

Okefenokee National Wildlife Refuge and nine other areas were studied as potential locations to recolonize the species. The Refuge was one of three areas identified by researchers as an area that has the highest combination of effective habitat area and expert opinion scores. The proposed project may have a significant enough impact to preclude any potential future efforts to reestablish the species in the area, which may cause jeopardy to the species.

f. Wood Stork

A litany of negative impacts could cause jeopardy for the wood stork. The Corps and Service must therefore consult on this species. Changes in the hydrological regime and mine-related runoff could have a major impact upon the ability of wood storks to locate prey. Changes in the hydrological regime could also prove fatal to breeding storks. Moreover, impacts such as indefinite lighting, noise disturbances, and human encroachment near the refuge boundary are likely to affect the foraging and nesting habits of the species. Thus, it is impossible to make a no jeopardy determination regarding impacts on the wood stork unless further studies are conducted.

g. Eastern Indigo Snake

There is a reasonable likelihood that a Section 7 consultation between the Corps and the Service on the threatened eastern indigo snake would establish a finding of jeopardy. First, this species requires thousands of connected acres for home range territories and it has grown increasingly vulnerable due to habitat fragmentation. This heavy mineral sands mining would continue to compound this problem by creating habitat loss and disrupting natural corridors used by the species. Furthermore, as the Service has noted, mining debris and equipment, along with the discharge of hazardous materials, adversely impact this species. Despite these concerns, the applicant has not proposed any meaningful avoidance and minimization measures for impacts to this species.

2. The mine risks a take of individual listed species in violation of Section 9 of the ESA.

Unless an Incidental Take Permit has been issued, Section 9 of the ESA prohibits the take of individual members of any endangered species of fish or wildlife,²⁶⁹ and the Service has historically extended these same protections to threatened species, as well. “The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”²⁷⁰ Congress, in fact, intended the term “take” to be “defined in the broadest possible manner to include every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife.”²⁷¹ Moreover, “Congress intended ‘take’... to cover indirect as well as purposeful actions.”²⁷²

²⁶⁹ 16 U.S.C. § 1538(a)(1)(B),

²⁷⁰ 16 U.S.C. § 1532(19).

²⁷¹ S. Rep. No. 93-307, at 7 (1973) *reprinted in* 1973 U.S.S.C.A.N. 2995.

²⁷² *Loggerhead Turtle*, 148 F.3d at 1237 (quoting *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 704 (1995)).