocodilian skins, however, trade controls were considered insufficient to justify uncontrolled trade through third parties.

The Service delayed publication of the final rule to reclassify the Australian populations of the saltwater crocodile beyond the 12 months normally allowed because of concerns about allowing trade in products of one crocodilian species without adequate control of trade in other crocodilians and pending acceptance of universal tagging procedures for crocodilian skins in international trade. Resolution Conf. 8.14 adopted at the 1992 Meeting of the Conference of the Parties in Kyoto, Japan, established a new marking system that was to provide for strict regulation of trade in all crocodilian skins. This system was to have been effective after adoption of additional procedures by the CITES Animals Committee, with concurrence from the CITES Standing Committee. However, because the issues were too substantial to resolve at the committee level a revised resolution on universal tagging procedures was presented to the 1994 Meeting of the Conference of the Parties in Ft. Lauderdale, Florida. After further modification the Parties adopted this new resolution. The special rule presented in this notice is consistent with the newly adopted resolution.

Summary of Comments on Proposed Reclassification

Comment: African Resources Trust, Crocodile Farmers Association of Zimbabwe, the Crocodile Specialist Group of the World Conservation Union (IUCN), the Governments of Brazil, Paraguay, and Gambia, and Safari Club International supported the proposed reclassification of the Australian population of saltwater crocodile from endangered to threatened.

Response: The Service continues to believe that this reclassification is warranted.

Comment: Dr. Wayne King and IUCN believed that the Australian population had recovered sufficiently and was adequately protected so as to warrant removal from the list of Endangered and Threatened Wildlife Species.

Response: The Service notes that some portions of the Australian

population of the saltwater crocodile may not have recovered and that other populations of the species remain endangered, and therefore, believes that threatened classification is appropriate.

Comment: The Environmental Centre N.T. Inc. (ECNT) believed the Australian population of the saltwater crocodile was relatively low, that population estimates were based on limited surveys, and that the annual State reports are not available to the public.

Response: The Service believes that the surveys are adequate to document the recovery of this population and that this population continues to increase as documented in the proposal presented to the ninth meeting of the CITES Parties.

Comment: The ECNT was concerned that the proposed reclassification would lead to an expanded crocodile trade industry, and that the Northern Territory government had too few staff to regulate commercial trade in crocodile specimens.

Response: The Service believes that the regulation and management by the Australian State and Federal governments is adequate to control crocodile trade and protect the wild population.

Comment: The ECNT stated that the claim that the provision for legal harvest provided an incentive for conservation was unsubstantiated and that the ranching and egg harvesting operation provided no demonstrable contribution to the conservation of the species.

Response: Regardless of whether a direct linkage between the harvest operation and conservation benefits to the species can be demonstrated, the Service believes the Australian population of saltwater crocodile has recovered sufficiently to warrant reclassification of the species.

Comment: The ECNT noted that only a small number of coastal or marine conservation reserves occur within the range of the saltwater crocodile in Australia.

Response: The Service believes that based on population increases and management programs that adequate habitat exists for the saltwater crocodile in Australia to warrant reclassification of the species.

Summary of Factors Affecting the Australian Population of Saltwater Crocodile

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 factors 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 saltwater crocodile in Australia are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The saltwater crocodile occupies a variety of tidal and non-tidal habitats across northern Australia from Maryborough on the Queensland east coast to Broome on the Western Australian west coast. The Northern Territory has more extensive areas of prime saltwater crocodile habitat than either Queensland or Western Australia (report from the ANPWS 1990, titled, "Evidence in Support of a Petition by Australia to the U.S. Fish and Wildlife Service to Remove Captive Populations of the Saltwater Crocodile, *Crocodylus porosus*, in Australia from the Endangered Species List under the U.S. Endangered Species Act 1973"—copy on file with the Office of Scientific Authority). Exploitation of crocodiles in Australia began on a large scale in the late 1940's and extended into the early 1970's. During this time, populations in the rivers along the north coast were nearly extirpated with only small scattered populations remaining (King et al. 1979). Export of saltwater crocodiles and their parts from Australia was prohibited in 1972. Today, the habitats are largely intact across the whole of northern Australia, and the species occupies the whole of its known historical range within the country. The species is protected in the three states where it occurs (the Northern Territory, Queensland, and Western Australia). Management programs allowing limited utilization of wild stocks for crocodile farm operations have been implemented by the states in light of the crocodile's increasing population size.

According to the ANPWS (ANPWS 1990, op cit.), the Northern Territory population of saltwater crocodiles has undergone significant recovery since protection from hunting in 1972. Analysis of all available monitoring results from 1975 to 1987 shows that the density of wild saltwater crocodiles in tidal rivers has tripled since surveying began. In 1984, Webb et al. (1989) estimated the total Northern Territory population of the saltwater crocodile to be at least 40,000 individuals. Between 1984 and 1987, monitoring results indicated that the tidal population increased by 16.5 percent. Assuming that this rate of increase can be applied to the population as a whole, the minimum estimate for 1989 would be 46,000 crocodiles in the Northern Territory.

Extensive helicopter surveys across the entire range of habitat types present in Cape York Peninsula, Queensland, resulted in the sighting of some 2,400 crocodiles. Actual population numbers are likely to be considerably higher. It is not possible to derive an estimate of absolute numbers for Queensland, but sampling of potentially suitable habitats yielded an average density index of 0.77 crocodile/km of waterway. Surveys in 1977–78 resulted in a population estimate of about 2,000 crocodiles beyond the hatchling stage for Western Australia. The population was estimated at 2,500 crocodiles beyond the hatchling stage when it was resurveyed in 1986.

A proposal was submitted by Australia to the ninth meeting of the Conference of the Parties to CITES in Ft. Lauderdale in November 1994 to retain the Australian population of the saltwater crocodile in Appendix II pursuant to resolution Conf. 1.2 instead of resolution Conf. 3.15 under ranching provisions. The proposal reported that saltwater crocodile populations in the Northern Territories had increased by 50 percent since ranching was introduced in 1984, and that the 1993 population estimate "scaled from the 1984 estimate" of 40,000 was around 60,000 individuals. Furthermore, the Western Australia population of saltwater crocodiles was reported to be stable or increasing and estimated to be about 3,000 individuals excluding young of the year. The results of the 1987 survey in Queensland reportedly indicated a slow recovery from the 1979 population of 3,000 although the number in the populated and agricultural areas particularly along the east coast may still be decreasing.

2. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Population estimates of saltwater crocodiles in Australia were not made prior to 1970. Over-exploitation for the skin trade and persecution as undesirable wildlife began in the late 1940's and did not subside until hunting was banned in 1972. The export of saltwater crocodiles and their parts from Australia was prohibited in 1972 by an amendment of the customs regulations. By that time, many accessible populations had become seriously threatened with extirpation. With the enactment of state and territorial protection laws [Wildlife Conservation and Control Ordinance (1962)—Northern Territory; the Fauna Conservation Act (1974)—Queensland; and the Wildlife Conservation Act (1950)—Western Australia], the populations showed an immediate response and have tripled in numbers

since surveying began in the late 1970's (ANPWS 1990, op. cit.).

At the 1985 meeting of the Conference of the Parties to CITES, the Australian saltwater crocodile population was transferred from Appendix I to Appendix II, pursuant to resolution Conf. 3.15 on ranching. This provided for trade in saltwater crocodiles bred-in-captivity or raised on farms under approved management plans. The transfer was recommended by the Australian Council of Nature Conservation Ministers and IUCN Crocodile Specialist Group. The Australian CITES proposal to transfer the Australian population of saltwater crocodile to Appendix II to allow trade under the ranching provision was based on a series of experimental egg harvests and quantification of the impacts of those harvests. No discernible impact of this egg harvest has been detected on the number of crocodiles in subsequent age classes. Australia allows a regulated annual harvest of crocodile eggs for farm operations under approved management plans. The effects of the egg harvests are quantified and assessed through monitoring programs in the harvested areas. Approval to harvest eggs incorporates a commitment that if any decline in the wild population were to occur, a larger number of 1-year-old crocodiles would be returned to the wild than would have survived had no eggs or hatchlings been removed from the wild. In 1994, only the Northern Territory and Western Australia had approved management plans under which the harvest of eggs is allowed for ranching operations.

According to information provided by the Australian National Parks and Wildlife Service (ANPWS 1990, op. cit.), the capture and relocation of nuisance crocodiles can only be authorized by State and federal personnel.

In the Northern Territory, nuisance animals are caught alive and relocated to farms whenever practical. In other cases, they are destroyed by Northern Territory Conservation Commission personnel. In Western Australia, problem crocodiles are captured and removed, or where the level of risk to humans is unacceptable, permission to kill the crocodile may be given. In both States, those problem animals relocated to farms are individually marked and, if not required for captive breeding, are available for harvest after they have been maintained in captivity for a minimum of 30 days. In Queensland, nuisance animals may be removed to provide breeding stock for closed-cycle farms or destroyed where other options are not available.

Traditional harvest of crocodiles and crocodile eggs for food by Aborigines of the Northern Territory is allowed. However, the low level of traditional harvests is not considered a threat to the populations. Traditional use does not include commercial trade.

Ranched and captive-bred crocodile parts and products are exported from six establishments under an approved management program in the Northern Territory. A management program that would allow ranching operations in Western Australia has also been developed. Two farms in Queensland export products derived solely from captive-bred crocodiles.

The proposal submitted to the 1994 meeting of the CITES Parties reported that there were 6, 6, and 2 crocodile farms/ranches in the Northern Territory, Queensland, and Western Australia, respectively. Finally, it was noted that Queensland does not permit the capture of wild saltwater crocodiles for the purposes of stocking farms although a total of 181 problem crocodiles had been added to the farms between 1984 and 1994. The proposal was adopted by the CITES Parties.

3. *Disease or predation.* None known at this time.

4. *The inadequacy of existing regulatory mechanisms.* The saltwater crocodile is recognized as a valuable resource in Australia, where laws and regulations are in place to prevent over-exploitation of these animals. Since the ban on hunting in 1972, saltwater crocodile populations have substantially increased in numbers. State wildlife laws govern the take, possession, and trade in saltwater crocodiles. Also, the Commonwealth Wildlife Protection (Regulation of Exports and Imports) Act of 1982, administered by the Australian Nature Conservation Agency (ANCA, formerly ANPWS) helps to protect wildlife that might otherwise be threatened by unregulated export. Under this Act, export of saltwater crocodiles, their parts and products requires an export permit. Permits may be issued only for scientific purposes, or for specimens including products derived from captive-bred animals, or animals taken under an approved management program. Maximum penalties for violations of the Act are a AUS \$100,000 fine and/or 5 years imprisonment for individuals, and AUS \$200,000 for corporations. The substantial increase in maximum penalties for attempting to illegally export saltwater crocodile skins from Australia (from \$1,000 up to \$200,000) is considered to be an effective deterrent. In addition to legislation and policies regulating take within

Australia, export of saltwater crocodiles is regulated by CITES, to which Australia is a party.

Regulation of take has been a factor in the continued improvement of Australia's saltwater crocodile populations in the wild. This significant improvement has prompted the Service to reclassify the saltwater crocodile in Australia from endangered to threatened.

5. *Other natural or manmade factors affecting its continued existence.* A comprehensive system of nature conservation reserves has been developed, so that approximately 40 million hectares of all habitats throughout Australia, or 5.5 percent of the total land surface, is reserved under different categories. Parks, reserves, and sanctuaries in northern Australia provide a mosaic of areas in which crocodiles and their habitats are protected. Significant areas of crocodile habitat are contained in at least six parks or nature reserves. In addition, nearly 37 million hectares are protected under various state and national marine and estuarine protected area categories.

The Cobourg Peninsula Marine National Park was declared in 1983 to protect, among other species, the saltwater crocodile.

The Service has carefully assessed the best biological and commercial information with respect to past, present, and future threats faced by the species in issuing this rule. Criteria for reclassification of a threatened or endangered species (50 CFR 424.11 (c) and (d)) are the same as for listing a species as endangered or threatened. The proposed action is to reclassify Australia's saltwater crocodile populations from endangered to threatened, based on continuing recovery of the species. A special rule amending 50 CFR 17.42 to allow for the importation of specimens into the United States under certain circumstances but without a threatened species permit is also established. This reclassification is based on substantial evidence that Australia's populations of the saltwater crocodile have made a remarkable recovery and are no longer in danger of extinction in the foreseeable future.

Surveys conducted in the late 1980's indicated populations of at least 50,000. Populations are estimated to have increased three-fold between 1975 and 1987. The species is protected in the three jurisdictions in which it occurs, and there are closely regulated crocodile farm operations. In light of increasing populations, Australia's strict regulation of harvest, and the requirement of a management program prior to approval

of crocodile farm operations, several threats to the existence of the saltwater crocodile in Australia have been ameliorated. Therefore, the Service believes that reclassification to threatened best fits the current status of saltwater crocodile populations in Australia.

Other populations throughout the species' range are still in danger of extinction, to varying degrees, by taking. Penalties for illegal exports and enforcement activities will help ensure that illegal skins or products do not enter into commercial trade. Because crocodiles of the Australian population cannot be distinguished from saltwater crocodiles of other populations and from other endangered crocodilians once made into manufactured products, the Service is adopting a special rule to strengthen the implementation of the CITES skin-tagging program (see description presented later in this notice).

The reclassification to a threatened status and adoption of a special rule allowing commercial trade under certain conditions will not end trade controls for the species. The species remains on Appendix II of CITES with export permits required, and the special rule will require adherence to the CITES marking scheme for crocodilian skins, among other things discussed later in this document when provisions of the special rule are described. Trade in legally harvested saltwater crocodile skins, meat, and products, when controlled as specified in the special rule, will provide an incentive for conserving the species without posing significant risks to wild populations.

Proposed Classification of the Papua New Guinea Population

The Service had proposed the classification of the Papua New Guinea population of saltwater crocodile for reasons of similarity of appearance (59 FR 18652), because this population is the only saltwater crocodile population not listed under the Endangered Species Act, and such a listing would have imposed the same conditions on all legally traded saltwater crocodilian parts and products so as to better address concerns about commingling of legal and illegal specimens. However, such listing action is presently precluded by a listing moratorium imposed under U.S. legislation.

African Resources Trust and Crocodile Farmers Association of Zimbabwe had commented that such a listing appeared to be sensible. The Government of Papua New Guinea indicated that the crocodile population in Papua New Guinea was stable and a

transfer to Appendix I was not warranted. Such a transfer was not proposed, and if it were to occur would prohibit international trade for commercial purposes. In addition, Mainland Holdings Pty Ltd in Papua New Guinea commented that the saltwater crocodile population in Papua New Guinea was not endangered, that habitat would be left untouched if landowners can continue to realize cash income from the harvest of crocodiles, that recent surveys show that current regulations preserved habitat, that the trade was controlled by the Department of Wildlife and there was no evidence of any illegal trade in crocodile skins from Papua New Guinea, and that the proposed rule was likely to be detrimental to the crocodile industry in Papua New Guinea. This organization apparently did not understand that the proposed listing would not have precluded the sale of crocodile skins, other parts, and products from Papua New Guinea or the trade of these items through other countries that were properly implementing CITES. Furthermore, the provisions of the special rule should inhibit competitive trade in any illegal specimens from other countries.

The special rule will require tagging of crocodilian skins imported directly from Australia into the United States, and this will be expected under CITES resolution Conf. 9.22 for skins imported directly from Papua New Guinea. Implementation of CITES provisions and resolutions by Papua New Guinea has been effective. Furthermore, the special rule is intended to allow trade in saltwater crocodile parts and products through intermediary countries only if the countries involved in such trade are effectively implementing CITES. Intermediary countries likely to trade in crocodile specimens from Papua New Guinea are expected to be the same as those trading in specimens from Australia. Therefore effectively implementing the CITES tagging resolution. Therefore, the Service believes that the trade in crocodilian parts and products from Papua New Guinea can continue without listing that saltwater population as threatened by reason of similarity of appearance, but the Service will take special care to detect any illegal trade in skins from the saltwater crocodile population in Papua New Guinea.

Special Rule for Nile and Saltwater Crocodiles

1. History of Special Rule

The special rule established in 1987 (52 FR 23148) allowed for the import of

skins and live animals into the United States direct from Zimbabwe under certain circumstances. In the September 27, 1990, Federal Register (55 FR 39489), the Service proposed a special rule along with the proposed reclassification of the Australian population of the saltwater crocodile. The special rule would have allowed the importation of skins and products into the United States from ranches saltwater crocodile populations in Australia, regardless of whether the imported products came directly from Australia or through an intermediary country. However, concerns were raised about the provision for commercial trade in products without adequate control of trade for all crocodilian skins.

In the August 3, 1992, Federal Register (57 FR 34095), the Service proposed a special rule along with the proposed reclassification of the Nile crocodile. Concerns were expressed about the feasibility of the requirement to relate original tag numbers for all pieces of skins in products that are re-exported, and for the need for a more effective system to control trade in raw skins. Furthermore, implementation of the CITES universal tagging system for crocodiles had been delayed. Therefore, the Service reclassified the Nile crocodile (58 FR 49870, September 23, 1993) without revising the existing special rule that related only to specimens from the Zimbabwean populations, and announced that it would develop a special rule designed to complement the CITES universal tagging system when finalized. Consequently, on April 19, 1994 (59 FR 18652), the Service repropounded a special rule for the Nile and saltwater crocodiles which accompanied the proposed reclassification and classification of the Australian population and Papua New Guinea population of the saltwater crocodile, respectively.

Summary of Comments Received on Proposed Special Rule

Comment: Columbia Impex Corporation stated that the special rule should conform with CITES.

Response: The Service has included in the special rule provisions of the CITES resolution on "Universal Tagging System for the Identification of Crocodilian Skins" (tagging resolution) adopted at the ninth meeting of the Conference of the Parties, as well as provisions that allow only those countries that are properly implementing CITES and its tagging resolutions to import skins and products into the United States.

Comment: The Government of Gambia supported the special rule as written.

Response: The Service has retained the basic concept of the special rule with regard to effective implementation of CITES, and implementation of the tagging resolution, and those essential provisions to address the commingling concerns.

Comment: Safari Club International (SCI) expressed concerns about the process of documentation.

Response: The Service has included CITES documentation requirements that are consistent with the provisions of the special rule, and in the case of crocodilian products and pieces of processed skins the Service has adopted provisions that complement CITES requirements and resolutions.

Comment: SCI expressed the concern that the country approval process will cause lengthy delays.

Response: The Service has established criteria which if not met would result in a Schedule III Notice of Information that may prohibit or restrict imports of crocodilian skins, other parts and products. Removal of the proposed requirement for information to be provided by the involved exporting and intermediary countries will also expedite appropriate actions when warranted.

Comment: SCI believed that requiring the country of origin to certify its compliance with various practices is contrary to the spirit of CITES.

Response: The Service does not agree that asking a country to certify its compliance with certain internal practices necessary for effective implementation of CITES is contrary to the spirit of CITES. Countries presently certify that resolution recommendations are met when issuing certificates or submitting registration proposals for bred-in-captivity and artificially propagated specimens.

Comment: SCI noted that the concerns about commingling of skins is not "tied" to the biological status of the species.

Response: The Service is concerned not only about commingling of skins of populations listed as threatened but also of skins of the same species listed as endangered pursuant to the Act and/or in CITES Appendix I.

Comment: SCI objected to the United States dictating controls to other countries.

Response: The Service has already noted that the provisions of the special rule complement the implementation practices adopted by CITES Parties and that any additional provisions are designed to clarify and support aspects of relevant CITES resolutions or

requirements. Furthermore, the United States has or will implement similar provisions in its internal regulations.

Comment: SCI noted that no tag appeared to be required for sport-hunted trophies imported directly from the country of origin.

Response: The Service, in implementing the CITES tagging resolution, will require tags on all crocodilian skins including trophies imported, exported, or re-exported from the United States and has repeated this requirement in the special rule.

Comment: SCI noted that in addition to allowing the import of sport-hunted trophies directly from the country of origin, the special rule should allow the import of trophies from intermediary countries provided that the tag from the country of origin is attached to the trophy or just accompanies the shipment.

Response: The Service recognizes that trophies may be shipped to third party countries for preparation by a taxidermist and acknowledges that this is a low volume activity. Therefore, the Service has modified the special rule to allow these trophy imports from third party countries provided the original export tag is attached to unmounted trophies or accompanies the mounted trophy and the re-export certificate contains the original tag and export permit number and date and re-export certificate number from the previous country of re-export.

Comment: Crocodile Farmers Association of Zimbabwe (CFAZ) and African Resources Trust noted that the requirement that all pieces of skin larger than 9 square inches must bear an intact tag was discussed in the description of the special rule but not in the proposed special rule.

Response: In the discussion of paragraph (c)(3)(iii) (F1-F3) in the "Section-by-Section Description" of the proposed special rule on page 18659 of the April 19, 1994, Federal Register notice, mention of 9 square inches was intended to refer only to tracking such pieces (separate or in products) and was not included as a tagging requirement for skin pieces. This situation in which skins may be imported, processed, and cut in one country prior to shipment to another country for manufacture is believed to involve a small percentage of the trade. In these situations, the tagging resolution calls for an administrative system effectively matching imports and re-exports. Uncut, unprocessed or processed whole or partial skins, flanks, bellies or backs should retain the original tag through the intermediary country(s) and on import into the United States, or should

possess a re-export tag in a limited number of situations in which the original tag was lost in reprocessing but tracked through the administrative system. However, if the processed skins have been cut into pieces, in addition to the administrative tracking system, the Service believes that precise tracking of the more valuable larger pieces is significantly important to the proper control of trade in legal skins. Therefore, the Service will require that belly skin pieces wider than 35 centimeters will have the original tag number and permit number and the previous intermediary country's re-export certificate number, if any, recorded on the re-export certificate.

Comment: The Government of Paraguay, Dr. Wayne King, CFAZ, and the African Resources Trust stated that the tagging of pieces greater than 9 square inches involves unnecessary work.

Response: The Service agrees, and as noted in the previous response, the special rule has been revised.

Comment: IUCN and Dr. Wayne King believed that most countries would be unable to comply with provisions requiring the tracking of pieces larger than 9 square inches in finished products to the original tag and permit, and Dr. King suggested not requiring documentation for pieces comprising less than 25 percent of the product.

Response: The Service now believes that the burden imposed by the tracking of such small pieces is unnecessary if provisions of the tagging resolution for documenting tag and permit numbers are extended to point of manufacture. The tagging resolution requires an administrative system for effective matching of imports and re-exports of skins, and for skins being re-exported the tags should remain attached. To further enable the intermediary countries to detect commingling, the Service will require that the tags should remain attached to the point of manufacture. This along with some monitoring system for quantity of products produced should obviate the need for tracking the smaller pieces. The system suggested by IUCN and Dr. King for tracking pieces amounting to 25 percent of product could still result in tracking small pieces. However, the tracking of most valuable large pieces is still considered to be warranted, but precise tracking will only be required for belly skin pieces wider than 35 centimeters.

Comment: The Government of Paraguay, Dr. Wayne King, the African Resources Trust, CFAZ, and IUCN commented on the need to clarify the meaning "physically inspects 40

percent of crocodilian skin and product shipments." IUCN also considered that the Service should not require an inspection rate higher than it conducts. In addition, the Australian Nature Conservation Agency felt that requiring a 40 percent inspection rate imposed an undue burden and noted that random inspections of shipments and processing facilities supported with severe penalties was a sufficient deterrent.

Response: The Service believes that its random inspection practices as well as its efforts to inspect 40 percent of the crocodilian skin or product shipments on importation constituted an effective enforcement level in the United States. However, the Service recognizes that an effective enforcement level involves a combination of inspection rates and severity of penalties. Therefore, the Service has not stated an inspection rate in the special rule but has relied on the importing, exporting and re-exporting countries to establish what they believe to be an effective level of enforcement.

Comment: The Government of Hong Kong thought that the special rule should be reconsidered after a revised tagging resolution was adopted at COP9.

Response: The Service agrees with this comment and has waited until the tagging resolution was revised and readopted by the CITES Parties to make the provisions of the resolution and this special rule consistent whenever possible.

Comment: CFAZ and African Resources Trust stated that if the listing of the Papua New Guinea population is contentious enough to hold up the special rule for Nile crocodile, they would request the special rule be uncoupled from the listing document.

Response: The delay in finalizing action on the special rule was due to waiting for the adoption of the tagging resolution by the CITES Parties, and the Service is now proceeding with the special rule without listing the Papua New Guinea population of the saltwater crocodile, presently prohibited by a listing moratorium enacted by U.S. legislation.

Comment: IUCN and Dr. Wayne King considered that the proposed 12-month delay in implementation was unwarranted.

Response: The 12-month delay referred to in paragraph (c)(3)(i)(A) was not intended to indicate when commercial shipments of skins would first be allowed into the United States, but to establish the date after which *untagged* skins and parts from intermediary countries would no longer be allowed into the United States. The Service has reviewed the wording of this provision in the special rule and

because the tagging resolution has been in effect for 1 year, the Service has made the tagging requirements effective on the effective date of this rule. However, because the specific parts tag requirements stipulated in this rule clarify the Service's perception of the intent of this requirement in the tagging resolution, the Service will not require the parts tag to be on containers until 1 year after the date of publication of this rule.

Similarly, the 12-month delay referred to in paragraph (c)(3)(ii)(A) was intended to establish the date after which commercial shipments of products must be accompanied by copies of CITES documents (or records of documents) from the country of origin. This delay has been deleted because the Service will follow the guidance on information to be included on permits and certificates as recommended in CITES resolution Conf. 9.3 as adopted at the ninth meeting of the Conference of the Parties in November 1994.

Comment: CFAZ and Africa Resources Trust noted that there are no details by which a country not originally approved or subsequently removed from the approved list can be included or reestablished on the approved list.

Response: The Service agrees that this was not addressed and has included a statement in the preamble portion of the rule which notes that any import prohibition or restriction established with a Schedule III Notice of Information will be lifted through a similar Notice of Information when conditions contributing to the prohibition or restriction have been corrected.

Comment: Jon Hutton (pers comm) noted that the preamble text of paragraph (c)(3)(iii) (F1-F3) in the proposed rule indicated that the provisions would apply to countries of origin and re-export but that the portion of the special rule omitted the country of re-export.

Response: The Service acknowledges this omission in the special rule paragraph but notes that it is clear from the specific requirements of this part of the proposed special rule that it applies to re-exporting countries. The special rule has been revised to state specifically that the provision for effective implementation of the tagging resolution applies to countries of origin and re-export.

Comment: The Australian Nature Conservation Agency expressed the view that random inspection of premises and records supported by severe penalties should be sufficient

deterrent to obviate the need to track pieces of skin greater than 9 square inches.

Response: The Service generally agrees with this position and notes that it has eliminated the requirement for a specific inspection rate and has expected the other countries to determine effective enforcement practices which might involve higher inspection rates if penalties and/or ability to conduct random inspections do not provide an adequate deterrent. However, because of the monetary value of large, unmarred, raw or processed pieces, the Service is retaining a requirement for tracking belly skin pieces wider than 35 centimeters.

Comment: The Australian Nature Conservation Agency questioned how a ban by the CITES Parties or Standing Committee would be applied, e.g. how would a country be removed from the approved list?

Response: The Service has established bases for issuing Schedule III Notices of Information which would prohibit or restrict imports. If the Secretariat issues a notification of a ban based on a decision of the Parties or Standing Committee, the Service will publish a Schedule III Notice of Information. A similar Notice of Information to lift the prohibition or restriction will be published.

3. Description of Special Rule

The United States would allow import under certain conditions only of those skins, parts or products from designated populations of saltwater and Nile crocodiles. The special rule provides for import prohibitions or restrictions on exporting or re-exporting countries if (1) 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; (2) the country is identified in any action adopted by 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 CITES-listed species from the country in question; or (3) the Service determines, based on information from the CITES Secretariat or other reliable sources that the country is not effectively implementing the tagging resolution. Whenever such evidence becomes available to the Service, the United States will inform the CITES Secretariat and the appropriate CITES Committee so that the CITES Parties collectively may also take appropriate actions.

The United States would also allow imports from non-CITES Parties if the country was in compliance with all of the expectations stated above for CITES Parties and if the country issued CITES-comparable permits/certificates and tags.

Importation of skin and other parts of saltwater crocodiles directly from Australia, or skins and parts of Nile crocodiles directly from countries with Appendix II populations would also be allowed under certain circumstances, if the country of origin implements provisions of the universal tagging system.

a. Marking. 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 the conservation of the species. The United States, in conjunction with Australia, Italy, and Germany submitted a resolution to the CITES Secretariat that was adopted at the eighth meeting of the Conference of the Parties in Kyoto, Japan (March 2-13, 1992). This resolution (Conf. 8.14) called for a universal tagging system for the identification of crocodilian skins in international trade. Furthermore, in accordance with resolution Conf. 8.14, the CITES Animals Committee at its July 1992 and September 1993 meetings adopted resolutions recommending additional practices for tracking and monitoring tags. However, concurrence was not obtained from the CITES Standing Committee, and a new resolution was presented at the ninth meeting of the Conference of the Parties in Ft. Lauderdale, Florida (November 7-18, 1994). This resolution was further revised and then adopted at the November meeting.

Aspects of this resolution dealing with imports into the United States are incorporated into this special rule, and U.S. implementation of this resolution for import, export, and re-export for all crocodilian species will be incorporated into a future revision of 50 CFR part 23. Adherence to the new marking requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with similarity in appearance of skins and products among the different species of crocodilians.

Prior to implementation of the CITES universal tagging resolution certain taxa listed in Appendix II could be traded internationally without adequate assurance of their identification and/or legal status. 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 re-exported, unless substantial processing and manufacturing has taken place; (2) that such 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 species code and the year of production, and further that such non-reusable tags have as a minimum the following characteristics: a self-locking system, heat resistance, inertia to chemical and mechanical processing, information that has been applied by permanent stamping (tag manufacturers approved by each country's CITES Management Authority must be registered with the CITES Secretariat and meet certain conditions); (3) that the same information as is on the tags (for whole skins, flanks, bellies, and "chalecos") 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 CITES-document issuing authority or by government authority designated by the CITES-document issuing authority (for the purposes of this rule this requirement applies to all uncut skins and pieces wider than 35 centimeters); (4) that each Party in which tags are applied maintain records accounting for tags and maintain records that relate each Convention document number to the tags of the crocodilian specimens traded thereunder and vice versa; (5) that Parties establish, where legally possible, a system of registration or licensing, or both, for importers and exporters of crocodilian skins and parts thereof; (6) that all countries permitting the re-export of raw, tanned, and/or finished crocodilian skins implement an administrative system for the effective matching of imports and re-exports; and (7) that tails, throats, feet, backstrips, and other parts be exported in transparent sealed containers clearly marked with a parts tag together with a description of the contents and total weight.

b. **Special Rule.** This special rule allows trade through intermediary countries, i.e., all countries of re-export by definition, for Nile and saltwater crocodiles as long as such countries are effectively implementing CITES and have adopted certain management measures to control trade in crocodilian skins and products. Countries are not

considered as countries of re-export if the specimen remains in customs control while transiting or being transhipped through the country and the specimen has not entered into the commerce of that country. The special rule is intended to complement and strengthen the universal crocodilian tagging system as presently envisioned in the CITES universal tagging resolution.

The purpose of this special rule is to require a more accountable system for the transfer and processing of skins and products in the commercial crocodilian trade. The United States is a major importer of crocodilian products produced by other countries of re-export. The Service's inspections of importations have revealed a continuing pattern of commingling and misidentification of crocodilian leathers. Accompanying CITES documents have often declared the merchandise as American alligator when the product contains some species of crocodile, or as crocodile, when the goods are made from American alligator hide. The new CITES tagging system will represent a significant step towards eliminating misidentification of skins as they leave the country of origin. Since all American alligator skins are tagged upon export from the United States, the problems of commingling of alligator and crocodile clearly arise during the tanning and manufacturing process.

In addition, there are several species of crocodiles throughout Africa and Asia that remain listed as endangered. While identification of crocodile versus alligator can be made consistently in manufactured products, other species identification of crocodilian products is more difficult. Despite these difficulties, various species of endangered crocodilians have been identified in products declared as American alligator or non-endangered crocodiles.

Since the commingling problems described above principally arise in the re-exporting countries, this special rule is established with the expectation of adequate control through proper implementation and enforcement of CITES in the manufacturing countries to deter intermingling of the protected populations of the Nile and saltwater crocodiles, as well as the endangered populations of other crocodiles and alligators without imposing the overburdensome requirement of tracking each piece through the production process, and recording all incoming tag numbers on the re-exporting permit for products. However, the special rule provides for possible prohibition of imports from any re-exporting country that does not

effectively control trade and adequately preclude commingling of illegal crocodilian skins and other parts.

Furthermore, this special rule is written to allow the Service to respond quickly to changing situations that may result in lessened protection to the crocodilians. Thus, the criteria described in the special rule establish bases for determining whether CITES provisions are being effectively implemented. Therefore, imports into the United States can be prohibited after publication of a Schedule III Notice of Information on any country that fails to comply with the requirements of the special rule. Such prohibitions/restrictions will be lifted through a similar Notice of Information when conditions contributing to the prohibition or restriction have been corrected. For those additional situations outside of the ones set forth in the special rule which involve a judgment as to whether necessary trade controls are being implemented, the Service will go through a separate proposed rule and comment process before reaching a final decision on any trade bans.

The special rule adopted herein will require the CITES-approved tags for all saltwater and Nile crocodile skins or appropriate tamperproof parts tags with CITES-required information on transparent sealed containers of crocodilian parts being imported into intermediary countries and CITES tags for all skins or significant pieces of skin being exported from any re-exporting country if the skins or products are eventually to be imported into the United States.

The special rule is designed to allow trade in saltwater and Nile crocodile skins and products from designated populations without the need to obtain a threatened species import permit. Tagged skins may be imported from the country of origin or any CITES-member country of re-export as long as the involved countries comply with certain criteria. Crocodilian products may be imported without individual tags, provided the involved countries comply with criteria described for products. The special rule expects compliance with the CITES universal tagging resolution including an administrative system for the effective matching of imports and re-exports of skins. In addition, the intermediary country will be expected to have adequate enforcement authorities to deter the commingling of illegal skins. If a country fails to meet the criteria in the special rule, a Schedule III Notice of Information to that effect will be published in the Federal Register, and skins and

products from Nile and saltwater crocodiles will not be able to be imported into the United States from that country without the threatened species import permits required in part 17.

4. Effects of the Special Rule

The degree of endangerment of the many crocodilian species varies by species and specific populations. Some crocodilian species and populations are listed on Appendix I of CITES, and the remaining species and populations are included in Appendix II. Some species are listed as threatened or 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 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 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 under current management systems, the Appendix II populations of Nile crocodile with assigned export quotas and the Australian populations of saltwater crocodile are being sufficiently sustained to support controlled commercial use; the key risk to these populations, as well as other similar-appearing crocodilians, is inadequate controls in the countries of re-export, especially in those countries in which manufacturing occurs.

The CITES Parties have adopted and are in the process of implementing provisions of a universal tagging system for crocodilian skins, and the Service supports these efforts. Adherence to the new marking requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with the similarity in appearance of skins and products among different species of crocodilians. Further, this special rule contains other steps designed 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. With the requirement that all skins are to be tagged, that administrative systems for the effective matching of imported and re-exported skins exist in intermediary countries, that all uncut skins are to be tagged up to the point of manufacture, and that the valuable belly skin pieces wider than 35 centimeters are to be specifically tracked, it is expected that there will be greater accountability and accuracy in the processing and manufacturing of crocodilian skins.

In summary, the special rule allowing limited trade in these saltwater crocodile and Nile crocodile populations should provide incentives to maintain wild populations, as well as encourage all countries involved in commerce in crocodilian species to guard against illegal trade.

1. Saltwater Crocodile. Allowing import of farm-raised specimens is expected to benefit the conservation of wild populations. Under Australia's conservation program, eggs or hatchlings are removed from the wild for crocodile farm operations under an approved management program, and wild populations are carefully monitored. Should any decline occur in the wild populations, the program would return a greater number of 1-year-old captive raised crocodiles to the wild than would have survived to that age in the wild had no eggs or hatchlings been removed. Limited trade with the United States would provide economic incentives for conserving wild populations and their habitats, owing to the dependence on them as the source of eggs. Careful regulation of take and the prescription of specific corrective actions ensure that crocodile farming activities will not cause declines of wild populations, and have the added potential of reversing declines caused by other factors.

In addition, under this special rule, parts or products of the Australian crocodile populations imported into the United States must be identified in accordance with the CITES marking system for crocodile skins and parts (refer to section on marking, and provisions of special rule). These marking requirements should ensure that only legally taken specimens are traded, and thus should also benefit the conservation of the species.

2. Nile crocodile. The appropriateness of the original endangered listing under the Act and the Appendix I listing under CITES of the Nile crocodile has been the subject of much international debate. However, improvements in the status of Nile crocodile populations and their management have prompted the

CITES Parties to transfer 11 national populations to Appendix II. The downlisting to a threatened status under the Act does not end trade controls for the species. The species remains in Appendix II of CITES with export permits required. The special rule should strengthen adherence to the CITES marking scheme for crocodilian skins as well as compliance with other CITES trade control provisions. Allowing commercial importation into the United States from CITES-approved countries is expected to benefit the species by encouraging proper conservation practices and by promoting adherence to the CITES marking system.

Effects of the Rule

This rule revises § 17.11(h) to reclassify the Australian population of the saltwater crocodile from endangered to threatened, with a special rule stating that the regulations specifically pertaining to threatened species (50 CFR 17.31, 17.32) would still apply.

The Australian population and the unlisted Papua New Guinea populations are defined by distinct geo-political boundaries that delineate an area representing a significant portion of the range of the species. In addition, both populations are biologically significant in maintaining variability of the species and in preventing the further decline of the species.

Consistent with the requirements of sections 3(3) and 4(d) of the Act, this rule also establishes a special rule by amending 50 CFR 17.42 to allow the importation, under certain conditions, of whole and partial skins, parts, and finished products thereof of populations of Nile crocodiles included in CITES Appendix II which were previously reclassified as threatened (58 FR 49870), and saltwater crocodile that originate in Australia, without a threatened species import permit for individual shipments otherwise required by 50 CFR part 17, if all requirements of the special rule are met.

Available Conservation Measures for Nile and Saltwater Crocodiles

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

Section 7(a) of the Act, as amended, 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 or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

In general, 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 the United States 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, the National Marine Fisheries Service, and State conservation agencies.

In general, 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, 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 will be governed by the provisions of § 17.32 unless a special rule applicable to the wildlife (appearing in §§ 17.40 to 17.48) provides otherwise.

Although threatened species are generally covered by all prohibitions applicable to endangered species, under Section 4(d) of the Act, the Secretary may propose special rules if deemed necessary and advisable to provide for the conservation of the species. The rule included in § 17.42 allows commercial importation into the United States of certain farm-raised specimens of Australia's saltwater crocodile population, and certain specimens of Nile crocodile populations downlisted to Appendix II by CITES Parties under ranching or quota provisions as provided for by CITES.

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 Flexibility Act

Based upon its analysis of the identified factors, the Service has determined that:

No individual industries within the United States will be significantly affected and no changes in the demography of populations are anticipated.

Note that some alligator producers, trappers, and dealers may experience some increased competition, but the International Alligator Crocodile Trade Study (1996) prepared by Ashley Associates, Tallahassee, Florida projects an increase in alligator skin trade in 1997, albeit in the projection of total crocodilian trade, the alligator skin trade made up a smaller percentage of the total market. The removal of the threat of possible retaliatory trade prohibition measures directed at alligator parts and products by other countries will at least partially offset any effects of increased competition.

In addition, the two or three known operational tanneries and several product manufacturers in the United States will have access to a new source of crocodile skins; and because of this increase in supply, this may lower prices on legally imported crocodile skins.

Furthermore, retailers will be able to legally buy products made from these previously prohibited species. Consequently, the U.S. consumer will have a wider selection of materials and possibly benefit from lower prices.

To the extent that the total market in crocodilian products is expanded, the States may benefit from additional sale tax collections.

Importers taking advantage of the possibility of expanded trade will incur the risk of specimens being seized by U.S. enforcement agents if the specimens are not tagged at the time of import in accordance with the CITES tagging resolution or if imported from a country not effectively implementing the CITES tagging resolution. Note that any such countries will be identified in Notices of Information published in the Federal Register with a current list of such countries available from the Fish and Wildlife Service's Office of Management Authority.

This rule will not impose any additional requirements on U.S. exporters or importers of crocodilian skins or products provided the present CITES tagging and permitting requirements are followed.

The Service, in light of the above analysis, has determined that the rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It has therefore, been determined that a "small entity flexibility analysis" study is not necessary.

Other Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and has found it to contain no information collection requirements.

The Service concludes that the rule is not a significant regulatory action in the sense of Executive Order 12886, and was not subject to review by the Office of Management and Budget under Executive Order 12886.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. These revisions to the regulations in 50 CFR 17 are of a kind consistent with the existing parameters of established Federal authority.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

In accordance with Executive Order 12630, it has been determined that the rule has no potential takings of private property implications as defined by the Executive Order 12630.

The Service, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Section 3(a) and (b) of Executive Order 12988.

References Cited

- International Union for Conservation of Nature and Natural Resources. 1975. Red Data Book: Amphibia and Reptilia. Morges, Switzerland.
- International Union for Conservation of Nature and Natural Resources (IUCN). 1990. IUCN Red List of Threatened Animals. IUCN Conservation Monitoring Center. Cambridge, England.

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Webb, G.J.W., M.L. Dillion, G.E. McLean, S.C. Manolis and B. Ottley. 1989. Monitoring the recovery of the saltwater crocodile (*Crocodylus porosus*) population in the Northern Territory of Australia. In: Proceedings of the 9th working meeting of the Crocodile Specialist Group of the Species Survival Commission of the International Union for Conservation of Nature and Natural Resources. October, 1989. Lae, Papua New Guinea.

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List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

Accordingly, part 17 subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations is amended 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; U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for the "Crocodile, saltwater (=estuarine)" 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 population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|------------------------------------|--------------------|---|--|--------|-------------|------------------|---------------|
| Common name | Scientific name | | | | | | |
| REPTILES | | | | | | | |
| Crocodile, saltwater (=estuarine). | Crocodylus porosus | South Asia, Australia, Papua New Guinea, Pacific Islands. | Entire, except Papua New Guinea and Australia. | E | 87____ | NA | NA |
| Do..... | do..... |do..... | Australia..... | T | 87____ | NA | 17.42(c) |

3. Paragraph (c) of § 17.42 is revised to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(c) *Threatened crocodilians*. This paragraph applies to the following species: Saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile) and Nile crocodile (*Crocodylus niloticus*) populations listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention).

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

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

(ii) *Crocodilian parts* means meat and body parts with or without skin attached (including tails, throats, feet, and backstrips and other parts), except skulls.

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

(iv) *Tagging resolution* shall mean the CITES resolution entitled "Universal

Tagging System for the Identification of Crocodilian Skins" and numbered Conf. 9.22 and any subsequent revisions.

(2) *Prohibitions*. All provisions of § 17.31 (a) and (b) and § 17.32 apply to Nile crocodile populations listed in Appendix I of CITES. The following prohibitions apply to saltwater crocodiles (*Crocodylus porosus*) originating in Australia and to all Nile crocodile (*Crocodylus niloticus*) populations in Appendix II of CITES:

(i) *Import, export, and re-export*. Except as provided in paragraph (c)(3) of this section, it is unlawful to import, export, re-export, or present for export or re-export any Nile crocodile (*Crocodylus niloticus*) or Australian saltwater crocodile (*Crocodylus porosus*) 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 (c)(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 Nile or saltwater crocodile, crocodilian 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 (c)(2)(i)–(iii) of this section.

(3) *Exceptions*. The import, export, or re-export of, or interstate or foreign commerce in live crocodiles, crocodilian 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 applicable paragraphs set out below have been met.

(i) *Import, export, or re-export of crocodilian skins and parts*. The import, export, or re-export into/from the United States of crocodilian skins and parts of Nile crocodiles listed in Appendix II of the Convention, and of saltwater crocodiles originating in Australia must meet the following conditions:

(A) All crocodilian parts must be in a transparent, sealed container, and each container imported into or presented for export or re-export from the United States after July 24, 1997.

(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

(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 crocodilian skin and each belly skin piece wider than 35 cm. imported into or presented for export or

re-export from the United States after July 24, 1996, 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. Clearance of any shipment with more than 25 percent replacement tags requires prior consultation with the U.S. Office of Management Authority by the re-exporting country to determine whether the requirements of the tagging resolution have 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 and belly skin pieces wider than 35 cm or on a separate sheet, 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 substantial evidence 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 is not 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, ARLSQ Room 430, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(ii) *Import, export or re-export of crocodilian products.* Import, export, or re-export into or from the United States of crocodilian products of Nile crocodiles listed in Appendix II of the Convention, and saltwater crocodiles originating in Australia will be allowed without permits required by 50 CFR part 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 substantial evidence 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 is not 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 430, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(iii) *Shipments of eggs, skulls, meat, scientific specimens and live specimens.* The import/re-export into/from the United States of eggs, skulls, meat, scientific specimens and live specimens of Nile crocodile populations listed in

Appendix II of CITES or Australian saltwater crocodile will be allowed without permits otherwise required by 50 CFR part 17, provided the requirements of part 23 are met.

(iv) *Noncommercial accompanying baggage.* The conditions of paragraphs (c)(3)(i) and (ii) for skins tagged in accordance with the tagging resolution, skulls, meat, other parts, and products made of specimens of Nile crocodile populations on CITES Appendix II or of Australian saltwater crocodile do not apply to noncommercial accompanying personal baggage or household effects.

(v) *Personal sport-hunted trophies.* The import of personal sport-hunted trophies, including skulls, of Nile crocodile or saltwater crocodile from Appendix II populations will be allowed from country of origin and intermediary countries into the United States without permits required by 50 CFR part 17, provided that unmounted skins bear an intact, uncut tag from the country of origin or such a tag accompanies mounted specimens in accordance with the tagging resolution.

(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 crocodilians addressed in this paragraph (c) 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 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 CITES-listed Species from the country in question.

(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: March 18, 1996.

George T. Frampton, Jr.,
Assistant Secretary For Fish and Wildlife and Parks.

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