

## § 17.31

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sought under this section is not granted.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued under any of the three categories of economic hardship, as defined in section 10(b)(2) of the Act. In making his decisions, the Director shall consider, in addition to the general criteria in §13.21(b) of this subchapter, the following factors:

(1) Whether the purpose for which the permit is being requested is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(3) The economic, legal, subsistence, or other alternatives or relief available to the applicant;

(4) The amount of evidence that the applicant was in fact party to a contract or other binding legal obligation which;

(i) Deals specifically with the wildlife sought to be covered by the permit; and

(ii) Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier.

(5) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b)(4) of this section would cause if the permit were denied;

(6) Where applicable, the portion of the applicant's income which would be lost if the permit were denied, and the relationship of that portion to the balance of his income;

(7) Where applicable, the nature and extent of subsistence taking generally by the applicant; and

(8) The likelihood that applicant can reasonably carry out his desired activity within one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife,

or to list such wildlife as endangered, whichever is earlier.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's office designated in the permit.

(d) Duration of permits issued under this section shall be designated on the face of the permit. No permit issued under this section, however, shall be valid for more than one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 40 FR 58307, Dec. 16, 1975; 50 FR 39688, Sept. 30, 1985]

### Subpart D—Threatened Wildlife

#### § 17.31 Prohibitions.

(a) Except as provided in §§17.4 through 17.8, or in a permit issued under this subpart, all of the provisions of §17.21, except §17.21(c)(5), shall apply to threatened species of wildlife that were added to the List of Endangered and Threatened Wildlife in §17.11(h) on or prior to September 26, 2019, unless the Secretary has promulgated species-specific provisions (see paragraph (c) of this section).

(b) In addition to any other provisions of this part, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course

of official duties, take those threatened species of wildlife that are covered by an approved cooperative agreement to carry out conservation programs.

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

[84 FR 44760, Aug. 27, 2019]

#### § 17.32 Permits—general.

Upon receipt of a complete application the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§17.40 to 17.48, of this part provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

(a)(1) *Application requirements for permits for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* A person wishing to get a permit for an activity prohibited by §17.31 submits an application for activities under this paragraph. The Service provides Form 3-200 for the application to which as much of the following information relating to the purpose of the permit must be attached:

(i) The Common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought

to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in §13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

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(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* (i) A person wishing to get a permit for an activity prohibited by §17.31 submits an application for activities under this paragraph.

(ii) The director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application.

(iii) Each application must be submitted on an official application (Form 3-200) provided by the Service, and must include as an attachment, all of the following information:

(A) A complete description of the activity sought to be authorized;

(B) The common and scientific names of the species sought to be covered by

the permit, as well as the number, age, and sex of such species, if known;

(C) A conservation plan that specifies:

(1) The impact that will likely result from such taking;

(2) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(3) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(4) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan.

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the

Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's

operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

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(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of §13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to §13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under paragraph (b) of this section may not be revoked for any reason except those set forth in §13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S.

Fish and Wildlife Service, for the Region where the applicant resides or where the proposed action is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by §17.31. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of how incidental take of the covered species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline;

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service; and

(iv) The Director must publish notice in the FEDERAL REGISTER of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in §17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in §13.21(b) of this subchapter, except for §13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not

appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in §13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit.

In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances (CCAAs).* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a CCAA is listed as threatened and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by §17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. The applicant must submit an official Service application form (3–200.54) that includes the following information:

- (i) The common and scientific names of the species for which the applicant requests incidental take authorization;
- (ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and
- (iii) A CCAA that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(iv) The Director must publish notice in the FEDERAL REGISTER of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in §17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in §13.21(b) of this subchapter, except for §13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA;

(ii) The implementation of the terms of the CCAA is reasonably expected to provide a net conservation benefit to the affected covered species by contributing to the conservation of the species included in the permit, and the CCAA otherwise complies with the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a CCAA;

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the CCAA.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a CCAA on the effective date of a final rule that lists a covered species as threatened.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the CCAA is being properly implemented, and apply only with respect to species adequately covered by the CCAA. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent

possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the Agreement;

(3) Percentage of range conserved by the Agreement;

(4) Ecological significance of that portion of the range affected by the Agreement;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a CCAA.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in §13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such

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that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(8) *Duration.* The duration of a CCAA covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit to the species covered by the permit and the Agreement and otherwise comply with the Candidate Conservation Agreement with Assurances policy available from the Service.

[50 FR 39689, Sept. 30, 1985, as amended at 63 FR 8871, Feb. 23, 1998; 63 FR 52635, Oct. 1, 1998; 64 FR 32714, June 17, 1999; 64 FR 52676, Sept. 30, 1999; 69 FR 24093, May 3, 2004; 69 FR 29670, May 25, 2004; 69 FR 71731, Dec. 10, 2004; 81 FR 95055, Dec. 27, 2016]

### § 17.40 Special rules—mammals.

(a) Mazama pocket gophers (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis*, *glacialis*, *tumuli*, and *yelmensis*)—(1) *Which populations of the Mazama pocket gopher are covered by this special rule?* This special rule covers the four Thurston/Pierce subspecies of the Mazama pocket gopher (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis*, *glacialis*, *tumuli*, and *yelmensis*) wherever they occur.

(2) *What activities are prohibited?* Except as noted in paragraphs (a)(3) through (7) of this section, all prohibitions of § 17.31 apply to the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers.

(3) *What activities are allowed on civilian airports?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from non-Federal routine maintenance activities in or

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adjacent to Mazama pocket gopher habitat and associated with airport operations on civilian airports. Routine maintenance activities include the following:

(i) Routine management, repair, and maintenance of runways, roads, and taxiways (does not include upgrades, or construction of new runways, roads, or taxiways, or new development at airports);

(ii) Hazing of hazardous wildlife;

(iii) Management of forage, water, and shelter to reduce the attractiveness of the area around airports for hazardous wildlife; and

(iv) Control or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning. Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.

(4) *What agricultural activities are allowed on non-Federal lands?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from agricultural or horticultural (farming) practices implemented on such lands consistent with State laws on non-Federal lands. For the purposes of this special rule, farm means any facility, including land, buildings, watercourses, and appurtenances, used in the commercial production of crops, nursery or orchard stock, the propagation and raising of nursery or orchard stock, livestock or poultry, or livestock or poultry products.

(i) For the purposes of this special rule, an agricultural (farming) practice means a mode of operation on a farm that:

(A) Is or may be used on a farm of a similar nature;

(B) Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money;

(C) Is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use;

(D) Complies with applicable State laws;

(E) Is done in a reasonable and prudent manner.

(ii) Accepted agricultural or horticultural (farming) practices include:

(A) Grazing;

(B) Routine installation, management, and maintenance of stock water facilities such as stock ponds, berms, troughs, and tanks, pipelines and watering systems to maintain water supplies;

(C) Routine maintenance or construction of fencing;

(D) Planting, harvest, fertilization, harrowing, tilling, or rotation of crops (Disturbance to the soils shall not exceed a 12-inch (30.5-cm) depth. All activities that do not disturb the soil surface are also allowed, such as haying, baling, some orchard and berry plant management activities, etc.);

(E) Maintenance of livestock management facilities such as corrals, sheds, and other ranch outbuildings;

(F) Repair and maintenance of unimproved agricultural roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(G) Placement of mineral supplements, plant nutrients, or soil amendments;

(H) Harvest, control, or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning (Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.); and

(I) Deep tillage (usually at depths of 18–36 inches (45.7–91.4 cm), for compaction reduction purposes) occurring between September 1 and February 28, no more often than once in 10 years.

(5) *What noncommercial activities are allowed on single-family residential private land?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from noncommercial activities that occur in or adjacent to Mazama pocket gopher habitat on existing single-family residential properties. These activities include the following:

(i) Harvest, control, or other management of noxious weeds and invasive

plants through mowing, herbicide and fungicide application, fumigation, or burning. Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable;

(ii) Construction and placement of fencing, garden plots, or play equipment; and

(iii) Construction and placement of dog kennels, carports, or storage sheds less than 120 ft<sup>2</sup> (11.15 m<sup>2</sup>) in size.

(6) *What noxious weed and invasive plant control activities are allowed on non-Federal lands?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from routine removal or other management of noxious weeds and invasive plants. Routine removal or other management of noxious weeds and invasive plants are limited to the following, and must be conducted in a way that impacts to nontarget plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Discing;

(iii) Herbicide and fungicide application;

(iv) Fumigation; and

(v) Burning.

(7) *What roadside right-of-way maintenance activities are allowed on Federal and non-Federal lands?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from routine maintenance of roadside rights-of-way on Federal and non-Federal lands. Routine maintenance activities of roadside rights-of-way of highways and roads are limited to the following, and must be conducted in a way that impacts to nontarget plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Mechanical removal of noxious weeds or invasive plants;

(iii) Selective application of herbicides for removal of noxious weeds or invasive plants; and

(iv) Repair or maintenance of fences.

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(b) Grizzly bear (*Ursus arctos horribilis*)—(1) *Prohibitions.* The following prohibitions apply to the grizzly bear:

(i) *Taking.* (A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported by the individual who has taken the bear or his designee within 5 days of occurrence to the Resident Agent in Charge, Office of Law Enforcement, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Suite 301, Billings, MT 59101 (406-247-7355), if occurring in Montana or Wyoming, or the Special Agent in Charge, Office of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 9, Sherwood, OR 97140 (503-521-5300), if occurring in Idaho or Washington, and to appropriate State and Tribal authorities. Grizzly bears taken in self-defense or in defense of others, including the parts of such bears, shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) *Removal of nuisance bears.* A grizzly bear constituting a demonstrable but non immediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(1) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(2) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(3) The taking is reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may take grizzly

bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) [Reserved]

(F) *National Parks.* The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

(ii) *Unlawfully taken grizzly bears.* (A) Except as provided in paragraphs (b)(1)(ii)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any unlawful taking of a grizzly bear shall be reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(B) Authorized Federal, State, or Tribal employees, when acting in the course of their official duties, may, for scientific or research purposes, possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzly bears.

(iii) *Import or export.* Except as provided in paragraphs (b)(1)(iii) (A) and (B) and (iv) of this section, no person shall import any grizzly bear into the United States.

(A) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may import grizzly bears into the United States for scientific or research purposes.

(B) *Public zoological institution.* Public zoological institutions (see 50 CFR 10.12) may import grizzly bears into the United States.

(iv) *Commercial transactions.* (A) Except as provided in paragraph (b)(1)(iv)(B) of this section, no person shall, in the course of commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any grizzly bear.

(B) A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell

grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce.

(v) *Other violations.* No person shall attempt to commit, cause to be committed, or solicit another to commit any act prohibited by paragraph (b)(1) of this section.

(2) *Definitions.* As used in paragraph (b) of this section:

*Grizzly bear* means any member of the species *Ursus arctos horribilis* of the 48 conterminous States of the United States, including any part, offspring, dead body, part of a dead body, or product of such species.

*Grizzly bear accompanied by young* means any grizzly bear having offspring, including one or more cubs, yearlings, or 2-year-olds, in its immediate vicinity.

*Identified* means permanently marked or documented so as to be identifiable by law enforcement officials at a subsequent date.

*State, Federal or Tribal authority* means an employee of State, Federal, or Indian Tribal government who, as part of his/her official duties, normally handles grizzly bears.

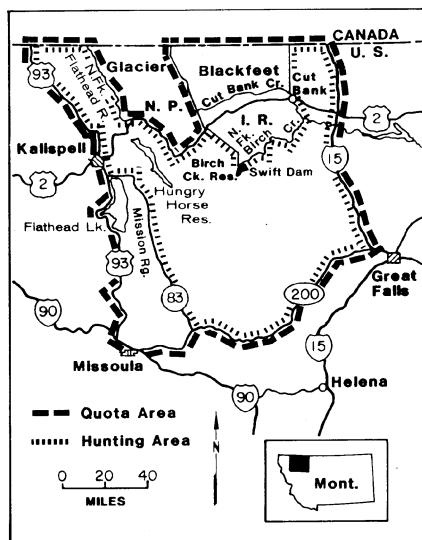
*Young grizzly bear* means a cub, yearling, or 2-year-old grizzly bear.

(c) *Primates.* (1) Except as noted in paragraph (c)(2) of this section, all provisions of §17.31 apply to the lesser slow loris (*Nycticebus pygmaeus*); Philippine tarsier (*Tarsius syrichta*); white-footed tamarin (*Saguinus leucopus*); black howler monkey (*Alouatta pigra*); stump-tailed macaque (*Macaca arctoides*); gelada baboon (*Theropithecus gelada*); Formosan rock macaque (*Macaca cyclopis*); Japanese macaque (*Macaca fuscata*); Toque macaque (*Macaca sinica*); long-tailed langur (*Presbytis potenziani*); and purple-faced langur (*Presbytis senex*).

(2) The prohibitions referred to above do not apply to any live member of such species held in captivity in the United States on the effective date of the final rulemaking, or to the progeny of such animals, or to the progeny of animals legally imported into the United States after the effective date of the final rulemaking, *Provided*, That the person wishing to engage in any activity which would otherwise be prohibited must be able to show satisfactory documentary or other evidence as to the captive status of the particular member of the species on the effective date of this rulemaking or that the particular member of the species was born in captivity in the United States after the effective date of this rulemaking. Identification of the particular member to a record in the International Species Inventory System (ISIS), or to a Federal, State or local government permit, shall be deemed to be satisfactory evidence. Records in the form of studbooks or inventories, kept in the normal course of business, shall be acceptable as evidence, provided that a notarized statement is inserted in such record to the effect that:

- (i) The records were kept in the normal course of business prior to November 18, 1976, and accurately identify (by use of markers, tags, or other acceptable marking devices) individual animals; or
- (ii) That the individual animal identified by the records was born in captivity on \_\_\_\_ (Date).

The notarized statement in paragraph (c)(2)(i) of this section, shall be acceptable only if the notarization is dated



on or before January 3, 1977. The notarized statement in paragraph (c)(2)(ii), of this section, shall be acceptable only if the notarization is dated within 15 days of the date of birth of the animal.

(d) [Reserved]

(e) African elephant (*Loxodonta africana*). This paragraph (e) applies to any specimen of the species *Loxodonta africana* whether live or dead, including any part or product thereof. The African Elephant Conservation Act (16 U.S.C. 4201 *et. seq.*), and any moratorium under that act, also applies. Except as provided in paragraphs (e)(2) through (9) of this section, all of the prohibitions and exceptions in §§ 17.31 and 17.32 apply to the African elephant. Persons seeking to benefit from the exceptions provided in this paragraph (e) must demonstrate that they meet the criteria to qualify for the exceptions.

(1) *Definitions.* In this paragraph (e), *antique* means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)). *Ivory* means any African elephant tusk and any piece of an African elephant tusk. *Raw ivory* means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved. *Worked ivory* means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Live animals and parts and products other than ivory and sport-hunted trophies.* Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met.

(3) *Interstate and foreign commerce of ivory.* Except for antiques and certain manufactured or handcrafted items containing *de minimis* quantities of ivory, sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a com-

mercial activity is prohibited. Except as provided in paragraphs (e)(5)(iii) and (e)(6) through (8) of this section, manufactured or handcrafted items containing *de minimis* quantities of ivory may be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided they meet all of the following criteria:

(i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;

(ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;

(iii) The ivory is a fixed or integral component or components of a larger manufactured or handcrafted item and is not in its current form the primary source of the value of the item, that is, the ivory does not account for more than 50 percent of the value of the item;

(iv) The ivory is not raw;

(v) The manufactured or handcrafted item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50 percent of the item by volume;

(vi) The total weight of the ivory component or components is less than 200 grams; and

(vii) The item was manufactured or handcrafted before July 6, 2016.

(4) *Import/export of raw ivory.* Except as provided in paragraphs (e)(6) through (9) of this section, raw ivory may not be imported into or exported from the United States.

(5) *Import/export of worked ivory.* Except as provided in paragraphs (e)(6) through (9) of this section, worked ivory may not be imported into or exported from the United States unless it is contained in a musical instrument, or is part of a traveling exhibition,

household move, or inheritance, and meets the following criteria:

(i) *Musical instrument.* Musical instruments that contain worked ivory may be imported into and exported from the United States without a threatened species permit issued under §17.32 of this part provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The instrument containing worked ivory is accompanied by a valid CITES musical instrument certificate or equivalent CITES document;

(C) The instrument is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the musical instrument in question; and

(D) The instrument is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(ii) *Traveling exhibition.* Worked ivory that is part of a traveling exhibition may be imported into and exported from the United States without a threatened species permit issued under §17.32 provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The item containing worked ivory is accompanied by a valid CITES traveling exhibition certificate (see the requirements for traveling exhibition certificates at 50 CFR 23.49) or equivalent CITES document;

(C) The item containing ivory is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the item in question; and

(D) The item containing worked ivory is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(iii) *Household move or inheritance.* Worked ivory may be imported into or exported from the United States without a threatened species permit issued under §17.32 for personal use as part of a household move or as part of an inheritance if the ivory was legally acquired prior to February 26, 1976, and the item is accompanied by a valid CITES pre-Convention certificate. It is unlawful to sell or offer for sale in interstate or foreign commerce or to

deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory imported into the United States as part of a household move or inheritance. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to items imported or exported under this paragraph (e)(5)(iii) as part of a household move or inheritance.

(6) *Sport-hunted trophies.* (i) African elephant sport-hunted trophies may be imported into the United States provided:

(A) The trophy was legally taken in an African elephant range country that declared an ivory export quota to the CITES Secretariat for the year in which the trophy animal was killed;

(B) A determination is made that the killing of the trophy animal will enhance the survival of the species and the trophy is accompanied by a threatened species permit issued under §17.32;

(C) The trophy is legibly marked in accordance with 50 CFR part 23;

(D) The requirements in 50 CFR parts 13, 14, and 23 have been met; and

(E) No more than two African elephant sport-hunted trophies are imported by any hunter in a calendar year.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(6) as part of a sport-hunted trophy.

(iii) Except as provided in paragraph (e)(9) of this section, raw ivory that was imported as part of a sport-hunted trophy may not be exported from the United States. Except as provided in paragraphs (e)(5), (e)(7), (e)(8), and (e)(9) of this section, worked ivory imported as a sport-hunted trophy may not be exported from the United States. Parts of a sport-hunted trophy other than ivory may be exported from the United

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States without a threatened species permit issued under §17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met.

(7) *Import/export of ivory for law enforcement purposes.* Raw or worked ivory may be imported into and worked ivory may be exported from the United States by an employee or agent of a Federal, State, or tribal government agency for law enforcement purposes, without a threatened species permit issued under §17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for law enforcement purposes. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(7) for law enforcement purposes.

(8) *Import/export of ivory for genuine scientific purposes.* (i) Raw or worked ivory may be imported into and worked ivory may be exported from the United States for genuine scientific purposes that will contribute to the conservation of the African elephant, provided:

(A) It is accompanied by a threatened species permit issued under §17.32; and

(B) The requirements of 50 CFR parts 13, 14, and 23 have been met.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for genuine scientific purposes. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(8) for genuine scientific purposes.

(9) *Antique ivory.* Antiques (as defined in paragraph (e)(1) of this section) are

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not subject to the provisions of this rule. Antiques containing or consisting of ivory may, therefore, be imported into or exported from the United States without a threatened species permit issued under §17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. Nevertheless, nothing in this rule interprets or changes any provisions or prohibitions that may apply under the African Elephant Conservation Act (16 U.S.C. 4201 *et seq.*), regardless of the age of the item. Antiques that consist of or contain raw or worked ivory may similarly be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under §17.32.

(f) Leopard (*Panthera pardus*) (1) Except as noted in paragraph (f)(2) of this section, all prohibitions of §17.31 of this part and exemptions of §17.32 of this part shall apply to the leopard populations occurring in southern Africa to the south of a line running along the borders of the following countries: Gabon/Rio Muni; Gabon/Cameroon; Congo/Cameroon; Congo/Central African Republic; Zaire/Central African Republic; Zaire/Sudan; Uganda/Sudan; Kenya/Sudan; Kenya/Ethiopia; Kenya/Somalia.

(2) A sport-hunted leopard trophy legally taken after the effective date of this rulemaking, from the area south of the line delineated above, may be imported into the United States without a Threatened Species permit pursuant to §17.32 of this part, provided that the applicable provisions of 50 CFR part 23 have been met.

(g) Utah prairie dog (*Cynomys parvidens*).

(1) Except as noted in paragraphs (g)(2) through (g)(6) of this section, all prohibitions of §17.31(a) and (b) and exemptions of §17.32 apply to the Utah prairie dog.

(2) A Utah prairie dog may be directly or intentionally taken as described in paragraphs (g)(3) and (4) of this section on agricultural lands, properties within 0.8 kilometers (km) (0.5 miles (mi)) of conservation lands,

and areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.

(3) *Agricultural lands and properties near conservation lands.* When permitted by the Utah Division of Wildlife Resources (UDWR), or other parties as authorized in writing by the Service, direct or intentional take is allowed on private properties that are located within 0.8 km (0.5 mi) of conservation land, and on agricultural land. Records on permitted take will be maintained by the State (or other parties as authorized in writing by the Service), and made available to the Service upon request.

(1) *Agricultural land.* (A) Take may be permitted only on agricultural land being physically or economically affected by Utah prairie dogs, and only when the spring count on the agricultural lands is seven or more individuals, and only during the period of June 15 to December 31; and

(B) The land must:

(1) Meet the general classification of irrigated, dryland, grazing land, orchard, or meadow;

(2) Be capable of producing crops or forage;

(3) Be at least 2 contiguous hectares (5 contiguous acres) in area (smaller parcels may qualify where devoted to agricultural use in conjunction with other eligible acreage under identical legal ownership);

(4) Be managed in such a way that there is a reasonable expectation of profit;

(5) Have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and

(6) Meet State average annual (per-acre) production requirements.

(ii) *Private property near conservation land.* (A) Take may be permitted on private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land during the period of June 15 to December 31.

(B) Conservation lands are defined as non-Federal areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands may include, but are not limited

to, properties set aside as conservation banks, fee-title purchased properties, properties under conservation easements, and properties subject to a safe harbor agreement (see §17.22). Conservation lands do not include Federal lands.

(iii) *Amount of permitted take on agricultural lands and private property near conservation land.* (A) The UDWR, or other parties as authorized in writing by the Service, will ensure that permitted take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands does not exceed 10 percent of the estimated rangewide population annually.

(B) On agricultural lands, the UDWR, or other parties as authorized in writing by the Service, will limit permitted take to 7 percent of the estimated annual rangewide population and will limit within-colony take to one-half of a colony's estimated annual production. The UDWR, or other parties as authorized in writing by the Service, will spatially distribute the 7 percent allowed take on agricultural lands across the three Recovery Units, based on the distribution of the total annual population estimate within each Recovery Unit.

(C) In setting take limits on properties within 0.8 km (0.5 mi) of conservation lands, the UDWR, or other parties as authorized in writing by the Service, will consider the amount of take that occurs on agricultural lands. The State, or other parties as authorized in writing by the Service, will restrict the remaining permitted take (the amount that would bring the total take up to 10 percent of the estimated annual rangewide population) on properties within 0.8 km (0.5 mi) of conservation lands to animals in excess of the baseline population. The baseline population of these lands is determined in accordance with paragraph (g)(3)(iii)(D) of this section.

(D) Take on properties within 0.8 km (0.5 mi) of conservation lands is restricted to prairie dogs in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to the establishment of the conservation property, except that if no UDWR surveys

to determine population size on a property were conducted during such 5-year period, the baseline population is the estimated total (summer) population size on that property as determined in the first survey conducted after the establishment of the conservation property. The baseline population will be established by the UDWR, or other parties as authorized in writing by the Service.

(E) Translocated Utah prairie dogs will count toward the take limits in paragraphs (g)(3)(iii)(A) through (D) of this section.

(iv) *Methods of allowed direct take on agricultural lands and private properties near conservation land.* Methods for controlling Utah prairie dogs on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands are limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended for lethal removal, and shooting. Actions intended to drown or poison Utah prairie dogs and the use of gas cartridges, anticoagulants, and explosive devices are prohibited.

(4) *Human safety hazards and significant human cultural or human burial sites.* (i) Nonlethal take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, if approved in writing by the Service. To reduce hazards, prairie dog burrows may be filled with dirt if they are directly creating human hazards or disturbing the sanctity of significant human cultural or human burial sites. Utah prairie dogs also may be translocated from these sites to approved translocation sites by properly trained personnel using Service-approved translocation protocols.

(ii) Direct or intentional lethal take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, but only after all practicable measures to resolve the conflict are implemented, and only as approved in writing by the Service. A permit is not required to allow take under these conditions.

(A) All practicable measures means, with respect to these situations:

(1) Construction of prairie-dog-proof fence, above and below grade to specifications approved by the Service, around the area in which there is concern.

(2) Translocation of Utah prairie dogs out of the fenced area in which there is a concern must be conducted prior to allowing lethal take. Lethal take is allowed only to remove prairie dogs that remain in these areas after the measures to fence and translocate are successfully carried out.

(3) Continued maintenance or modification of the fence as needed to preclude Utah prairie dogs from entering the fenced sites.

(B) There are no restrictions on the amount, timing, or methods of lethal take allowed on lands where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, as long as all qualifications in paragraphs (g)(4)(ii)(A)(1) through (3) of this section are met.

(C) The amount of take in areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites does not contribute to the upper permitted take limits described above for agricultural lands and private properties within 0.8 km (0.5 mi) of conservation lands.

(5) *Incidental take associated with agriculture.* Utah prairie dogs may be taken when take is incidental to otherwise-legal activities associated with legal and standard agricultural practices on legitimately operating agricultural lands. Acceptable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and baling, as long as the activities are not intended to eradicate Utah prairie dogs. There is no numeric limit established for incidental take associated with standard agricultural practices. Incidental take is in addition to, and does not contribute to, the take limits described in paragraphs (g)(2) through (4) of this section. A permit is not required for incidental take associated with agricultural practices.

(6) If the Service receives evidence that take pursuant to paragraphs (g)(2) through (5) of this section is having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such take as appropriate for the conservation of the species. The Service will notify the permitting entities in writing if take restrictions are necessary.

(h) Mountain lion (*Felis concolor*). (1) Except as allowed in paragraphs (h)(2), (h)(3), and (h)(4) of this section, no person shall take any free-living mountain lion (*Felis concolor*) in Florida.

(2) A mountain lion (*Felis concolor*) may be taken in this area under a valid threatened species permit issued pursuant to 50 CFR 17.52.

(3) A mountain lion (*Felis concolor*) may be taken in Florida by an employee or designated agent of the Service or the Florida Game and Fresh Water Fish Commission for taxonomic identification or other reasons consistent with the conservation of the endangered Florida panther (*Felis concolor coryi*). When it has been established by the Service, in consultation with the State, that an animal in question is not a Florida panther (*Felis concolor coryi*) or an eastern cougar (*Felis concolor couguar*), such animals may be removed from the wild. The disposition of animals so taken shall be at the discretion of the Florida Game and Fresh Water Fish Commission, with the concurrence of the Fish and Wildlife Service.

(4) Take for reasons of human safety is allowed as specified under 50 CFR 17.21(c)(2) and 17.21(c)(3)(iv).

(5) Any take pursuant to paragraph (h)(4) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 N. Fairfax Drive, LE-3000, Arlington, VA 22203, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(i) Columbian white-tailed deer (*Odocoileus virginianus leucurus*) (CWTD), the Columbia River distinct population segment. (1) *General requirements*. Other than as expressly provided at paragraph (i)(3) of this section, the

provisions of §17.31(a) apply to the CWTD.

(2) *Definitions*. For the purposes of this entry:

(i) *CWTD* means the Columbia River distinct population segment (DPS) of Columbian white-tailed deer or individual specimens of CWTD.

(ii) *Intentional harassment* means an intentional act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Intentional harassment may include prior purposeful actions to attract, track, wait for, or search out CWTD, or purposeful actions to deter CWTD.

(iii) *Problem CWTD* means an individual specimen of CWTD that has been identified in writing by a State conservation agency or the Service as meeting the following criteria:

(A) The CWTD is causing more than *de minimus* negative economic impact to a commercial crop;

(B) Previous efforts to alleviate the damage through nonlethal methods have been ineffective; and

(C) There is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented.

(iv) *Commercial crop* means commercially raised horticultural, agricultural, or forest products.

(v) *State conservation agency* means the State agency in Oregon or Washington operating a conservation program for CWTD pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Endangered Species Act.

(3) *Allowable forms of take of CWTD*. Take of CWTD resulting from the following legally conducted activities is allowed:

(i) Intentional harassment not likely to cause mortality. A State conservation agency may issue permits to landowners or their agents to harass CWTD on lands they own, rent, or lease if the State conservation agency determines in writing that such action is not likely to cause mortality of CWTD. The techniques employed in this harassment must occur only as specifically

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directed or restricted by the State permit in order to avoid causing CWTD mortality.

(ii) Take of problem CWTD resulting in mortality. Take of problem CWTD is authorized under the following circumstances:

(A) Any employee or agent of the Service or the State conservation agency, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take problem CWTD. This take must occur in compliance with all other applicable Federal, State, and local laws and regulations.

(B) The State conservation agency may issue a permit to landowners or their agents to take problem CWTD on lands they own, rent, or lease. Such take must be implemented only as directed and allowed in the permit obtained from the State conservation agency.

(iii) Accidental take of CWTD when carrying out State-permitted black-tailed deer damage control. Take of CWTD in the course of carrying out black-tailed deer damage control will be a violation of this rule unless the taking was accidental; reasonable care was practiced to avoid such taking; and the person causing the take was in possession of a valid black-tailed deer damage control permit from a State conservation agency. When issuing black-tailed deer damage control permits, the State conservation agency will provide education regarding identification of target species. The exercise of reasonable care includes, but is not limited to, the review of the educational material provided by the State conservation agency and identification of the target before shooting.

(iv) Accidental take of CWTD when carrying out State-permitted black-tailed deer hunting. Take of CWTD in the course of hunting black-tailed deer will be a violation of this rule unless the take was accidental; the take was in the course of hunting black-tailed deer under a lawful State permit; and reasonable due care was exercised to avoid such taking. The State conservation agency will provide educational material to hunters regarding identification of target species when issuing hunting permits. The exercise of rea-

sonable care includes, but is not limited to, the review of the educational materials provided by the State conservation agency and identification of the target before shooting.

(4) *Take limits.* The amount of take of CWTD allowed for the activities in paragraphs (i)(3)(ii), (iii), and (iv) of this section will not exceed 5 percent of the CWTD population during any calendar year, as determined by the Service. By December 31 of each year, the Service will use the most current annual DPS population estimate to set the maximum allowable take for these activities for the following calendar year. If take exceeds 2 percent of the DPS population in a given calendar year, the Service will convene a meeting with the Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife to discuss CWTD management and strategies to minimize further take from these activities for the rest of the year. If take exceeds 5 percent of the CWTD population in any given calendar year, no further take under paragraphs (i)(3)(ii), (iii), and (iv) will be allowed during that year and any further take that does occur may be subject to prosecution under the Endangered Species Act.

(5) *Reporting and disposal requirements.* Any injury or mortality of CWTD associated with the actions authorized under paragraphs (i)(3), (6), and (7) of this section must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Law Enforcement Office at (503) 231-6125, or the Service's Oregon Fish and Wildlife Office at (503) 231-6179. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

(6) *Additional taking authorizations for Tribal employees, State and local law enforcement officers, and State-licensed wildlife rehabilitation facilities.* (i) Tribal employees and State and local government law enforcement officers. When acting in the course of their official duties, both Tribal employees designated by the Tribe for such purposes, and State and local government law enforcement officers working in the

States of Oregon or Washington, may take CWTB for the following purposes:

(A) Aiding or euthanizing sick, injured, or orphaned CWTB;

(B) Disposing of a dead specimen; and

(C) Salvaging a dead specimen that may be used for scientific study.

(ii) Such take must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service.

(7) *Wildlife rehabilitation facilities licensed by the States of Oregon or Washington.* When acting in the course of their official duties, a State-licensed wildlife rehabilitation facility may take CWTB for the purpose of aiding or euthanizing sick, injured, or orphaned CWTB. Such take must be reported to the Service within 72 hours as required by paragraph (i)(5) of this section, and specimens may be retained and disposed of only in accordance with directions from the Service.

(8) *Take authorized by permits.* Any person with a valid permit issued by the Service under §17.32 may take CWTB, pursuant to the special terms and conditions of the permit.

(j) *Argali (*Ovis ammon*) in Kyrgyzstan, Mongolia, and Tajikistan.* (1) Except as noted in paragraph (j)(2) of this section, all prohibitions of §17.31 of this part and exemptions of §17.32 of this part shall apply to this species in Kyrgyzstan, Mongolia, and Tajikistan

(NOTE. In all other parts of its range the argali is classified as endangered and covered by §17.21).

(2) Upon receiving from the governments of Kyrgyzstan, Mongolia, and Tajikistan properly documented and verifiable certification that (i) argali populations in those countries are sufficiently large to sustain sport hunting, (ii) regulating authorities have the capacity to obtain sound data on these populations, (iii) regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them as such, (iv) the habitat of these populations is secure, (v) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations, and (vi) funds derived from the in-

involved sport hunting are applied primarily to argali conservation, the Director may, consistent with the purposes of the Act, authorize by publication of a notice in the FEDERAL REGISTER the importation of personal sport-hunted argali trophies, taken legally in Kyrgyzstan, Mongolia, and Tajikistan after the date of such notice, without a Threatened Species permit pursuant to §17.32 of this part, provided that the applicable provisions of 50 CFR part 23 have been met.

(k) *Canada lynx (*Lynx canadensis*).* (1) *What lynx does this special rule apply to?* The regulations in this paragraph (k) apply to all wild and captive lynx in the contiguous United States.

(2) *What activities are prohibited for wild lynx?* All prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to wild lynx found in the contiguous United States.

(3) *What is considered a captive lynx?* (i) For purposes of this paragraph (k), captive lynx means lynx, whether alive or dead, and any part or product, if the specimen was in captivity at the time of the listing, born in captivity, or lawfully imported or transported into the contiguous United States.

(ii) Lynx that were either born or held in captivity and then released into the wild are considered wild.

(4) *What activities are allowed for captive lynx?* (i) *Take.* You may take lawfully obtained captive lynx without a permit.

(ii) *Import and export.* You may export captive live lynx, parts or products of captive lynx provided the specimens are tagged with Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export tags and/or accompanied by a valid CITES export permit. You may import lawfully obtained lynx that originated outside the United States when you follow the requirements of CITES.

(iii) *Interstate commerce.* You may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce captive lynx and captive lynx parts and products in accordance with State or tribal laws and regulations. In addition, lynx pelts that are properly tagged with valid CITES export tags

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also qualify for this exemption on interstate commerce.

(5) *Are any activities not allowed or restricted for captive lynx?* You must comply with all applicable State and tribal laws and regulations. Violation of State or tribal law will also be a violation of the Act.

(1) *Preble's meadow jumping mouse (*Zapus hudsonius preblei*).* (1) *What is the definition of take?* To harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect; or attempt to engage in any such conduct. Incidental take is that which occurs when it is incidental to and not the purpose of an otherwise lawful activity. Any take that is not authorized by permit provided through section 7 or section 10 of the Act or that is not covered by the exemptions described below is considered illegal take.

(2) *When is take of Preble's meadow jumping mice allowed?* Take of Preble's meadow jumping mice resulting from the following legally conducted activities, in certain circumstances as described below, is allowed:

(i) *Take under permits.* Any person with a valid permit issued by the Service under §17.32 may take Preble's meadow jumping mice pursuant to the terms of the permit.

(ii) *Rodent control.* Preble's meadow jumping mice may be taken incidental to rodent control undertaken within 10 feet of or inside any structure. "Rodent control" includes control of mice and rats by trapping, capturing, or otherwise physically capturing or killing, or poisoning by any substance registered with the Environmental Protection Agency as required by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136) and applied consistent with its labeling. "Structure" includes but is not limited to any building, stable, grain silo, corral, barn, shed, water or sewage treatment equipment or facility, enclosed parking structure, shelter, gazebo, bandshell, or restroom complex.

(iii) *Established, ongoing agricultural activities.* Preble's meadow jumping mice may be taken incidental to agricultural activities, including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing, and harvesting, as long as these activities are

established, ongoing activities and do not increase impacts to or further encroach upon the Preble's meadow jumping mouse or its habitat. New agricultural activities or those that expand the footprint or intensity of the activity are not considered to be established, ongoing activities.

(iv) *Maintenance and replacement of existing landscaping.* Preble's meadow jumping mice may be taken incidental to the maintenance and replacement of any landscaping and related structures and improvements, as long as they are currently in place and no increase in impervious surfaces would result from their maintenance and improvement. Construction of new structures or improvements or expansion of the landscaping in a manner that increases impervious surfaces would not be considered maintenance and replacement of existing landscaping.

(v) *Existing uses of water.* Preble's meadow jumping mice may be taken incidentally as a result of existing uses of water associated with the exercise of perfected water rights pursuant to State law and interstate compacts and decrees. (A "perfected water right" is a right that has been put to beneficial use and has been permitted, decreed, or adjudicated pursuant to State law.) Increasing the use or altering the location of use of an existing water right would not be considered an existing use of water.

(vi) *Noxious weed control.* Preble's meadow jumping mice may be taken incidental to noxious weed control that is conducted in accordance with:

(A) Federal law, including Environmental Protection Agency label restrictions;

(B) Applicable State laws for noxious weed control;

(C) Applicable county bulletins;

(D) Herbicide application guidelines as prescribed by herbicide manufacturers; and

(E) Any future revisions to the authorities listed in paragraphs (1)(2)(vi)(A) through (D) of this section that apply to the herbicides proposed for use within the species' range.

(vii) *Ditch maintenance activities.* Preble's meadow jumping mice may be

taken incidental to normal and customary ditch maintenance activities only if the activities:

(A) Result in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch, including burning of ditches that results in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch.

(B) Are performed within the historic footprint of the surface disturbance associated with ditches and related infrastructure, and

(C) Follow the Best Management Practices described in paragraphs (1)(2)(vii)(C)(I) through (3) of this section.

(I) Persons engaged in ditch maintenance activities shall avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if accessing the ditch for maintenance or repair activities from an area containing no shrubs is possible, then damage to adjacent shrub vegetation shall be avoided.

(2) Persons engaged in placement or sidelaying of silt and debris removed during ditch cleaning, vegetation or mulch from mowing or cutting, and other material from ditch maintenance shall, to the maximum extent practicable, avoid shrub habitat and at no time disturb more than ¼ mile of riparian shrub habitat per linear mile of ditch within any calendar year.

(3) To the maximum extent practicable, all ditch maintenance activities should be carried out during the Preble's hibernation season, November through April.

(D) All ditch maintenance activities carried out during the Preble's active season, May through October, should be conducted during daylight hours only.

(E) Ditch maintenance activities that would result in permanent or long-term loss of potential habitat that would not be considered normal or customary include replacement of existing infrastructure with components of substantially different materials and design, such as replacement of open ditches with pipeline or concrete-lined ditches, replacement of an existing gravel access road with a permanently paved road, or replacement of an earth-

en diversion structure with a rip-rap and concrete structure, and construction of new infrastructure or the movement of existing infrastructure to new locations, such as realignment of a ditch, building a new access road, or installation of new diversion works where none previously existed.

(3) *When is take of Preble's not allowed?* (i) Any manner of take not described under paragraph (1)(2) of this section.

(ii) No person may import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any Preble's meadow jumping mice.

(iii) No person, except for an authorized person, may possess, sell, deliver, carry, transport, or ship any Preble's meadow jumping mice that have been taken illegally.

(4) *Where does this rule apply?* The take exemptions provided by this rule are applicable within the entire range of the Preble's meadow jumping mouse.

(m) *Vicuña (Vicugna vicugna)*— (1) *What activities involving vicuña are prohibited by this rule?* (i) *Appendix I populations.* All provisions of §17.31 (a) and (b) and §17.32 apply to vicuña and vicuña parts and products originating from populations currently listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

(ii) *Import, export, and re-export.* Except as provided in paragraph (m)(2) of this section, it is unlawful to import, export, or re-export, or present for export or re-export without valid permits as required under parts 17 and 23 of this subchapter, any vicuña or vicuña parts and products. For import of embryos, blood, other tissue samples, or live vicuña, permits required under §17.32 and part 23 will be issued only for bona fide scientific research contributing to the conservation of the species in the wild.

(iii) *Other activities.* Except as provided in paragraph (m)(2) of this section, it is unlawful to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any vicuña or vicuña parts and products.

(iv) 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 (m)(1)(ii)-(iii) of this section.

(2) *What activities involving vicuña are allowed by this rule?* You may import, export, or re-export, or conduct interstate or foreign commerce in raw wool sheared from live vicuñas, cloth made from such wool, or manufactured or handcraft products and articles made from or consisting of such wool or cloth without a threatened species permit issued according to §17.32 only when the following provisions have been met:

(i) The specimens originated from a population listed in CITES Appendix II.

(ii) The provisions in parts 13, 14, and 23 of this subchapter are met, including the specific labeling provisions in part 23.

(iii) *Personal and household effects.* Under the provisions of this special rule, raw wool sheared from live vicuñas, cloth made from such wool, or manufactured or handcraft products and articles made from or consisting of such wool or cloth are not granted the personal or household effects exemption described in part 23 of this subchapter. In addition to the provisions of this paragraph (m)(2), such specimens may only be imported, exported, or re-exported when accompanied by a valid CITES document.

(iv) *Labeling of wool sheared from live vicuñas.* Any shipment of raw wool sheared from live vicuñas must be sealed with a tamper-proof seal and have the following:

(A) An identification tag with a code identifying the country of origin of the raw vicuña wool and the CITES export permit number; and

(B) The vicuña logotype as defined in 50 CFR part 23 and the words “VICUÑA—COUNTRY OF ORIGIN”, where country of origin is the name of the country from which the raw vicuña wool was first exported.

(v) At the time of import, the country of origin and each country of re-export involved in the trade of a particular shipment have not been identified by the CITES Conference of the Parties, the CITES Standing Com-

mittee, or in a Notification from the CITES Secretariat as a country from which Parties should not accept permits.

(3) *When and how will the Service inform the public of additional restrictions in trade of vicuña?* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, we will issue a public bulletin that identifies a restriction on trade in specimens of vicuña addressed in this paragraph (m) if any of the following criteria are met:

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

(ii) The Service’s Division of Scientific Authority administratively determines that the conservation or management status of threatened vicuña populations in a range country has changed, such that continued recovery of the vicuña population in that country may be compromised, as a result of one or more of the following factors:

(A) A change in range country laws or regulations that lessens protection for vicuña;

(B) A change in range country management programs that lessens protection for vicuña;

(C) A documented decline in wild vicuña population numbers;

(D) A documented increase in poaching of vicuña;

(E) A documented decline in vicuña habitat quality or quantity; or

(F) Other natural or man-made factors affecting the species’ recovery.

(4) *What must vicuña range countries do in order to be authorized under the special rule to export to the United States?*—(i) *Annual Report.* Range country governments (Argentina, Bolivia, Chile, and Peru) wishing to export specimens of vicuña to the United States will need to provide an annual report containing the most recent information available on the status of the species, following the information guidelines specified below. The first submission of a status report will be

required as of July 1, 2003, and every year thereafter on the anniversary of that date. For each range country, the following information should be provided in the annual report:

(A) A description of any revisions to the management program, especially any changes in management approaches or emphasis;

(B) New information obtained in the last year on vicuña distribution, population status, or population trends, for the country as a whole or for specific protected areas, and a detailed description of the methodology used to obtain such information;

(C) Results of any research projects concluded in the last year on the biology of vicuña in the wild, particularly its population biology, habitat use, and genetics, and a description of any new research projects undertaken on the biology of vicuña in the wild, particularly its population biology, habitat use, and genetics;

(D) A description of any changes to national and/or provincial laws and programs relating to vicuña conservation, in particular those laws and regulations related to harvest and use of the vicuña, and export of vicuña parts and products;

(E) A description of any changes in the number or size of natural reserves or national parks that provide protected habitat for the vicuña;

(F) A summary of law enforcement activities undertaken in the last year, and a description of any changes in programs to prevent poaching, smuggling, and illegal commercialization of the vicuña;

(G) A description of the current management and harvest (or "sustainable use") programs for wild populations of the vicuña, including: any changes in the location and population size of wild populations being managed for sustainable use; any changes in the harvest management practices being used for each population; any changes in current harvest quotas for wild populations, if any; any changes in protocols for translocations undertaken as part of the use program; a summary of the specific financial costs of and revenues generated by the sustainable use program over the last year; and a summary of documented conservation ben-

efits resulting from the sustainable use program over the last year;

(H) A description of current management and harvest (or "sustainable use") programs for captive and so-called "semi-captive" populations of the vicuña, including: any changes in the number and location of all captive and "semi-captive" populations; any changes in the size (ha) of each captive enclosure and the number of vicuña maintained therein; any changes in protocols for translocations undertaken as part of the use program; a summary of the financial costs of and revenues generated by the sustainable use program over the last year; and documented conservation benefits resulting from the sustainable use program over the last year (information on captive and "semi-captive" populations must be separate from that provided for wild populations); and

(I) Export data for the last year.

(ii) The Service's Division of Scientific Authority will conduct a review every 2 years, using information in the annual reports, to determine whether range country management programs are effectively achieving conservation benefits for the vicuña. Failure to submit an annual report could result in a restriction on trade in specimens of vicuña as addressed in paragraph (m)(3) of this section. Based on information contained in the annual reports and any other pertinent information it has available, the Service may restrict trade from a range country, as addressed in paragraph (m)(3) of this section, if it determines that the conservation or management status of threatened vicuña populations in a range country has changed, such that continued recovery of the vicuña population in that country may be compromised. Trade restrictions may result from one or more of the following factors:

(A) A change in range country laws or regulations that lessens protection for vicuña;

(B) A change in range country management programs that lessens protection for vicuña;

(C) A documented decline in wild vicuña population numbers;

(D) A documented increase in poaching of vicuña;

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(E) A documented decline in vicuña habitat quality or quantity; or

(F) Other natural or man-made factors affecting the species' recovery.

(n) Straight-horned markhor (*Capra falconeri megaceros*).

(1) *General requirements.* Except as noted in paragraph (n)(2) of this section, all prohibitions of §17.31 and exemptions of §17.32 apply to this subspecies.

(2) *What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under §17.32?* The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the FEDERAL REGISTER the importation, without a threatened species permit issued under §17.32, of personal sport-hunted straight-horned markhor from an established conservation program that meets the following criteria:

(i) The markhor was taken legally from the established program after the date of the FEDERAL REGISTER notice;

(ii) The applicable provisions of 50 CFR parts 13, 14, 17, and 23 have been met; and

(iii) The Director has received the following information regarding the established conservation program for straight-horned markhor:

(A) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing.

(B) Regulatory authorities have the capacity to obtain sound data on populations.

(C) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.

(D) Regulatory authorities have the legal and practical capacity to provide for the long-term survival of the populations.

(E) Regulatory authorities can determine that the sport-hunted trophies have in fact been legally taken from the populations under an established conservation program.

(o) [Reserved]

(p) Northern sea otter (*Enhydra lutris kenyoni*). (1) *To what population of sea otter does this special rule apply?* The regulations in paragraph (p) of this section apply to the southwest Alaska distinct population segment (DPS) of the northern sea otter as set forth at §17.11(h) of this part.

(2) *What provisions apply to this DPS?* Except as noted in paragraph (p)(3) of this section, all prohibitions and provisions of §§17.31 and 17.32 of this part apply to the southwest Alaska DPS of the northern sea otter.

(3) *What additional activities are allowed for this DPS?* In addition to the activities authorized under paragraph (p)(2) of this section, you may conduct any activity authorized or exempted under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) with a part or product of a southwest Alaska DPS northern sea otter, provided that:

(i) The product qualifies as an authentic native article of handicrafts or clothing as defined in §17.3 of this part; and

(A) It was created by an Indian, Aleut, or Eskimo who is an Alaskan Native, and

(B) It is not being exported or imported for commercial purposes; or

(ii) The part or product is owned by an Indian, Aleut, or Eskimo who is an Alaskan Native and resides in Alaska, or by a Native inhabitant of Russia, Canada, or Greenland, and is part of a cultural exchange; or

(iii) The product is owned by a Native inhabitant of Russia, Canada, or Greenland, and is in conjunction with travel for noncommercial purposes; or

(iv) The part or product has been received or acquired by a person registered as an agent or tannery under §18.23 of this subchapter.

(4) *What other wildlife regulations may apply?* All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(q) Polar bear (*Ursus maritimus*).

(1) Except as noted in paragraphs (q)(2) and (4) of this section, all prohibitions and provisions of §§17.31 and 17.32 of this part apply to the polar bear.

(2) None of the prohibitions in §17.31 of this part apply to any activity that is authorized or exempted under the Marine Mammal Protection Act

(MMPA) (16 U.S.C. 1361 *et seq.*), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), or both, provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

(3) All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(4) None of the prohibitions in § 17.31 of this part apply to any taking of polar bears that is incidental to, but not the purpose of, carrying out an otherwise lawful activity within the United States, except for any incidental taking caused by activities in areas subject to the jurisdiction or sovereign rights of the United States within the current range of the polar bear.

(r) Lion (*Panthera leo melanochaita*).

(1) *General requirements.* All prohibitions and provisions of §§ 17.31 and 17.32 apply to this subspecies.

(2) The import exemption found in § 17.8 for threatened wildlife listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) does not apply to this subspecies. A threatened species import permit under § 17.32 is required for the importation of all specimens of *Panthera leo melanochaita*.

(3) All applicable provisions of 50 CFR parts 13, 14, 17, and 23 must be met.

(s) Pacific marten (*Martes caurina*), Coastal DPS.

(1) *Prohibitions.* Except as provided in paragraph (s)(2) of this section, all prohibitions and provisions of section 9(a)(1) of the Act apply to the Coastal DPS of the Pacific marten.

(2) *Exceptions from prohibitions.* In regard to the Coastal DPS of the Pacific marten ("coastal marten"), you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Conduct forest management activities for the purposes of reducing the risk or severity of wildfire, which include fuels reduction projects, firebreaks, and wildfire firefighting activities. More specifically, forest man-

agement practices such as those that treat vertical and horizontal (ladder) fuels in an effort to reduce continuity between understory and the overstory vegetation and the potential for crown fires, remove fuels within 150 feet of legally permitted structures and within 300 feet of habitable structures, or implement Fuelbreak/Defensible Space Prescriptions that allow for removal of trees or other vegetation to create a shaded fuelbreak along roads or other natural features, or create defensible space.

(v) Conduct forestry management activities included in a plan or agreement for lands covered by a Natural Communities Conservation Plan or State Safe Harbor Agreement that addresses and authorizes State take of coastal marten as a covered species and is approved by the California Department of Fish and Wildlife under the authority of the California Endangered Species Act.

(vi) Conduct forestry management activities consistent with the conservation needs of the coastal marten (e.g., activities that promote, retain, or restore suitable coastal marten habitat that increase percent canopy cover, percent ericaceous shrub cover, and denning and resting structures). These include activities consistent with finalized conservation plans or strategies, such as plans and documents that include coastal marten conservation prescriptions or compliance, and for which the Service has determined that meeting such plans or strategies, or portions thereof, would be consistent with conservation strategies for coastal marten.

(vii) Conduct activities to remove toxicants and other chemicals consistent with conservation strategies for coastal marten. Such activities include management or cleanup activities that remove toxicants and other chemicals from forested areas, for which the Service has determined that such activities to remove toxicants and other chemicals would be consistent with conservation strategies for coastal marten. Cleanup of these sites may involve activities that may cause localized, short-term disturbance to coastal

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martens, as well as require limited removal of some habitat structures valuable to coastal martens (e.g., hazard trees that may be a suitable den site).

(t) Stephens' kangaroo rat (*Dipodomys stephensi*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Stephens' kangaroo rat. Except as provided under paragraph (t)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to Stephens' kangaroo rat, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(v) Implement livestock grazing in the course of habitat management and restoration to benefit Stephens' kangaroo rat or other native species in the grassland habitat as approved by the Service.

(vi) Conduct the following wildfire suppression activities:

(A) Activities necessary to maintain the minimum clearance (defensible space) requirement from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and to reduce wildfire risks consistent with

the State of California fire codes or local fire codes/ordinances.

(B) Fire management actions (e.g., prescribed burns, hazardous fuel reduction activities) on protected/preserve lands to maintain, protect, or enhance habitat occupied by Stephens' kangaroo rat. These activities are to be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(C) Maintenance of existing fuel breaks.

(D) Firefighting activities associated with actively burning wildfires to reduce risk to life or property.

(vii) Remove nonnative, invasive, or noxious plants for the purpose of Stephens' kangaroo rat conservation as approved by the Service. This includes noxious weed control and other vegetation reduction in the course of habitat management and restoration to benefit Stephens' kangaroo rat, including mechanical and chemical control, provided that these activities are conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions for herbicide application.

(viii) Implement activities conducted as part of a plan developed in coordination with the Service or the California Department of Fish and Wildlife that are for the purpose of Stephens' kangaroo rat conservation.

[40 FR 44415, Sept. 26, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §17.40, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 17.41 Special rules—birds.

(a) Streaked horned lark (*Eremophila alpestris strigata*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to streaked horned lark. Except as provided under paragraph (a)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

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(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife, and (c)(6) and (7) for endangered migratory birds.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) The management of hazardous wildlife at airport facilities by airport staff or employees contracted by the airport to perform hazardous wildlife management activities. Hazardous wildlife is defined by the Federal Aviation Administration as species of wildlife, including feral animals and domesticated animals not under control, that are associated with aircraft strike problems, are capable of causing structural damage to airport facilities, or act as attractants to other wildlife that pose a strike hazard. Routine management activities include, but are not limited to, the following:

(1) Hazing of hazardous wildlife;

(2) Habitat modification and management of sources of forage, water, and shelter to reduce the attractiveness of the area around the airport for hazardous wildlife. This exception for habitat modification and management includes control and management of vegetation (grass, weeds, shrubs, and trees) through mowing, discing, herbicide application, or burning; and

(3) Routine management, repair, and maintenance of roads and runways (does not include upgrades or construction of new roads or runways).

(B) Accidental aircraft strikes at airports on non-Federal lands.

(C) Agricultural (farming) practices implemented on farms in accordance with State laws on non-Federal lands in Washington and Oregon.

(1) For the purposes of this rule, farm means any facility, including land, buildings, watercourses and appurtenances, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products, or the propagation and raising of nursery stock.

(2) For the purposes of this rule, an agricultural (farming) practice means a mode of operation on a farm that is or may be used on a farm of a similar nature; is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money; is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use; complies with applicable State laws; and is done in a reasonable and prudent manner. Common agricultural (farming) practices include, but are not limited to, the following activities:

(i) Planting, harvesting, rotation, mowing, tilling, discing, burning, and herbicide application to crops;

(ii) Normal transportation activities, and repair and maintenance of unimproved farm roads (this exception does not include improvement or construction of new roads) and graveled margins of rural roads;

(iii) Livestock grazing according to normally acceptable and established levels;

(iv) Hazing of geese or predators; and

(v) Maintenance of irrigation and drainage systems.

(D) Removal or other management of noxious weeds. Routine removal or other management of noxious weeds are limited to the following, and must be conducted in such a way that impacts to non-target plants are avoided to the maximum extent practicable:

(1) Mowing;

(2) Herbicide and fungicide application;

(3) Fumigation; and

(4) Burning.

(E) Habitat restoration actions. Habitat restoration and enhancement activities for the conservation of

streaked horned lark may include activities consistent with formal approved conservation plans or strategies, such as Federal, Tribal, or State plans that include streaked horned lark conservation prescriptions or compliance, which the Service has determined (on a case-by-case basis) would be consistent with this rule.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) through (d)(4).

(b) Coastal California gnatcatcher (*Polioptila californica californica*). (1) Except as noted in paragraphs (b)(2) and (3) of this section, all prohibitions of § 17.31(a) and (b) shall apply to the coastal California gnatcatcher.

(2) Incidental take of the coastal California gnatcatcher will not be considered a violation of section 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991 (NCCP), and in accordance with a NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State's NCCP Conservation and Process Guidelines, *provided that*:

(i) The NCCP plan has been prepared, approved, and implemented pursuant to California Fish and Game Code sections 2800–2840; and

(ii) The Fish and Wildlife Service (Service) has issued written concurrence that the NCCP plan meets the standards set forth in 50 CFR 17.32(b)(2). The Service shall issue its concurrence pursuant to the provisions of the Memorandum of Understanding (MOU), dated December 4, 1991, between the California Department of Fish and Game and the Service regarding coastal sage scrub natural community conservation planning in southern California. (Copies of the State's NCCP Conservation and Process Guidelines and the MOU are available from the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, CA 92008.) The Service shall monitor the implementation of the NCCP plan and may revoke its concurrence under this paragraph (b)(2)(ii) if the NCCP plan, as implemented, fails to adhere to the standards set forth in 50 CFR 17.32(b)(2).

(3) During the period that a NCCP plan referred to in paragraph (b)(2) of this section is being prepared, incidental take of the coastal California gnatcatcher will not be a violation of section 9 of the Act if such take occurs within an area under the jurisdiction of a local government agency that is enrolled and actively engaged in the preparation of such a plan and such take results from activities conducted in accordance with the NCCP Conservation Guidelines and Process Guidelines.

(4) The Service will monitor the implementation of the NCCP Conservation and Process Guidelines as a whole, and will conduct a review every 6 months to determine whether the guidelines, as implemented, are effective in progressing toward or meeting regional and subregional conservation objectives during the interim planning period. If the Service determines that the guidelines are not effecting adequate progress toward or meeting regional and subregional conservation objectives, the Service will consult with the California Department of Fish and Game pursuant to the MOU to seek appropriate modification of the guidelines or their application as defined therein. If appropriate modification of the guidelines or their application as defined therein does not occur, the Service may revoke the interim take provisions of this special rule on a subregional or subarea basis. The Service will publish the findings for revocation in the FEDERAL REGISTER and provide for a 30-day public comment period prior to the effective date for revoking the provisions of the special rule in a particular area. Revocation would result in the reinstatement of the take prohibitions set forth under 50 CFR 17.31(a) and (b) in the affected NCCP area.

(c) The following species in the parrot family: Salmon-crested cockatoo (*Cacatua moluccensis*), yellow-billed parrot (*Amazona collaria*), white cockatoo (*Cacatua alba*), hyacinth macaw (*Anodorhynchus hyacinthinus*), scarlet macaw (*Ara macao macao* and scarlet macaw subspecies crosses (*Ara macao macao* and *Ara macao cyanoptera*)), and golden conure (*Guaruba guarouba*).

(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to these species.

(2) *Import and export.* You may import or export a specimen without a permit issued under § 17.32 of this part only when the provisions of parts 13, 14, 15, and 23 of this chapter have been met and you meet the following requirements:

(i) *Captive-bred specimens:* The source code on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) document accompanying the specimen must be “F” (captive born), “C” (bred in captivity), or “D” (bred in captivity for commercial purposes) (see 50 CFR 23.24); or

(ii) *Specimens held in captivity prior to certain dates:* You must provide documentation to demonstrate that the specimen was held in captivity prior to the applicable date specified in paragraph (c)(2)(ii)(A), (B), (C), (D), (E), or (F) of this section. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to the specified dates.

(A) *For salmon-crested cockatoos:* January 18, 1990 (the date this species was transferred to CITES Appendix I).

(B) *For yellow-billed parrots:* April 11, 2013 (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

(C) *For white cockatoos:* July 24, 2014 (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

(D) *For hyacinth macaws:* September 12, 2018 (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

(E) *For scarlet macaws:* March 28, 2019 (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

(F) *For golden conures:* July 1, 1975 (the date CITES entered into force with the “golden parakeet” (*i.e.*, the golden conure) listed in Appendix I of the Convention).

(3) *Interstate commerce.* Except where use after import is restricted under § 23.55 of this chapter, you may deliver, receive, carry, transport, or ship in interstate commerce and in the course of a commercial activity, or sell or offer to sell, in interstate commerce the species listed in this paragraph (c) without a permit under the Act.

(d) *Hawaiian goose (Branta sandvicensis) (nene).* (1) *Definitions.* For the purposes of this paragraph (d):

(i) *Nene* means the Hawaiian goose (*Branta sandvicensis*).

(ii) *Intentional harassment* means an intentional act that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Intentional harassment may include prior purposeful actions to attract, track, wait for, or search out nene, or purposeful actions to deter nene.

(iii) *Person* means a person as defined by section 3(13) of the Act.

(iv) *Qualified biologist* means an individual with a combination of academic training in the area of wildlife biology or related discipline and demonstrated field experience in the identification and life history of nene.

(2) *Prohibitions.* The following prohibitions apply to the nene except as provided under paragraph (d)(3) of this section and §§ 17.4 through 17.6:

(i) Import or export as provided in § 17.21(b).

(ii) Take as provided in § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens as provided in § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity as provided in § 17.21(e).

(v) Sale or offer for sale as provided in § 17.21(f).

(vi) Attempt to commit, solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (d)(2)(i) through (v) of this section.

(3) *Exceptions from prohibitions.* The following exceptions from prohibitions apply to the nene:

(i) Authorization provided under § 17.32.

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(ii) Take as provided in §17.21(c)(2) through (7). However, §17.21(c)(5)(i) through (iv) does not apply.

(iii) Take incidental to an otherwise lawful activity caused by:

(A) *Intentional harassment of nene that is not likely to cause direct injury or mortality.* A person may harass nene on lands they own, rent, or lease, if the action is not likely to cause direct injury or mortality of nene. Techniques for such harassment may include the use of predator effigies (including raptor kites, predator replicas, etc.), commercial chemical bird repellents, ultrasonic repellents, audio deterrents (noisemakers, pyrotechnics, etc.), herding or harassing with trained or tethered dogs, or access control (including netting, fencing, etc.). Nene may also be harassed in the course of surveys that benefit and further the recovery of nene. Such harassment techniques must avoid causing direct injury or mortality to nene. Before implementation of any such intentional harassment activities during the nene breeding season (September through April), a qualified biologist knowledgeable about the nesting behavior of nene must survey in and around the area to determine whether a nest or goslings are present. If a nest is discovered, the Service and authorized State wildlife officials must be notified within 72 hours (see paragraph (d)(4) of this section for contact information) and the following measures implemented to avoid disturbance of nests and broods:

(1) No disruptive activities may occur within a 100-foot (30-meter) buffer around all active nests and broods until the goslings have fledged;

(2) Brooding adults (*i.e.*, adults with an active nest or goslings) or adults in molt may not be subject to intentional harassment at any time; and

(3) The landowner must arrange follow-up surveys of the property by qualified biologists to assess the status of birds present.

(B) *Nonnative predator control or habitat management activities.* A person may incidentally take nene in the course of carrying out nonnative predator control or habitat management activities for nene conservation purposes if reasonable care is practiced to minimize effects to the nene.

(1) Nonnative predator control activities for the conservation of nene include use of fencing, trapping, shooting, and toxicants to control predators, and related activities such as performing efficacy surveys, trap checks, and maintenance duties. Reasonable care for predator control activities may include, but is not limited to, procuring and implementing technical assistance from a qualified biologist on predator control methods and protocols prior to application of methods; compliance with all State and Federal regulations and guidelines for application of predator control methods; and judicious use of methods and tool adaptations to reduce the likelihood of nene ingesting bait, interacting with mechanical devices, or being injured or dying from interaction with mechanical devices.

(2) Habitat management activities for the conservation of nene include: Mowing, weeding, fertilizing, herbicide application, and irrigating existing pasture areas for conservation purposes; planting native food resources; providing watering areas, such as water units or ponds or catchments, designed to be safe for goslings and flightless/molting adults; providing temporary supplemental feeding and watering stations when appropriate, such as under poor quality forage or extreme conditions (*e.g.*, drought or fire); if mechanical mowing of pastures for conservation management purposes is not feasible, alternate methods of keeping grass short, such as grazing; and large-scale restoration of native habitat (*e.g.*, feral ungulate control, fencing). Reasonable care for habitat management may include, but is not limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities, and best efforts to minimize nene exposure to hazards (*e.g.*, predation, habituation to feeding, entanglement, and vehicle collisions).

(C) *Actions carried out by law enforcement officers in the course of official law enforcement duties.* When acting in the course of their official duties, State and local government law enforcement officers, working in conjunction with

authorized wildlife biologists and wildlife rehabilitators in the State of Hawaii, may take nene for the following purposes:

(1) Aiding or euthanizing sick, injured, or orphaned nene;

(2) Disposing of a dead specimen; or

(3) Salvaging a dead specimen that may be used for scientific study; or

(4) Possession and other acts with unlawfully taken specimens as provided in § 17.21(d)(2) through (4).

(4) *Reporting and disposal requirements.* Any injury or mortality of nene associated with the actions excepted under paragraphs (d)(3)(iii)(A) through (C) of this section must be reported to the Service and authorized State wildlife officials within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Office of Law Enforcement at (808) 861-8525, or the Service's Pacific Islands Fish and Wildlife Office at (808) 792-9400. The State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife may be contacted at (808) 587-0166. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

(e) Elfin-woods warbler (*Setophaga angelae*). (1) *Prohibitions.* Except as noted in paragraph (e)(2) of this section, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the elfin-woods warbler.

(2) *Exemptions from prohibitions.* Incidental take of the elfin-woods warbler will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently occupied by the elfin-woods warbler provided these activities abide by the conservation measures set forth in this paragraph (e) and are conducted in accordance with applicable State, Federal, and local laws and regulations:

(i) The conversion of sun-grown coffee to shade-grown coffee plantations by the restoration and maintenance (*i.e.*, removal of invasive, exotic, and feral species; shade and coffee tree seasonal pruning; shade and coffee tree planting and replacement; coffee bean harvest by hands-on methods; and the use of standard pest control methods

and fertilizers within the plantations) of shade-grown coffee plantations and native forests associated with this type of crop. To minimize disturbance to the elfin-woods warbler, shade and coffee tree seasonal pruning must be conducted between September 1 and February 28, which is the time period outside the peak of the elfin-woods warbler's breeding season. The Service considers the use of pest control methods (*e.g.*, pesticides, herbicides) and fertilizers "standard" when it is used only twice a year during the establishment period of shade and coffee trees (*i.e.*, the first 2 years). Once the shade-grown coffee system reaches its functionality and structure (*i.e.*, 3 to 4 years), little or no chemical fertilizers, herbicides, or pesticides may be used.

(ii) Riparian buffer establishment though the planting of native vegetation and selective removal of exotic species.

(iii) Reforestation and forested habitat enhancement projects within secondary forests (*i.e.*, young and mature) that promote the establishment or improvement of habitat conditions for the species by the planting of native trees, selective removal of native and exotic trees, seasonal pruning of native and exotic trees, or a combination of these.

(f) Eastern black rail (*Laterallus jamaicensis jamaicensis*).

(1) *Prohibitions.* The following activities with the eastern black rail are prohibited:

(i) Purposeful take, including capture, handling, or other activities.

(ii) Incidental take resulting from the following activities:

(A) Prescribed burn activities, unless best management practices that minimize negative effects of the prescribed burn on the eastern black rail are employed. Best management practices include:

(1) Regardless of the size of the area under management with prescribed fire, a broad range of habitat conditions should be maintained by burning on a rotational basis, which supports black rail population maintenance and growth. In any given calendar year, at least 50 percent of the eastern black rail habitat within the management boundary should be maintained in order to provide the dense overhead

cover required by the subspecies. Management boundaries can include individual landholdings, e.g., a National Wildlife Refuge boundary, or be formed through landscape-level agreements across landholdings of different but contiguous ownerships. This percentage does not apply to landholdings smaller than 640 acres.

(2) Where eastern black rail are present, the application of prescribed fire uses tactics that provide unburned refugia allowing birds to survive a fire (e.g., using short flanking, backing fires, or similar approaches). Prescribed fire is applied under fuel and weather conditions (e.g., soil moisture and/or relative humidity) that are most likely to result in patchy persistence of unburned habitat to serve as refugia from fire and predators.

(3) Ignition tactics, rates of spread, and flame lengths should allow for wildlife escape routes to avoid trapping birds in a fire. The application of prescribed fire should avoid fires, such as ring and strip head fires, that have long, unbroken boundaries and/or that come together in a short period of time and that consume essentially all vegetation and prevent black rails from escaping a fire. If aerial ignition is the chosen tool, ignitions should be conducted in such a way that large, fast-moving fires are avoided.

(B) Mowing, haying, and other mechanical treatment activities in persistent emergent wetlands when the activity occurs during the nesting or brooding periods, except in accordance with paragraph (f)(2)(iii) of this section.

(C) Grazing activities on public lands that occur on eastern black rail habitat and, that individually or cumulatively with other land management practices, do not maintain at least 50 percent of eastern black rail habitat, *i.e.*, dense overhead cover, in any given calendar year within a management boundary.

(D) Long-term or permanent damage, fragmentation, or conversion of persistent emergent wetlands and the contiguous wetland-upland transition zone to other habitat types (such as open water) or land uses that do not support eastern black rail.

(iii) Possession and other acts with unlawfully taken eastern black rails. It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any eastern black rail that was taken in violation of section 9(a)(1)(B) and (C) of the Act or State laws.

(iv) Import or export, as set forth at §17.21(b) for endangered wildlife.

(v) Possess and conduct other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(vi) Engage in interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(vii) Sell or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.*

(i) All of the provisions of §17.32 apply to the eastern black rail.

(ii) Any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program for the eastern black rail pursuant to the terms of 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 eastern black rails.

(iii) Incidental take resulting from haying, mowing, or other mechanical treatment activities in persistent emergent wetlands that occur during the nesting and brooding periods is allowed if those activities:

(A) Are maintenance requirements to ensure safety and operational needs, including maintaining existing infrastructure such as firebreaks, roads, rights-of-way, levees, dikes, fence lines, airfields, and surface water irrigation infrastructure (e.g., head gates, ditches, canals, water control structures, and culverts); or

(B) Occur during the control of woody encroachment and other invasive plant species to restore degraded habitat.

(iv) Incidental take resulting from actions taken to control wildfires is allowed.

(v) Incidental take resulting from the establishment of new firebreaks (for

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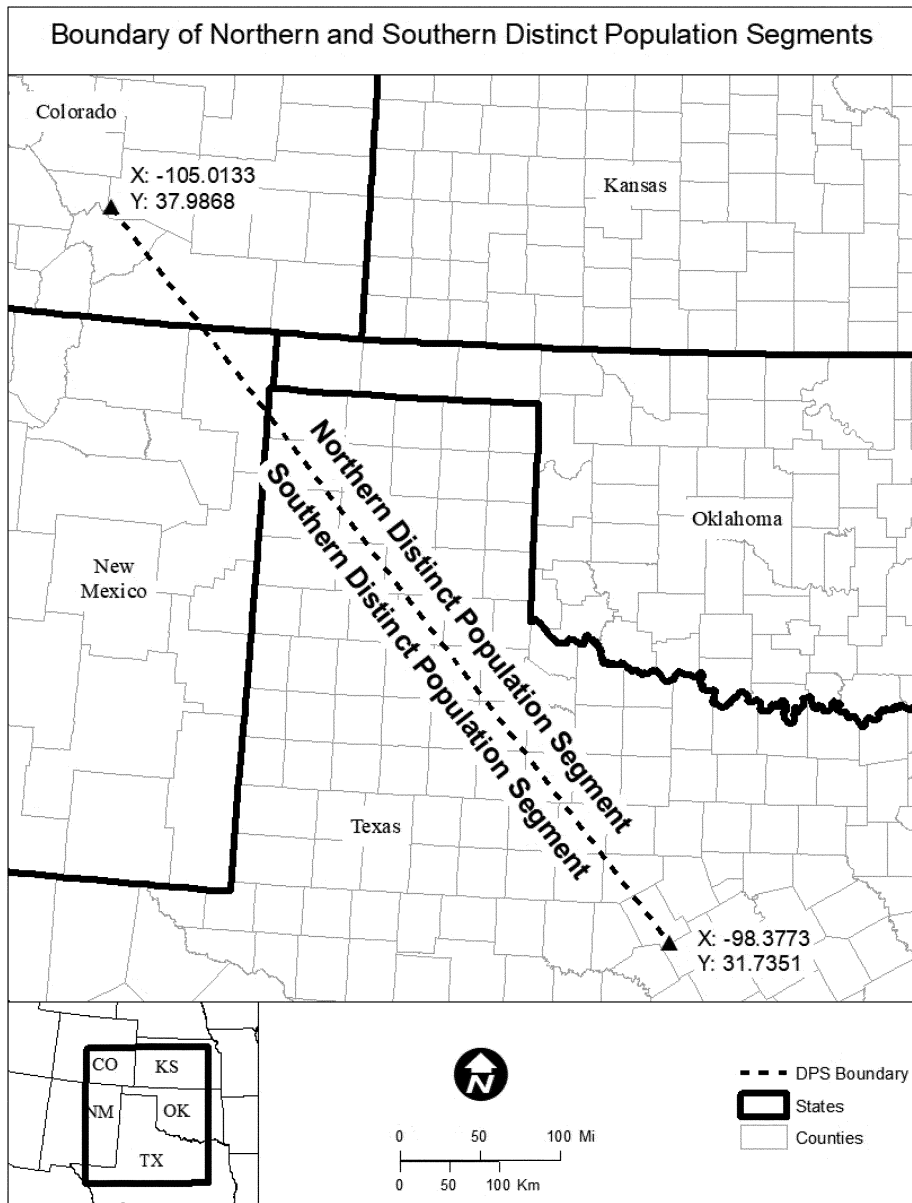
example, to protect wildlands or man-made infrastructure) and new fence lines is allowed.

(vi) Incidental take resulting from prescribed burns, grazing, and mowing or other mechanical treatment activities in existing moist soil management units or prior converted croplands (e.g., impoundments for rice or other cereal grain production) is allowed.

(g)–(j) [Reserved]

(k) Lesser prairie-chicken (*Tympanuchus pallidicinctus*), Northern Distinct Population Segment (DPS). The Northern DPS of the lesser prairie-chicken pertains to lesser prairie-chickens found northeast of a line starting in Colorado at 37.9868 N, 105.0133 W, going through northeastern New Mexico, and ending in Texas at 31.7351 N, 98.3773 W, NAD83, as shown in the map:

Figure 1 to paragraph (k)



(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Northern DPS of the lesser prairie-chicken. Except as provided under paragraph (k)(2) of this

section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit,

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to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at §17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Continuation of routine agricultural practices on existing cultivated lands, including:

(1) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands;

(2) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads; and

(3) Use of chemicals in direct support of cultivated agriculture when done in accordance with label recommendations.

(B) Implementation of prescribed fire for the purposes of grassland management, including:

(1) Construction and maintenance of fuel breaks;

(2) Planning needed for application of prescribed fire;

(3) Implementation of the fire and all associated actions; and

(4) Any necessary monitoring and followup actions.

(C) Implementation of prescribed grazing following a site-specific grazing management plan developed by a Service-approved party, including:

(1) Physical impact of cattle to vegetative composition and structure;

(2) Trampling of lesser prairie-chicken nests;

(3) Construction and maintenance of required infrastructure for grazing management, including but not limited to fences and water sources; and

(4) Other routine activities required to implement managed grazing, including but not limited to feeding, monitoring, and moving of livestock.

(1) Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). (1)

*Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the cactus ferruginous pygmy-owl. Except as provided under paragraphs (1)(2) and (3) of this section and §§17.4, 17.5, and 17.7, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this subspecies:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *General exceptions from prohibitions.* In regard to this subspecies, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (4) for endangered wildlife, and (c)(6) and (7) for endangered migratory birds.

(iii) Take as set forth at §17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife and (d)(3) and (4) for endangered migratory birds.

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take cactus ferruginous pygmy-owl while carrying out the following legally conducted activities in accordance with this paragraph (1)(3):

(i) Educational and outreach activities that have been coordinated with the Service no later than 60 calendar days prior to the initiation of the proposed activity, provided the researcher already holds an appropriate, valid permit issued under part 21 of this chapter, which governs species protected under the Migratory Bird Treaty Act, for educational activities involving the use of live pygmy-owls, zoological exhibitions, pygmy-owl skins, or parts of pygmy-owls or other raptors.

(ii) Specific surveying and monitoring activities within the State of Arizona that do not include handling of pygmy-owls (*e.g.*, call playback, visual observation, collection of feathers in nests or on the ground, and camera monitoring) and only if they are conducted under a valid scientific activity license issued by the Arizona Game and Fish Department.

(A) Data collected must be submitted to the Arizona Game and Fish Department for inclusion in their Heritage Data Management System.

(B) Call playback surveys and monitoring must follow the most current, Service-approved protocol.

(C) Surveying and monitoring activities must be associated with a legitimate scientific project or regulatory compliance activity.

(iii) Habitat restoration and enhancement activities and projects that are coordinated with and approved by the Service no later than 60 calendar days prior to the initiation of the proposed activity.

(A) These activities and projects may include activities that enhance cactus ferruginous pygmy-owl habitat conditions; improve ecosystem health and sustainability within the range of the pygmy-owl; improve habitat connectivity; increase availability of nest cavities; increase prey availability; reduce or control invasive, nonnative plant species; and enhance native plant communities, particularly woodland riparian communities.

(B) These activities and projects do not include prescribed fire within Sonoran Desert vegetation communities (unless these activities and projects occur in vegetation community transition areas and are coordinated with and approved by the Service), actions that would result in more than a minimal reduction or removal of tree cover (as determined through coordination with and approved by the Service and generally involving no more than a 30 percent reduction in tree cover) such as fuels management or roadway vegetation management, land development, or actions that use or promote nonnative vegetation species.

(iv) For all forms of allowable take, reasonable care must be practiced to minimize the impacts from the actions. Reasonable care means:

(A) Limiting the impacts to cactus ferruginous pygmy-owl individuals and populations by complying with all applicable Federal, State, and Tribal regulations for the activity in question;

(B) Using methods and techniques that result in the least harm, injury, or death, as feasible;

(C) Undertaking activities when and where they have the least impact (*e.g.*, conducting activities that might impact nesting cactus ferruginous pygmy-owls or nesting habitat only after nesting is concluded for the year), as feasible;

(D) Procuring and implementing technical assistance from a qualified biologist on all methods and techniques used for a project prior to their implementation;

(E) Minimizing the number of individual pygmy-owls disturbed in the existing wild population;

(F) Implementing best management practices to ensure no diseases or parasites are introduced into existing cactus ferruginous pygmy-owl populations; and

(G) Preserving the genetic diversity of wild populations.

(m) Emperor penguin (*Aptenodytes forsteri*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the emperor penguin. Except as provided under paragraph (m)(2) of this section and §§17.4 and 17.5, it is unlawful for any person

subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale in foreign commerce, as set forth at § 17.21(f) for endangered wildlife.

(vi) Sale or offer for sale in interstate commerce, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to the emperor penguin, you may:

(i) Sell, offer for sale, deliver, receive, carry, transport, or ship in interstate commerce live emperor penguins from one public institution to another public institution. For the purposes of this paragraph, “public institution” means a museum, zoological park, and scientific or educational institution that meets the definition of “public” at 50 CFR 10.12.

(ii) Take emperor penguins within Antarctica as authorized under implementing regulations for the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*), either in accordance with the provisions set forth at 45 CFR 670.5 or 670.9, or as authorized by a permit under 45 CFR part 670.

(iii) Import emperor penguins into the United States from Antarctica or export emperor penguins from the United States to Antarctica as authorized under implementing regulations for the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*), either in accordance with the provisions set forth at 45 CFR 670.9, or as authorized by a permit under 45 CFR part 670.

(iv) Conduct activities as authorized by a permit under § 17.32.

(v) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(vi) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(vii) Conduct activities as authorized by a captive-bred wildlife registration under § 17.21(g) for endangered wildlife.

[43 FR 6233, Feb. 14, 1978, as amended at 58 FR 65095, Dec. 10, 1993; 60 FR 36010, July 12, 1995; 72 FR 37372, July 9, 2007; 73 FR 23970, May 1, 2008; 76 FR 30780, May 26, 2011; 76 FR 54713, Sept. 2, 2011; 78 FR 15641, Mar. 12, 2013; 78 FR 61502, Oct. 3, 2013; 79 FR 20084, Apr. 10, 2014; 79 FR 35900, June 24, 2014; 81 FR 47048, July 20, 2016; 81 FR 40547, June 22, 2016; 83 FR 39916, Aug. 13, 2018; 84 FR 6311, Feb. 26, 2019; 84 FR 69946, Dec. 19, 2019; 85 FR 22663, Apr. 23, 2020; 85 FR 63830, Oct. 8, 2020; 87 FR 21811, Apr. 13, 2022; 87 FR 64720, Oct. 26, 2022; 87 FR 72753, Nov. 25, 2022; 87 FR 73971, Dec. 2, 2022; 88 FR 46949, July 20, 2023]

#### § 17.42 Special rules—reptiles.

(a) American alligator (*Alligator mississippiensis*)—(1) *Definitions.* For purposes of this paragraph (a) the following definitions apply:

(i) *American alligator* means any specimen of the species *Alligator mississippiensis*, whether alive or dead, including any skin, part, product, egg, or offspring thereof held in captivity or from the wild.

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) of this subchapter apply to this paragraph (a).

(2) *Taking.* No person may take any American alligator, except:

(i) Any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by the agency for such purposes, may, when acting in the course of official duties, take an American alligator.

(ii) Any person may take an American alligator in the wild, or one which was born in captivity or lawfully placed in captivity, and may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase such alligator in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity in accordance with the laws and regulations of the State of taking subject to the following conditions:

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(A) Any skin of an American alligator may be sold or otherwise transferred only if the State or Tribe of taking requires skins to be tagged by State or tribal officials or under State or tribal supervision with a Service-approved tag in accordance with the requirements in part 23 of this subchapter; and

(B) Any American alligator specimen may be sold or otherwise transferred only in accordance with the laws and regulations of the State or Tribe in which the taking occurs and the State or Tribe in which the sale or transfer occurs.

(3) *Import and export.* Any person may import or export an American alligator specimen provided that it is in accordance with part 23 of this subchapter.

(4) *Recordkeeping.* (i) Any person not holding an import/export license issued by the Service under part 14 of this subchapter and who imports, exports, or obtains permits under part 23 of this subchapter for the import or export of American alligator shall keep such records as are otherwise required to be maintained by all import/export licensees under part 14 of this subchapter. Such records shall be maintained as in the normal course of business, reproducible in the English language, and retained for 5 years from the date of each transaction.

(ii) Subject to applicable limitations of law, duly authorized officers at all reasonable times shall, upon notice, be afforded access to examine such records required to be kept under paragraph (a)(4)(i) of this section, and an opportunity to copy such records.

(b) Green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), olive ridley sea turtle (*Lepidochelys olivacea*) (these do not include the populations listed as endangered in §17.11).

(1) *Prohibitions.* Subject to the permits allowable under the following paragraph (b)(2) of this section, all of the provisions set forth in §17.31 (which incorporate portions of §17.21) shall apply to this wildlife with the following exceptions:

(i) Section 17.21(c)(2) (self-defense) is not applicable.

(ii) In §17.21(c)(3)(i), the word “orphaned” is replaced by the word “stranded.”

(iii) Delete §17.21(c)(3)(iv) (Wildlife threatening human safety).

(iv) [Reserved]

(v) The prohibition against taking shall not apply to incidental catches, as specified in 50 CFR 227.72(e).

(vi) The prohibition against taking within the United States or the territorial sea of the United States shall not apply to subsistence taking, as specified in 50 CFR 227.72(f).

(2) *Permits.* (i) For those activities which come under the jurisdiction of the Service, only permits for scientific purposes, enhancement of propagation or survival, zoological exhibition or educational purposes, are available under §17.32. Procedures for issuance of permits are found in §17.32 and, for those activities which come under the jurisdiction of the National Marine Fisheries Service, subpart E of part 220. All the provisions of §17.32 apply to permits issued by the Service.

(c) *Threatened crocodilians*—(1) *What are the definitions of terms used in this paragraph (c)?*

(i) *Threatened crocodilian* means any live or dead specimen of the following species:

(A) Broad-snouted caiman (*Caiman latirostris*) originating in Argentina;

(B) Brown caiman (*Caiman crocodilus fuscus*, including *Caiman crocodilus chiapasius*);

(C) Common caiman (*Caiman crocodilus crocodilus*);

(D) Yacare caiman (*Caiman yacare*);

(E) Nile crocodile (*Crocodylus niloticus*); and

(F) Saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile).

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in §23.70(b) and *re-export* in §23.5 of this subchapter apply to this paragraph (c).

(2) *What activities involving threatened crocodilians are prohibited by this rule?*

(i) All provisions of §§17.31 and 17.32 apply to live specimens, including viable eggs, of all threatened crocodilians and to any specimen of the Appendix-I Nile crocodile.

(ii) Except as provided in paragraph (c)(2)(i) of this section, the following prohibitions apply to threatened crocodilians.

(A) *Import, export, and re-export.* Except as provided in paragraph (c)(3) of this section, it is unlawful to import, export, or re-export, or attempt to import, export, or re-export without valid permits as required under parts 17 and 23 of this subchapter any threatened crocodylians, including their skins, parts, and products.

(B) *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 threatened crocodylians, including their skins, parts, and products.

(C) 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) and (c)(2)(ii)(A) and (B) of this section.

(3) *What activities involving threatened crocodylians are allowed by this rule?* Except as provided in (c)(2)(i), you may import, export, or re-export, or sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity, threatened crocodylian skins, parts, and products without a threatened species permit otherwise required under §17.32 provided the requirements of parts 13, 14, and 23 of this subchapter and the requirements of paragraphs (c)(3) and (4) of this section have been met.

(i) *Skins and parts.* Except as provided in (c)(3)(ii) of this section, the import, export, or re-export of threatened crocodylian skins and crocodylian parts is allowed provided the following conditions are met:

(A) Each crocodylian skin and crocodylian part imported, exported, or re-exported must be tagged or labeled in accordance with §23.70 of this subchapter.

(B) Any countries re-exporting crocodylian skins or parts must have implemented an administrative system for the effective matching of imports and re-exports.

(C) If a shipment contains more than 25 percent replacement tags, the U.S. Management Authority will consult

with the Management Authority of the re-exporting country before clearing the shipment. Such shipments may be seized if we determine that the requirements of the Convention have not been met.

(D) The country of origin and any intermediary country(s) must be effectively implementing the Convention. If we receive persuasive information from the CITES Secretariat or other reliable sources that a specific country is not effectively implementing the Convention, we will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(ii) *Meat, skulls, scientific specimens, products, and noncommercial personal or household effects.* The tagging requirements in paragraph (c)(3)(i) of this section for skins and parts do not apply to the import, export, or re-export of threatened crocodylian meat, skulls, scientific specimens, or products or to the noncommercial import, export, or re-export of personal effects in accompanying baggage or household effects.

(4) *When and how will the Service inform the public of additional restrictions in trade of threatened crocodylians?* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue an information bulletin (posted on our websites, <http://www.fws.gov/le> and <http://www.fws.gov/international>) announcing additional restrictions on trade of specimens of threatened crocodylians if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as not having designated Management and Scientific Authorities.

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

(iii) We determine, based on information from the CITES Secretariat or other reliable sources, that the country

is not effectively implementing the provisions of the Convention.

(5) *Reporting requirements for yacare caiman range countries*—(i) *Biennial reports*. Range countries (Argentina, Bolivia, Brazil, and Paraguay) wishing to export specimens of yacare caiman to the United States for commercial purposes must provide a biennial report containing the most recent information available on the status of the species. The first submission of a status report will be required as of December 31, 2001, and every 2 years thereafter on the anniversary of that date. For each range country, all of the following information must be included in the report.

(A) Recent distribution and population data, and a description of the methodology used to obtain such estimates.

(B) Description of research projects currently being conducted related to the biology of the species in the wild, particularly reproductive biology (for example, age or size when animals become sexually mature, number of clutches per season, number of eggs per clutch, survival of eggs, survival of hatchlings).

(C) Description of laws and programs regulating harvest, including approximate acreage of land set aside as natural reserves or national parks that provide protected habitat for yacare caiman.

(D) Description of current sustainable harvest programs, including ranching (captive rearing of specimens collected from the wild as eggs or juveniles) and farming (captive-breeding) programs.

(E) Current harvest quotas for wild populations.

(F) Export data for the last 2 years. Information should be organized according to the source of specimens such as wild-caught, captive-reared, or captive-bred.

(ii) *Review and restrictions*. The U.S. Scientific Authority will conduct a review every 2 years, using information in the biennial reports and other available information, to determine whether range country management programs are effectively achieving conservation benefits for the yacare caiman. Based on the best available information, we

may restrict trade from a range country if we determine that the conservation or management status of threatened yacare caiman populations has changed, such that continued recovery of the population in that country may be compromised. Trade restrictions, as addressed in paragraph (c)(4) of this section, may be implemented based on one or more of the following factors:

(A) Failure to submit the reports described above, or failure to respond to requests for additional information.

(B) A change in range country laws or regulations that lessens protection for yacare caiman.

(C) A change in range country management programs that lessens protection for the species.

(D) A documented decline in wild population numbers.

(E) A documented increase in poaching.

(F) A documented decline in habitat quality or quantity.

(G) Other natural or manmade factors affecting the species' recovery.

(d) Blue-tailed mole skink (*Eumeces egregius lividus*) and sand skink (*Neoseps reynoldsi*). (1) No person shall take these species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of these species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any such species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (c) (1) through (3) of this section.

(5) Taking of these species for purposes other than those described in paragraph (c)(1) of this section, including taking incidental to carrying out

otherwise lawful activities, is prohibited except when permitted under §§ 17.23 and 17.32.

(e) Desert tortoise (*Gopherus agassizii*)—(1) *Definition*. For the purposes of this paragraph (e) “desert tortoise” shall mean any member of the species *Gopherus agassizii*, whether alive or dead, and any part, product, egg, or offspring thereof, found outside of Arizona (south and east of the Colorado River) and Mexico, regardless of natal origin or place of removal from the wild.

(2) *Applicable provisions*. The provisions of § 17.31–17.32 shall apply to any desert tortoise subject to this paragraph (e).

(f) Bog turtle (*Glyptemys muhlenbergii*), southern population—(1) *Definitions of terms*. For the purposes of this paragraph (f): *Bog turtle* of the southern population means any member of the species *Clemmys muhlenbergii*, within Georgia, North Carolina, South Carolina, Tennessee and Virginia, regardless of whether in the wild or captivity, and also applies to the progeny of any such turtle.

(2) *Prohibitions*. Except as provided in paragraph (f)(3) of this section, the provisions of Sec. 17.31 (a) and (b) of this part applies to bog turtles of the southern population (see also 50 CFR part 23).

(3) *Take*. Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, does not apply to bog turtles of the southern population.

(g) Northern Mexican gartersnake (*Thamnophis eques megalops*)—(1) *Prohibitions*. Except as noted in paragraph (g)(2) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the northern Mexican gartersnake.

(2) *Exemptions from prohibitions*. Incidental take of the northern Mexican gartersnake will not be considered a violation of section 9 of the Act if the take occurs on non-Federal land and is incidental to activities pertaining to construction, continued use, and maintenance of stock tanks. A stock tank is an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock.

(h) Black pinesnake (*Pituophis melanoleucus lodingi*).

(1) *Prohibitions*. Except as noted in paragraph (h)(2) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the black pinesnake.

(2) *Exemptions from prohibitions*. Incidental take of the black pinesnake will not be considered a violation of section 9 of the Act if the take results from:

(i) Prescribed burning, including all fire break establishment and maintenance actions, as well as actions taken to control wildfires.

(ii) Herbicide application for invasive plant species control, site-preparation, and mid-story and understory woody vegetation control. All exempted herbicide applications must be conducted in a manner consistent with Federal law, including Environmental Protection Agency label restrictions; applicable State laws; and herbicide application guidelines as prescribed by herbicide manufacturers.

(iii) All forest management activities that maintain lands in a forested condition, except for:

(A) Conversion of longleaf-pine-dominated forests (>51 percent longleaf in the overstory) to other forest cover types or land uses; and

(B) Those activities causing significant subsurface disturbance, including, but not limited to, shearing, wind-rowing, stumping, disking (except during fire break creation or maintenance), root-raking, and bedding.

(i) Louisiana pinesnake (*Pituophis ruthveni*)—(1) *Definitions*. The following definitions apply only to terms used in this paragraph (i) for activities affecting the Louisiana pinesnake.

(i) *Estimated occupied habitat area (EOHA)*. Areas of land where occurrences of Louisiana pinesnakes have been recorded and that are considered by the Service to be occupied by the species. For current information regarding the EOHA, contact your local Service Ecological Services office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed in 50 CFR 2.2.

(ii) *Suitable or preferable soils*. Those soils in Louisiana and Texas that generally have high sand content and a low water table and that have been

shown to be selected by Louisiana pinesnakes (Natural Resources Conservation Service soil survey hydrologic group, Categories A and B).

(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Louisiana pinesnake. Except as provided at paragraph (i)(3) of this section and § 17.4, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth for endangered wildlife at § 17.21(b).

(ii) Take, as set forth for endangered wildlife at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth for endangered wildlife at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth for endangered wildlife at § 17.21(e).

(v) Sale or offer for sale, as set forth for endangered wildlife at § 17.21(f).

(3) *Exceptions from the prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit issued under § 17.32.

(ii) Take, as set forth for endangered wildlife at § 17.21(c)(2) through (c)(4).

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken Louisiana pinesnakes, as set forth for endangered wildlife at § 17.21(d)(2).

(v) Take incidental to an otherwise lawful activity caused by:

(A) *Outside any known EOHAs*—Activities that maintain existing forest lands in forest land use and that, when conducted in areas within the range of the Louisiana pinesnake, on preferred or suitable soils, result in the establishment and maintenance of open-canopy pine-dominated forest stands over time across the landscape. These activities include:

(1) Tree thinning, tree harvest (including clearcutting), and planting and replanting pines (by hand or by machine).

(2) Prescribed burning, including all firebreak establishment and maintenance

actions, as well as actions taken to control wildfires.

(3) Herbicide application that is generally targeted for invasive plant species control and midstory and understory woody vegetation control, but is also used for site preparation when applied in a manner that minimizes long-term impact to noninvasive herbaceous vegetation. These provisions include only herbicide applications conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions and herbicide application guidelines as prescribed by manufacturers.

(4) Skidding logs and use of loading decks that avoid mound complexes of Baird's pocket gophers (*Geomys breviceps*).

(5) Maintenance of existing substandard (dirt, unsurfaced) forest roads and trails used for access to timber being managed.

(6) Implementation of mandated and State-recommended forestry best management practices, including, but not limited to, those necessary to protect riparian (e.g., streamside management zone) and other habitats from erosional sediment deposition, and prevent washout of forest roads and impacts to vegetation.

(7) Food plot establishment for game animals, when it does not destroy existing native herbaceous vegetation, avoids Baird's pocket gopher mound complexes, and does not exceed 1 acre in size.

(B) *Within any known EOHAs* where Baird's pocket gopher mounds are present or on lands that have suitable or preferable soils and that are forested, undeveloped, or non-farmed (*i.e.*, not cultivated on an annual basis) and adjacent to forested lands—Activities described in paragraphs (i)(3)(v)(A)(1) through (7) of this section provided that those activities do not:

(1) Cause subsurface disturbance, including, but not limited to, wind-rowing, stumping, disking (except during firebreak creation or maintenance), root-raking, drum chopping (except for single pass with the lightest possible weighted drums and only when the soil

is not wet, when used to control hardwoods and woody shrub species detrimental to establishment of pine-for-ested land), shearing that penetrates the soil surface, ripping (except when restoring pine forest in compacted soil areas such as former pastures), bedding, new road construction, and commercial or residential development. Machine-planting, using the shallowest depth possible, would be allowed in areas where pocket gophers are not present and only for planting pine tree species. In former pastures or highly degraded areas with no herbaceous vegetation and poor planting conditions, subsurface disturbance will be allowed only for activities that contribute to reforestation that is consistent with the conservation of the species.

(2) Inhibit the persistence of suitable Baird's pocket gopher and Louisiana pinesnake habitat, which consists of open-canopy forest situated on well-drained sandy soils with an abundant herbaceous plant community, a non-existent or sparse midstory, and a low pine basal area.

(3) Involve the use of plastic mesh in erosion control and stabilization devices, mats, blankets, or channel protection.

(j)-(k) [Reserved]

(1) Egyptian tortoise (*Testudo kleinmanni*, syn. *Testudo werneri*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Egyptian tortoise. Except as provided under paragraph (1)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth for endangered wildlife at §17.21(b).

(ii) Take, as set forth for endangered wildlife at §17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth for endangered wildlife at §17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth for endangered wildlife at §17.21(e).

(v) Sale or offer for sale in interstate or foreign commerce, as set forth for endangered wildlife at §17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Sell, offer for sale, deliver, receive, carry, transport, or ship in interstate commerce live Egyptian tortoises from one public institution to another public institution, if such activity is in accordance with 50 CFR part 23. For the purposes of this paragraph, "public institution" means a museum, zoological park, and scientific institution that meets the definition of "public" at 50 CFR 10.12.

(iii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iv) Possess and engage in other acts, as set forth at §17.21(d)(2) for endangered wildlife.

(v) Conduct activities as authorized by a captive-bred wildlife registration under §17.21(g) for endangered wildlife.

[42 FR 2076, Jan. 10, 1977, as amended at 43 FR 32809, July 28, 1978; 44 FR 59084, Oct. 12, 1979; 45 FR 17589, Mar. 19, 1980; 45 FR 78154, Nov. 25, 1980; 48 FR 46336, Oct. 12, 1983; 50 FR 25678, June 20, 1985; 50 FR 45409, Oct. 31, 1985; 52 FR 21063, June 4, 1987; 52 FR 42662, Nov. 6, 1987; 55 FR 12191, Apr. 2, 1990; 61 FR 32366, June 24, 1996; 62 FR 59622, Nov. 4, 1997; 65 FR 25879, May 4, 2000; 72 FR 48446, Aug. 23, 2007; 78 FR 38190, June 25, 2013; 79 FR 38746, July 8, 2014; 80 FR 60489, Oct. 6, 2015; 85 FR 11306, Feb. 27, 2020; 86 FR 57376, Oct. 15, 2021; 88 FR 19017, Mar. 30, 2023]

#### § 17.43 Special rules—amphibians.

(a) San Marcos salamander (*Eurycea nana*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(b) Chiricahua leopard frog (*Lithobates chiricahuensis*).

(1) *What activities are prohibited?* Except as noted in paragraph (b)(2) of this section, all prohibitions of §17.31 will apply to the Chiricahua leopard frog.

(2) *What activities are allowed on private, State, or Tribal land?* Incidental take of the Chiricahua leopard frog will not be considered a violation of section 9 of the Act, if the take results from livestock use at or maintenance

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activities of livestock tanks located on private, State, or Tribal lands. A livestock tank is defined as an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock.

(c) California tiger salamander (*Ambystoma californiense*).

(1) *Which populations of the California tiger salamander are covered by this special rule?* This rule covers the California tiger salamander (*Ambystoma californiense*) rangewide.

(2) *What activities are prohibited?* Except as noted in paragraph (c)(3) of this section, all prohibitions of §17.31 will apply to the California tiger salamander.

(3) *What activities are allowed on private or Tribal land?* Incidental take of the California tiger salamander will not be a violation of section 9 of the Act, if the incidental take results from routine ranching activities located on private or Tribal lands. Routine ranching activities include, but are not limited to, the following:

(i) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;

(ii) Control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (The use of toxic or suffocating gases is not exempt from the prohibitions due to their nontarget-specific mode of action.);

(iii) Control and management of burrow complexes using discing and grading to destroy burrows and fill openings;

(iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies (This exemption does not include the intentional introduction of species into a stock pond that may prey on California tiger salamander adults, larvae, or eggs.);

(v) Routine maintenance or construction of fences for grazing management;

(vi) Planting, harvest, or rotation of unirrigated forage crops as part of a rangeland livestock operation;

(vii) Maintenance and construction of livestock management facilities such as corrals, sheds, and other ranch out-buildings;

(viii) Repair and maintenance of unimproved ranch roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(ix) Discing of fencelines or perimeter areas for fire prevention control;

(x) Placement of mineral supplements; and

(xi) Control and management of noxious weeds.

(d) California red-legged frog (*Rana aurora draytonii*)—(1) *Which populations of the California red-legged frog are covered by this special rule?* This rule covers the California red-legged frog (*Rana aurora draytonii*) rangewide.

(2) *What activities are prohibited?* Except as noted in paragraph (d)(3) of this section, all prohibitions of §17.31 will apply to the California red-legged frog.

(3) *What activities are allowed on private or Tribal land?* Incidental take of the California red-legged frog will not be a violation of section 9 of the Act, if the incidental take results from routine ranching activities located on private or Tribal lands. Routine ranching activities include, but are not limited to, the following:

(i) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;

(ii) Control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (In areas where California red-legged frogs and California tiger salamanders coexist, the use of toxic or suffocating gases is not exempt from the prohibitions due to their nontarget-specific mode of action.);

(iii) Control and management of burrow complexes using discing and grading to destroy burrows and fill openings (This exemption does not apply to areas within 0.7 mi (1.2 km) of known or potential California red-legged frog breeding ponds.);

(iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies (This exemption does not include the

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intentional introduction of species into a stock pond (including non-native fish and bullfrogs) that may prey on California red-legged frog adults, larvae, or eggs.);

(v) Routine maintenance or construction of fences for grazing management;

(vi) Planting, harvest, or rotation of unirrigated forage crops as part of a rangeland livestock operation;

(vii) Maintenance and construction of livestock management facilities such as corrals, sheds, and other ranch out-buildings;

(viii) Repair and maintenance of unimproved ranch roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(ix) Discing of fencelines or perimeter areas for fire prevention control;

(x) Placement of mineral supplements; and

(xi) Control and management of noxious weeds.

(e) Georgetown salamander (*Eurycea naufragia*.)

(1) *Prohibitions*. Except as noted in paragraph (e)(2) of this section, all prohibitions and provisions of §§17.31 and 17.32 apply to the Georgetown salamander.

(2) *Exemptions from prohibitions*. Incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on non-Federal land from regulated activities that are conducted consistent with the water quality protection measures contained in chapter 11.07 and Appendix A of the City of Georgetown (Texas) Unified Development Code (UDC), as endorsed by the U.S. Fish and Wildlife Service.

(f) Neuse River waterdog (*Necturus lewisi*).

(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Neuse River waterdog. Except as provided under paragraph (f)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions*. In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species, and follow-up monitoring.

(B) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Second- to third-order, headwater streams reconstructed in this way offer suitable habitats for the Neuse River waterdog and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species for spawning, rearing, growth, feeding, migration, and other normal behaviors. Prior to restoration action, surveys to determine presence of Neuse River waterdog

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must be performed, and if located, waterdogs must be relocated prior to project implementation.

(C) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the region and habitat conditions. These methods will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(D) Forestry-related activities, including silvicultural practices, forest management work, and fire control tactics, that implement State-approved best management practices. In order for this exception to apply to forestry-related activities, these best management practices must achieve all of the following:

(1) Establish a streamside management zone alongside the margins of each waterway.

(2) Restrain visible sedimentation caused by the forestry-related activity from entering the waterway.

(3) Maintain native groundcover within the streamside management zone of the waterway, and promptly re-establish native groundcover if disturbed.

(4) Limit installation of vehicle or equipment crossings of the waterway to only where necessary for the forestry-related activity. Such crossings must:

(i) Have erosion and sedimentation control measures installed to divert surface runoff away and restrain visible sediment from entering the waterway;

(ii) Allow for movement of aquatic organisms within the waterway; and

(iii) Have native groundcover applied and maintained through completion of the forestry-related activity.

(5) Prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the waterway.

(6) Prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the waterway.

(7) Prohibit obstruction and impediment of the flow of water within the waterway, caused by direct deposition of debris or soil by the forestry-related activity.

(8) Maintain shade over the waterway similar to that observed prior to the forestry-related activity.

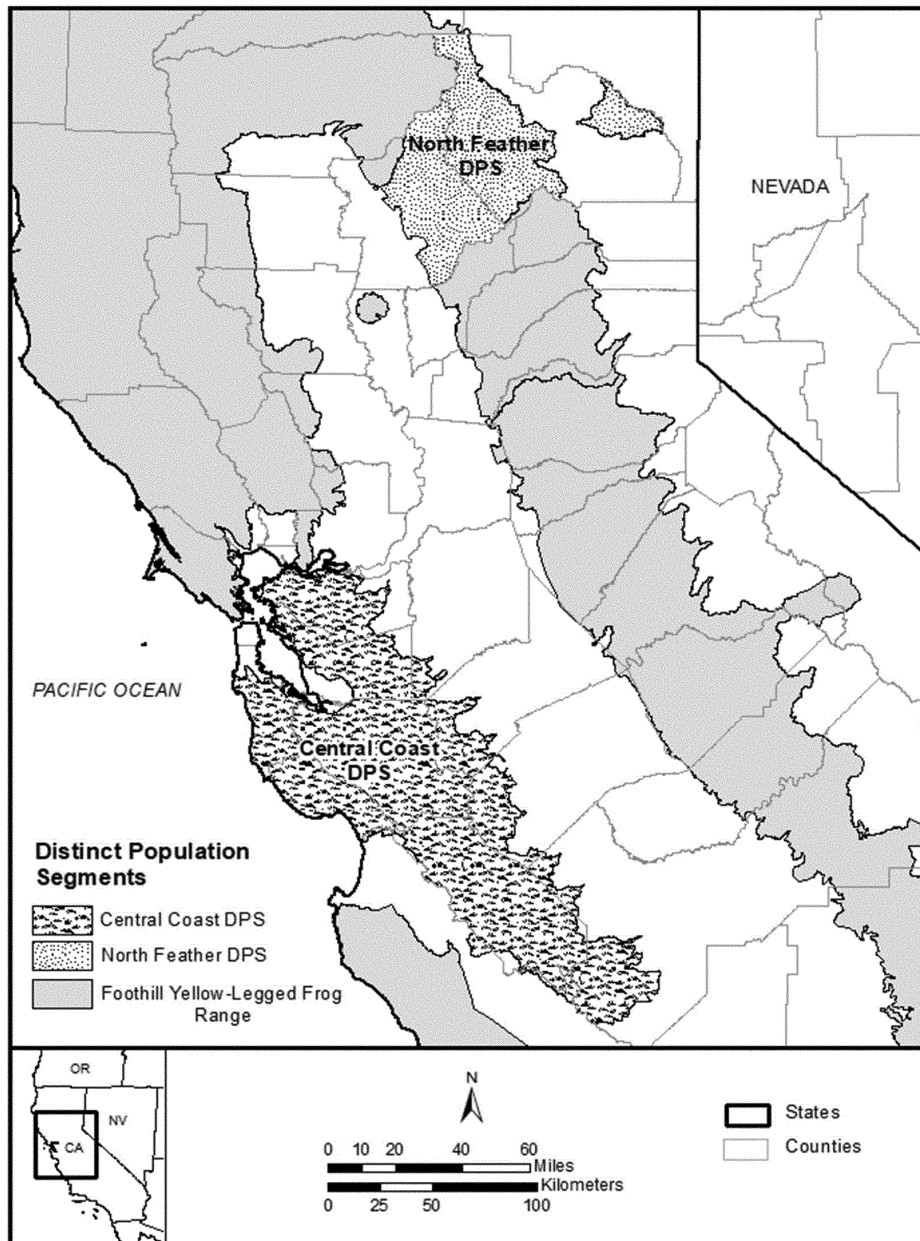
(9) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(g) Foothill yellow-legged frog (*Rana boylei*), Central Coast Distinct Population Segment (DPS) and North Feather DPS.

(1) *Location.* The Central Coast DPS and North Feather DPS of the foothill yellow-legged frog are shown on the map that follows:

Figure 1 to paragraph (g)



(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Central Coast DPS and North Feather DPS of the

foothill yellow-legged frog. Except as provided under paragraph (g)(3) of this

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section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* In regard to the Central Coast DPS and North Feather DPS of the foothill yellow-legged frog, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Forest management activities for the purposes of reducing the risk or severity of catastrophic wildfire, which include fuels reduction activities, non-emergency firebreak establishment or maintenance, and other non-emergency wildfire prevention and suppression activities that are in accordance with an established forest or fuels management plan that follow current State of California Forest Practice Rules, State fire codes, or local fire codes/ordinances as appropriate.

(B) Habitat restoration efforts that are specifically designed to provide for the conservation of the foothill yellow-legged frog. These efforts must be part of and carried out in accordance with finalized conservation plans or strategies specifically identified for the foothill yellow-legged frog and include measures that minimize impacts to the North Feather DPS or Central Coast DPS. Habitat restoration efforts for other species that may not share habitat requirements (*e.g.*, salmonid species) are not included in this exception.

(C) Efforts to remove and clean up trespass cannabis cultivation sites and related water diversion infrastructure and restore areas to precultivation conditions.

(D) Removal or eradication of non-native animal species including, but not limited to, American bullfrogs, smallmouth bass, and nonnative crayfish species occurring within stream reaches unoccupied by the foothill yellow-legged frog within the range of the Central Coast DPS or North Feather DPS. Actions involving habitat disturbance or the use of chemical treatments are not included.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

[40 FR 44415, Sept. 26, 1975, as amended at 45 FR 47363, July 14, 1980; 67 FR 40811, June 13, 2002; 69 FR 47248, Aug. 4, 2004; 71 FR 19293, Apr. 13, 2006; 77 FR 16375, Mar. 20, 2012; 80 FR 47428, Aug. 7, 2015; 86 FR 30728, June 9, 2021; 88 FR 59725, Aug. 29, 2023]

### § 17.44 Special rules—fishes.

(a) Lahontan cutthroat trout, Paiute cutthroat trout, and Arizona trout (*Salmo clarki henshawi*, *Salmo clarki seleniris*, and *Salmo apache*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

(2) Violation of State law will also be a violation of the Act.

(b) Bayou darter (*Etheostoma rubrum*). (1) All the provisions of §17.31 apply to this species, except that they may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(c) Slender chub (*Hybopsis cahnii*), spotfin chub (*Erimonax monachus*), slackwater darter (*Etheostoma boschungii*), and yellowfin madtom (*Noturus flavipinnis*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(d) Leopard darter (*Percina pantherina*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(e) Little Kern golden trout (*Salmo aguabonita whitei*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(f) Greenback cutthroat trout (*Salmo clarki stomias*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(g) Chihuahua chub (*Gila nigrescens*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

(h) Yaqui catfish (*Ictalurus pricei*) and beautiful shiner (*Notropis formosus*). (1) All provisions of §17.31 apply to these species, except that they may be taken for educational, scientific, or conservation purposes in accordance with applicable Arizona State laws and regulations.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

(i) Big Spring spinedace (*Lepidomeda mollispinis pratensis*). (1) All the provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to this species will also be a violation of the Endangered Species Act.

(j) Hutton tui chub (*Gila bicolor* subspecies). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival

of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (j) (1) through (3) of this section.

(k) Niangua darter, *Etheostoma nianguae*. (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (k) (1) through (3) of this section.

(l) Warner sucker (*Catostomus warnerensis*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species,

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zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) (1) through (3) of this section.

(m) Desert dace (*Eremichthys acros*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (m) (1) through (3) of this section.

(n) Railroad Valley springfish (*Crenichthys nevadae*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation

or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (n) (1) through (3) of this section.

(o) Sonora chub (*Gila ditaenia*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (o) (1) through (3) of this section.

(p) Kentucky arrow darter (*Etheostoma spilotum*).

(1) *Prohibitions*. Except as noted in paragraph (p)(2) of this section, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the Kentucky arrow darter.

(2) *Exceptions from prohibitions.*

(i) All of the activities listed in paragraph (p)(2)(ii) of this section must be conducted in a manner that:

(A) Maintains connectivity of suitable Kentucky arrow darter habitats, allowing for dispersal between streams;

(B) Minimizes instream disturbance by occurring during low-flow periods when possible; and

(C) Maximizes the amount of instream cover that is available for the species.

(ii) Incidental take of the Kentucky arrow darter will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently occupied by the Kentucky arrow darter:

(A) Channel reconfiguration or restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural, sinuous channel with low shear stress (force of water moving against the channel); low bank heights and reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. First- to third-order headwater streams reconstructed in this way would offer suitable habitats for the Kentucky arrow darter and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species for spawning, rearing, growth, feeding, migration, and other normal behaviors.

(B) Bank stabilization projects that use State-approved bioengineering methods (specified by the Kentucky Energy and Environment Cabinet and the Kentucky Transportation Cabinet) to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these methods,

stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects that remove migration barriers (e.g., collapsing, blocked, or perched culverts) or generally allow for improved upstream and downstream movements of Kentucky arrow darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species.

(D) Repair and maintenance of U.S. Forest Service concrete plank stream crossings on the Daniel Boone National Forest (DBNF) that allow for safe vehicle passage while maintaining instream habitats, reducing bank and stream bed erosion and instream sedimentation, and improving habitat conditions for the species. These concrete plank crossings have been an effective stream crossing structure on the DBNF and have been used for decades. Over time, the planks can be buried by sediment, undercut during storm events, or simply break down and decay. If these situations occur, the DBNF must make repairs or replace the affected plank.

(q) Trispot darter (*Etheostoma trisella*). (1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the trispot darter. Except as provided under paragraph (q)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to the trispot darter:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set

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forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit issued under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species.

(B) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known trispot darter spawning habitat, that take place between May 1 and December 31. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(C) Streambank stabilization projects that utilize bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the

stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (riparap) or the use of rock baskets or gabion structures.

(D) Silviculture practices and forest management activities that:

(1) Implement State best management practices, particularly for streamside management zones, for stream crossings, for forest roads, for erosion control, and to maintain stable channel morphology; or

(2) Remove logging debris or any other large material placed within natural or artificial wet weather conveyances or ephemeral, intermittent, or perennial stream channels; and

(3) When such activities involve trispot darter spawning habitat, are carried out between May 1 and December 31.

(E) Transportation projects that provide for fish passage at stream crossings that are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within spawning habitat, if such habitat is affected by the activity.

(F) Projects carried out in the species' range under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(1) Do not alter habitats known to be used by the trispot darter beyond the fish's tolerances; and

(2) Are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within its spawning habitat, if such habitat is affected by the activity.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(r) Pecos bluntnose shiner (*Notropis simus pecosensis*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (r) (1) through (3) of this section.

(s) Waccamaw Silverside (*Menidia extensa*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (s) (1) through (3) of this section.

(t) Little Colorado spinedace (*Lepidomeda vittata*). (1) No person shall take this species, except in accordance with applicable State Fish and Wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition,

and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (t) (1) through (3) of this section.

(u) Pygmy sculpin (*Cottus pygmaeus*). The City of Anniston Water Works and Sewer Board will continue to use Coldwater Spring as a municipal water supply. Pumpage may remove all spring flow in excess of 3 cubic feet per second (1,938,000 gallons per day).

(v) Gulf sturgeon (*Acipenser oxyrinchus desotoi*). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any of this species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v)(1) through (3) of this section.

(5) Taking of this species for purposes other than those described in paragraph (v)(1) of this section, including taking incidental to otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32.

(w) *What species are covered by this special rule?* Bull trout (*Salvelinus confluentus*), wherever found in the coterminous lower 48 States, except in the Jarbidge River Basin in Nevada and Idaho (see 50 CFR 17.44(x)).

(1) *What activities do we prohibit?* Except as noted in paragraph (w)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout in the coterminous United States as defined in paragraph (w) of this section.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable State, National Park Service, and Native American Tribal fish and conservation laws and regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) *What activities do we allow?* In the following instances you may take this species in accordance with applicable State, National Park Service, and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout in effect on November 1, 1999:

(i) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations;

(3) *How does this rule relate to State protective regulations?* Any violation of applicable State, National Park Service, or Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(x) Bull trout (*Salvelinus confluentus*), Jarbidge River population segment. (1) *Prohibitions.* Except as noted in paragraph (x)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the bull trout in the Jarbidge River population segment within the United States.

(2) *Exceptions.* No person may take this species, except in the following instances in accordance with applicable State fish and wildlife conservation laws and regulations relevant to protection of bull trout in effect on April 8, 1999.

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that any bull trout caught are immediately returned to the stream.

(iii) The exceptions in paragraphs (x)(2) (i) and (ii) of this section will be in effect until April 9, 2001. At that time, all take prohibitions of the Act will be reinstated for the Jarbidge River population segment unless exceptions to take prohibitions are otherwise provided through a subsequent special rule.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(4) No person may possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such species taken in violation of this section or in violation of applicable State fish and conservation laws and regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (x)(2) through (4) of this section.

(y) Beluga sturgeon (*Huso huso*)

(1) *How are various terms defined in this special rule?* In addition to the definitions specified in §10.12 of subchapter B of this chapter, we define certain terms that specifically apply to beluga sturgeon trade and this special rule as follows:

*Aquacultured beluga sturgeon products.* Eggs, larvae, fingerlings, or other products derived from *Huso huso* captive-bred or grown in captivity for commercial purposes starting at least at the F1 generation in captivity (*i.e.*, captive-bred for at least one generation).

*Beluga caviar.* Processed unfertilized eggs from female *Huso huso* intended for human consumption, including products containing such eggs (e.g., cosmetics).

*Beluga meat.* Excised muscle tissue of *Huso huso* destined for human consumption.

*Black Sea.* The contiguous waters of the Black Sea and the Sea of Azov.

*CITES.* The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

*Export.* The transport of a beluga sturgeon specimen out of its country of origin.

*Hatchery-origin beluga sturgeon.* Specimens of *Huso huso* captive-bred solely in the littoral states, primarily for re-introduction and stock enhancement purposes. Such specimens can occur in the natural marine environment of the littoral states.

*Live or living beluga sturgeon.* Any living specimen of *Huso huso*, including viable unfertilized or fertilized eggs, larvae, fingerlings, juveniles, and adults.

*Littoral states.* Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine.

*Re-export.* Export of beluga sturgeon specimens that were previously imported.

*Wild beluga sturgeon.* Specimens of *Huso huso* born and reared in the natural marine environment within the current or former geographic range of the species.

(2) *What activities involving beluga sturgeon are affected by this rule?* (i) *International trade in beluga sturgeon.* Except as provided in paragraphs (y)(3) and (y)(5) of this section, all prohibitions and provisions of §§17.31(a) and 17.32 apply to the international trade in beluga sturgeon, including its parts and derivatives. Live beluga sturgeon remain subject to all the prohibitions and provisions of §§17.31(a) and 17.32.

(ii) *Trade without CITES documents.* Except as provided in paragraph (y)(3) of this section, you may not import, export, or re-export, or present for export or re-export, beluga sturgeon or beluga sturgeon products without valid CITES permits and other permits and

licenses issued under parts 13, 17, and 23 of this chapter.

(iii) *Commercial activity.* Except as provided in paragraphs (y)(3) and (5) of this section and §17.32, you may not sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any beluga sturgeon or beluga sturgeon products.

(iv) 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 (y)(2)(i) and (iii) of this section.

(3) *What activities are exempted from threatened species permits by this rule?* (i) *Import, export or re-export, and interstate and foreign commerce involving certain caviar and meat obtained from beluga sturgeon.* You may import, export or re-export, or conduct interstate or foreign commerce in beluga sturgeon caviar and meat without a threatened species permit issued according to §17.32 only if the caviar and meat are derived from wild or hatchery-origin beluga sturgeon that were caught and processed in the littoral states, or the caviar and meat are exempt from permits because they originate from qualifying aquaculture facilities outside of littoral states (see paragraph (y)(5) of this section). Also, the provisions in parts 13, 14, and 23 of this chapter and the following requirements must be met:

(A) Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(B) The shipment must be accompanied by a valid CITES permit or certificate upon import, export, or re-export.

(C) For each shipment covered by this exemption, the country of origin and each country of re-export, and the country of import involved in the trade of a particular shipment, must have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country from which Parties

should not accept permits for beluga sturgeon or all CITES-listed species in general.

(D) The littoral state from which the beluga sturgeon caviar or meat originated has complied with all of the requirements shown in paragraph (y)(4) of this section, and none of the exporting, importing, or re-exporting countries involved in the commercial activity has been subject to an administrative trade restriction or suspension as outlined in paragraphs (y)(6) and (7) of this section.

(E) Any relevant aquaculture facility located outside of a littoral state has complied with all of the requirements shown in paragraph (y)(5) of this section.

(ii) *Personal and household effects.* You may import, export, or re-export, or conduct interstate or foreign commerce in beluga sturgeon specimens that qualify as personal or household effects under 50 CFR part 23 without a threatened species permit otherwise required under §17.32. Trade suspensions or trade restrictions administratively imposed by the Service under paragraphs (y)(6) or (y)(7) of this section may also apply to personal and household effects of beluga sturgeon caviar.

(4) *What must beluga sturgeon littoral states do to be authorized under the special rule to export to the United States?* The following requirements apply to the littoral states wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under §17.32. These requirements apply to all shipments of beluga caviar and beluga meat that originate in the littoral states, even if the shipments are re-exported to the United States via an intermediary country. (See paragraph (y)(7) of this section for more information on the Service's biennial reviews under the special rule.)

(i) *Basin-wide beluga sturgeon management plans.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under §17.32 must submit to the Service's Division of Scientific Authority a copy of a cooperative management plan for its respective basin (*i.e.*, Black Sea or Cas-

pian Sea) that addresses *Huso huso* conservation. Each of these two basin-wide management plans must be agreed to by all of the littoral states (not just exporting nations) in the Black Sea or the Caspian Sea, as appropriate. Upon receipt, the Division of Scientific Authority will review these basin-wide management plans within 90 days for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit basin-wide management plans by the specified deadline, or if we are unable to confirm that all littoral states are signatories to those plans, we will immediately suspend trade with all littoral states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist. Submission of documents in English may help expedite the Service's review. These cooperative management plans must contain the following elements:

(A) A clear statement of the recovery and management objectives of the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

(B) A statement of standard regulations and habitat improvement strategies (e.g., size limits, target harvest rates, quotas, seasons, fishing gear, effort caps, fish passage improvement, water quality controls) to be utilized by the nations involved;

(C) A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

(D) A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

(E) Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards

mentioned in paragraph (y)(4)(i)(B) of this section; and

(F) A complete schedule by which nations must take particular actions to be in compliance with the plan.

(ii) *National regulations.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States under this special rule must provide the Service's Division of Scientific Authority with copies of national legislation and regulations that implement the basin-wide cooperative management plan described in paragraph (y)(4)(i) of this section, including regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. Upon receipt, the Division of Scientific Authority will review these national laws and regulations within 90 days for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit copies of national laws and regulations by the specified deadline, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect. Submission of documents in English may help expedite the Service's review.

(iii) *CITES compliance.* Trade in beluga sturgeon specimens must comply with CITES requirements in 50 CFR part 23. Except for specimens that qualify as personal or household effects under 50 CFR part 23, all beluga sturgeon specimens, including those exempted from threatened species permits under this special rule, must be accompanied by valid CITES documents upon import, export, or re-export. Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(iv) *Initial reporting period.* Until September 6, 2005, no threatened species permits will be required for the import, export, re-export, or interstate or foreign commerce of beluga sturgeon caviar

and meat that originated in the littoral states, in order to provide the littoral states time to submit the required documentation. After this 6-month period, the exemption from threatened species permits will continue only while the Service reviews littoral state compliance with paragraphs (y)(4)(i) through (iv) of this section. If this review demonstrates that the provisions of this special rule are not met, the Service will announce and institute trade restrictions or suspensions in beluga sturgeon caviar or meat with one or more littoral states as per paragraph (y)(7) of this section.

(v) *Biennial reports.* Littoral state governments wishing to export specimens of beluga sturgeon caviar or meat to the United States under this special rule must provide to the Service's Division of Scientific Authority reports containing the most recent information available on the status of the species, following the information guidelines specified below. The Service must receive the first report no later than December 1, 2005, and every 2 years thereafter on the anniversary of that date. Starting in December 2005, and thereafter on a biennial basis, the Service will review the national reports within 90 days of receiving them and any other pertinent information on wild beluga sturgeon conservation. If any elements of the biennial reports are missing or unclear, the Service will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit biennial reports by the specified deadline, we will immediately suspend trade with the given littoral states (*see* paragraph (y)(7) of this section for details on how such a suspension would be instituted and announced). Submission of documents in English may help expedite the Service's review. We propose to use these reviews to determine whether littoral state management programs are leading to recovery of wild beluga sturgeon stocks. For each littoral state, the following information must be provided in the biennial reports:

(A) A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective littoral

state, with any changes from the previous report highlighted;

(B) A description of any revisions to the cooperative management program mentioned in paragraph (y)(4)(i) of this section, including any new models, assumptions, or equations used to set harvest and export quotas;

(C) New information obtained in the last 2 years on beluga sturgeon distribution, stock size, models used for quota-setting, spawning activity, habitat use, hatchery programs and results, or other relevant subjects;

(D) A summary of law enforcement activities undertaken in the last 2 years, and a description of any changes in programs to prevent poaching and smuggling, including indicators of their effectiveness;

(E) A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective littoral state, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (e.g., revenues allocated to hatchery and restocking programs or research programs); and

(F) Export data for the previous two calendar years.

(5) *Can aquacultured beluga sturgeon products be exempt from threatened species permits if the products originate outside the littoral states?* We will consider exemptions from threatened species permits for beluga caviar and meat obtained from aquaculture facilities outside the littoral states. These exemptions will be for individual facilities, and would allow aquacultured beluga caviar and meat originating from these facilities to be imported, exported, re-exported, or traded in interstate and foreign commerce without threatened species permits issued under Section 10 of the Act. Aquaculture facilities within the United States could also be exempt from prohibitions against take for purposes of harvesting caviar or meat (*i.e.*, killing of beluga sturgeon), or for conducting activities involving research to enhance the survival or propagation of the species. Facilities outside the littoral states wishing to obtain such exemptions must submit a written request to the Division of Management Authority at the address provided at 50 CFR 2.1(b) and provide in-

formation that shows, at a minimum, all of the following:

(i) The facility in question is using best management practices to prevent the escape of beluga sturgeon and disease pathogens into local ecosystems, as certified by the relevant regulatory agency. In the case of the United States, the relevant regulatory authority will be the state agency with jurisdiction over aquaculture. In the case of foreign aquaculture facilities outside the littoral states, the relevant regulatory agency will be the designated CITES Management Authority with jurisdiction over sturgeon. Best management practices that affect the applicant's facility must be part of the application and available for Service review.

(ii) The facility in question has entered into a formal agreement with one or more littoral states to study, protect, or otherwise enhance the survival of wild beluga sturgeon. Copies of such agreements must be provided.

(iii) The facility in question does not rely on wild beluga sturgeon for broodstock. Proof of broodstock origin, including relevant CITES permits that accompanied broodstock specimens upon import into the United States, must be part of the application.

(iv) Exemptions granted under paragraph (y)(5) of this section shall not apply to trade (import, export, re-export, or interstate and foreign commerce) in live beluga sturgeon, and may be revoked at any time if the Service determines that any of the criteria shown in paragraphs (y)(5)(i) through (iii) of this section are not met by the facility. Applicants will be required to submit biennial reports on their compliance with paragraphs (y)(5)(i) through (iii) of this section, starting on the second anniversary of any programmatic exemption granted to the applicants. These biennial reports must show that exempted facilities have actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation. Any beluga caviar originating from aquaculture facilities outside the littoral states must comply with CITES caviar-labeling requirements, even in interstate commerce

within the United States. We will publish an information notice if the Service grants a programmatic exemption to any aquaculture facility outside the littoral states, and announce such actions through our website and posting notices at our wildlife ports of entry. We will follow the provisions of paragraph (y)(7) of this section to announce restrictions or revocations of such programmatic exemptions, based on our review of facilities' biennial reports.

(6) *How will the Service inform the public of CITES restrictions on trade in beluga sturgeon?* We will issue a public bulletin that identifies a restriction or suspension of trade in specimens of beluga sturgeon and post it on our websites (<http://le.fws.gov> and <http://international.fws.gov>) and at our staffed wildlife ports of entry if any criterion in paragraphs (y)(6)(i) or (ii) of this section is met:

(i) The country is lacking a designated Management Authority or Scientific Authority for the issuance of valid CITES documents or their equivalent for beluga sturgeon.

(ii) The country is identified in any action adopted by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification to the Parties issued by the CITES Secretariat as a country from which Parties are asked not to accept shipments of specimens of beluga sturgeon or all CITES-listed species.

NOTE TO PARAGRAPH (y)(6): A listing of all countries that have not designated either a Management Authority or Scientific Authority, or that have been identified as countries from which Parties should not accept permits, is available by writing to the Division of Management Authority at the address provided at 50 CFR 2.1(b).

(7) *How will the Service set trade restrictions or prohibitions under the special rule?* The Service's Division of Scientific Authority will conduct a biennial review of beluga sturgeon conservation based on information in the cooperative basin-wide management plans, national regulations and laws, and biennial reports (submitted as per paragraph (y)(4) of this section, and, for aquaculture facilities, as per paragraph (y)(5)(iv) of this section). We will combine that review with a review of other relevant information (e.g., sci-

entific literature, law enforcement data, government-to-government consultations) to determine whether littoral state management programs and aquaculture operations are effectively achieving conservation benefits for beluga sturgeon. Based on this information, or the failure to obtain it, the Service may restrict or prohibit trade from a littoral state, a re-exporting intermediary country, or an entire basin (*i.e.*, the Caspian Sea or Black Sea) or a specific aquaculture facility outside the littoral states if we determine that the conservation or management status of beluga sturgeon has been adversely affected and the continued recovery of beluga sturgeon may be compromised. The decision to restrict or prohibit trade in beluga sturgeon products on a national, basin, or region-wide scale will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a national, basin, or region-wide scale.

(i) Trade restrictions or suspensions will result basin-wide, for specific littoral states, or for non-littoral state aquaculture facilities under one or more of the following scenarios:

(A) Failure to submit any of the reports, legislation, and management plans described in paragraph (y)(4) of this section, or failure to respond to requests for additional information;

(B) A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

(C) A change in littoral state laws or regulations that compromises beluga sturgeon recovery or survival in the wild;

(D) Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

(E) A decline in wild *Huso huso* populations, as documented in national reports outlined above or the scientific literature, that goes unaddressed by regional or national management programs;

(F) Failure to address poaching or smuggling in beluga sturgeon, their parts, or products in the littoral states or re-exporting countries, as documented in national reports described

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above or other law enforcement sources;

(G) Failure of the littoral states to address the loss of beluga sturgeon habitat quality or quantity;

(H) Failure of the littoral states or re-exporting countries to follow the caviar-labeling recommendations of the CITES Parties (currently embodied in Resolution Conf. 12.7);

(I) Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries; or

(J) An aquaculture facility outside the littoral states has been issued a programmatic exemption from threatened species permits under paragraph (y)(5) of this section, but is not abiding by the provisions of paragraphs (y)(5)(i) through (iii) of this section, or, based on the biennial reports required under paragraph (y)(5) of this section, has not actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation.

(K) Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

(ii) We will publish an information notice in the FEDERAL REGISTER, as well as on our Web site and at our wildlife ports of entry, if the Service's Division of Scientific Authority administratively suspends or restricts trade in beluga sturgeon products after determining that wild beluga sturgeon stock status worsens or threats to the species increase. This information notice will provide:

(A) The problem(s) identified in the biennial reports or other salient documents.

(B) The scope of the problem and the number of nations involved.

(C) The scope of the trade restriction or suspension we are imposing, including products covered, duration of the restriction or suspension, and criteria for lifting it and reinstating any exemption to threatened species permits.

(D) How the public can provide input, make comments, and recommend remedial action to withdraw the trade measures imposed.

(z) Gila trout (*Oncorhynchus gilae*). (1) Except as noted in paragraph (z)(2) of this section, all prohibitions of 50 CFR

17.31 and exemptions of 50 CFR 17.32 apply to the Gila trout.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable fish and conservation laws and regulations promulgated by the States of New Mexico or Arizona.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense listed in paragraph (z)(1)(i) of this section.

(2) In the following instances you may take Gila trout in accordance with applicable State fish and wildlife conservation laws and regulations to protect this species in the States of New Mexico or Arizona:

(i) Fishing activities authorized under New Mexico or Arizona laws and regulations; and

(ii) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act.

(3) The four relict populations of Gila trout (Main Diamond Creek, South Diamond Creek, Spruce Creek, and Whiskey Creek) will not be opened to fishing.

(4) Any changes to State recreational fishing regulations will be made by the States in collaboration with the Service.

(5) Any violation of State applicable fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act of 1973, as amended.

(aa) Shovelnose sturgeon (*Scaphirhynchus platorynchus*). (1) Within the geographic areas set forth in paragraph (aa)(2) of this section, except as expressly noted in this paragraph, take of any shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe associated with or related to a commercial fishing activity is prohibited. Capture of shovelnose sturgeon or shovelnose-pallid sturgeon hybrids in commercial fishing gear is not prohibited if it is accidental or incidental to otherwise legal commercial fishing

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activities, such as commercial fishing targeting nonsturgeon species, provided the animal is released immediately upon discovery, with all roe intact, at the point of capture.

(2) The shovelnose and shovelnose-pallid sturgeon hybrid populations covered by this special rule occur in portions of Arkansas, Iowa, Illinois, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Montana, North Dakota, Nebraska, South Dakota, and Tennessee. The specific areas are:

(i) The portion of the Missouri River in Iowa, Kansas, Missouri, Montana, North Dakota, Nebraska, and South Dakota;

(ii) The portion of the Mississippi River downstream from the Melvin

Price Locks and Dam (Lock and Dam 26) in Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, and Tennessee;

(iii) The Platte River downstream of the Elkhorn River confluence in Nebraska;

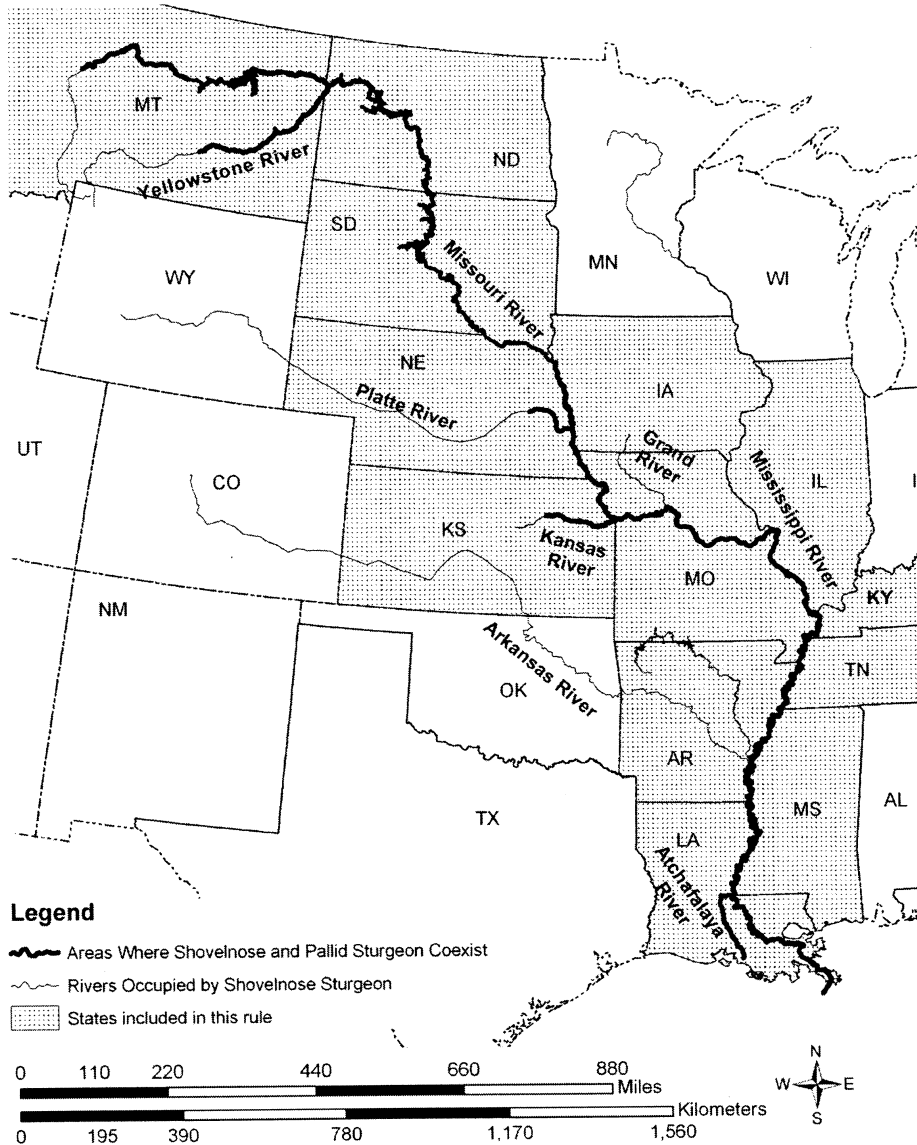
(iv) The portion of the Kansas River downstream from the Bowersock Dam in Kansas;

(v) The Yellowstone River downstream of the Bighorn River confluence in North Dakota and Montana; and

(vi) The Atchafalaya River in Louisiana.

(3) A map showing the area covered by this special rule (the area of shared habitat between shovelnose and pallid sturgeon) follows:

Figure 1: Areas Where Pallid and Shovelnose Sturgeon Commonly Coexist in the Missouri and Mississippi River Basins



(bb) [Reserved]

(cc) June sucker (*Chasmistes liorus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the June sucker. Ex-

cept as provided under paragraph (cc)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United

States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by an existing permit under §17.32.

(ii) Conduct activities as authorized by a permit issued prior to February 3, 2021 under §17.22 for the duration of the permit.

(iii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iv) Take, as set forth at §17.31(b).

(v) Take June suckers while carrying out the following legally conducted activities in accordance with this paragraph (cc)(2)(iv):

(A) *Definitions.* For the purposes of this paragraph (cc)(2)(iv):

(1) *Qualified biologist* means a full-time fish biologist or aquatic resources manager employed by Utah Division of Wildlife Resources, a Department of the Interior agency, or fish biologist or aquatic resource manager employed by a private consulting firm that has been approved by the Service in writing (by letter or email), the designated recovery program (e.g., June Sucker Recovery Implementation Program), or the Utah Division of Wildlife Resources.

(2) *Reasonable care* means limiting the impacts to June sucker individuals and populations by complying with all applicable Federal, State, and Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; procuring and implementing technical assistance from a qualified biologist on projects

regarding all methods prior to the implementation of those methods; ensuring the number of individuals removed or sampled minimally impacts the existing wild population; ensuring no disease or parasites are introduced into the existing June sucker population; and preserving the genetic diversity of wild populations.

(B) *Allowable forms of take of June suckers.* Take of June suckers as a result of the following legally conducted activities is allowed, provided that the activity is approved by the Service in writing (by letter or email), in coordination with any existing designated recovery program, for the purpose of the conservation or recovery of the June sucker, and that reasonable care is practiced to minimize the impact of such activities.

(1) *Nonnative fish removal.* Take of June suckers as a result of any action with the primary or secondary purpose of removing from Utah Lake and its tributaries nonnative fish that compete with, predate upon, or degrade the habitat of the June sucker is allowed. Allowable methods of removal may include, but are not limited to, mechanical removal, chemical treatments, or biological controls. Whenever possible, June suckers that are caught alive as part of nonnative fish removal should be returned to their source as quickly as possible.

(2) *Habitat restoration and improvement of instream flows.* Take of June suckers as a result of any action with the primary or secondary purpose of improving habitat conditions in Utah Lake and its tributaries or improving water delivery and available in-stream flows in spawning tributaries is allowed.

(3) *Monitoring.* Take of June suckers as a result of any method that is used to detect June suckers in the wild to better understand population numbers, trends, or response to stressors, and that is not intended to be destructive but that may unintentionally cause harm or death, is allowed.

(4) *Recreational fisheries management.* Take of June suckers as a result of any activity by the State, or its designated agent, that is necessary to manage or monitor recreational fisheries in Utah Lake and its tributaries is allowed, provided the management practices do

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not contradict June sucker recovery objectives and that the activities are not intended to cause harm or death to June suckers.

(5) *Research.* Take of June suckers as a result of any activity undertaken for the purposes of increasing scientific understanding of June sucker biology, ecology, or recovery needs under the auspices of the designated recovery program, a recognized academic institution, or a qualified scientific contractor is allowed. Incidental and direct take resulting from such approved research to benefit the June sucker is allowed.

(6) *Education and outreach.* Take of June suckers as a result of any activity undertaken under the auspices of the designated recovery program for the purposes of increasing public awareness of June sucker biology, ecology, or recovery needs and June sucker recovery benefits for Utah Lake, its tributaries, and the surrounding communities is allowed. Incidental and direct take resulting from such educational or outreach efforts to benefit the June sucker is allowed.

(7) *Refuges and stocking.* Take of June suckers as a result of activities undertaken for the long-term maintenance of June suckers at Service-approved facilities outside of Utah Lake and its tributaries or for the production of June suckers for stocking in Utah Lake is allowed.

(vi) Possess and engage in other acts with unlawfully taken endangered wildlife, as set forth at § 17.21(d)(2).

(dd) Humpback chub (*Gila cypha*). (1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to humpback chub. Except as provided under paragraphs (dd)(2) and (3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, unless excepted as outlined in paragraphs (dd)(2)(i) through (v) of this section.

(iii) Possession and other acts with unlawfully taken specimens, as set

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forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *General exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by an existing permit under § 17.32.

(ii) Conduct activities as authorized by a permit issued prior to November 17, 2021 under § 17.22 for the duration of the permit.

(iii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iv) Take, as set forth at § 17.31(b).

(v) Possess and engage in other acts with unlawfully taken specimens, as set forth at § 17.21(d)(2) for endangered wildlife.

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take humpback chub while carrying out the following legally conducted activities in accordance with this paragraph (dd)(3):

(i) *Definitions.* For the purposes of this paragraph (dd)(3):

(A) *Qualified person* means a full-time fish biologist or aquatic resources manager employed by any of the Colorado River Basin State wildlife agencies, Native American Tribes, the Department of the Interior bureaus and offices located within the Colorado River basin, or fish biologist or aquatic resource manager employed by a private consulting firm, provided the firm has received a scientific collecting permit from the appropriate State agency.

(B) *The six core populations* means the following populations of the humpback chub: Desolation and Gray Canyons (Green River, Utah), Dinosaur National Monument (Green and Yampa Rivers, Colorado and Utah), Black Rocks (Colorado River, Colorado), Westwater Canyon (Colorado River, Utah), Cataract Canyon (Colorado River, Utah), and Grand Canyon (Colorado and Little Colorado Rivers, Arizona).

(C) *Reasonable care* means limiting the impacts to humpback chub individuals and populations by complying with all applicable Federal, State, and

Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; and protecting existing extant wild populations of humpback chub by ensuring minimal impacts from the removal or sampling of individuals, preventing the introduction of disease or parasites, and preserving genetic diversity.

(ii) *Creation and maintenance of refuge populations.* A qualified person may take humpback chub in order to create or maintain a captive or wild refuge population that protects the long-term genetic diversity of humpback chub, provided that reasonable care is practiced to minimize the effects of that taking.

(A) Methods of allowable take under this paragraph (dd)(3)(ii) include, but are not limited to:

(1) Removing wild individuals via electrofishing, nets, and seines from the six core populations;

(2) Managing captive populations, including handling, rearing, and spawning of captive fish;

(3) Sacrificing individuals for hatchery management, such as parasite and disease certification; and

(4) Eliminating wild refuge populations if conditions are deemed inadequate for conservation of the species or are deemed detrimental to the six core populations.

(B) Before the establishment of any captive or wild refuge population, the Service must approve, in writing, the designation of the refuge population, and any removal of humpback chub individuals from wild populations. Subsequent to a written approval for the establishment of a refuge population, take associated with the maintenance of the refuge population would not be prohibited under the Act.

(iii) *Translocation and stocking of humpback chub.* A qualified person may take humpback chub in order to introduce individuals into areas outside of the six core populations. Humpback chub individuals may be introduced to new areas by translocating wild individuals to additional locations or by stocking individuals from captivity. All translocations of wild individuals

and stocking of individuals from captivity must involve reasonable care to minimize the effects of that taking. Translocations of wild individuals and stocking of individuals from captivity must be undertaken to expand the range of humpback chub or to supplement existing populations.

(A) Methods of allowable take under this paragraph (dd)(3)(iii) include, but are not limited to:

(1) Removing wild individuals via electrofishing, nets, and seines;

(2) Managing captive populations, including handling, rearing, and spawning;

(3) Sacrificing individuals for hatchery management, such as parasite and disease certification; and

(4) Removing or eliminating all humpback chub from failed introduction areas via mechanical or chemical methods.

(B) The Service must approve, in advance and in writing:

(1) Any translocation program; and

(2) Any stocking of humpback chub into any of the six core populations.

(iv) *Nonnative fish removal.* A qualified person may take humpback chub in order to perform nonnative fish removal for conservation purposes if reasonable care is practiced to minimize effects to humpback chub. For this paragraph (dd)(3)(iv), nonnative fish removal for conservation purposes means any action with the primary or secondary purpose of mechanically removing nonnative fishes that compete with, predate, or degrade the habitat of humpback chub.

(A) Methods of allowable take under this paragraph (dd)(3)(iv) include, but are not limited to:

(1) Mechanical removal of nonnative fish within occupied humpback chub habitats, including, but not limited to, electrofishing, seining, netting, and angling; and

(2) The use of other ecosystem modifications, such as altered flow regimes or habitat modifications.

(B) The Service and all applicable landowners must approve, in advance and in writing, any nonnative fish removal activities under this paragraph (dd)(3)(iv).

(v) *Catch-and-release angling of humpback chub.* States and Tribes may enact

Federal, State, and Tribal fishing regulations that address catch-and-release angling.

(A) In the six core populations, angling activities may include nontargeted (incidental) catch and release of humpback chub when targeting other species in accordance with Federal, State, and Tribal fishing regulations.

(B) In areas outside of the six core populations, angling activities may include targeted catch and release of humpback chub in accordance with Federal, State, and Tribal fishing regulations.

(C) Angling activities may cause take via:

(1) Handling of humpback chub caught via angling;

(2) Injury to humpback chub caught via angling; and

(3) Unintentional death to humpback chub caught via angling.

(D) Reasonable consideration by the Federal, State, and Tribal agencies for incidental catch and release of humpback chub in the six core populations include:

(1) Regulating tactics to minimize potential injury and death to humpback chub if caught;

(2) Communicating the potential for catching humpback chub in these areas; and

(3) Promoting the importance of the six core populations.

(E) Reasonable consideration for establishing new recreational angling locations for humpback chub include, but are not limited to:

(1) Evaluating each water body's ability to support humpback chub and sustain angling;

(2) Ensuring the recreational fishing population does not detrimentally impact the six core populations of humpback chub through such factors as disease or genetic drift; and

(3) Monitoring to ensure there are no detrimental effects to the humpback chub population from angling.

(F) The Service and all applicable State, Federal, and Tribal landowners must approve, in advance and in writing, any new recreational fishery for humpback chub.

(vi) *Chemical treatments to support humpback chub.* A qualified person may take humpback chub by performing a

chemical treatment in accordance with Federal, State, and Tribal regulations that would support the conservation and recovery of humpback chub, provided that reasonable care is practiced to minimize the effects of such taking.

(A) For treatments upstream of occupied humpback chub habitat:

(1) Service approval is not required; and

(2) Care should be taken to limit the potential for fish toxicants and piscicides traveling beyond treatment boundaries and impacting humpback chub.

(B) For treatments in known or potentially occupied humpback chub habitat:

(1) The Service must approve, in advance and in writing, any treatment;

(2) Care should be taken to perform robust salvage efforts to remove any humpback chub that may occur in the treatment area before the treatment is conducted; and

(C) Whenever possible, humpback chub that are salvaged should be moved to a location that supports recovery of the species.

(vii) *Reporting and disposal requirements.* Any mortality of humpback chub associated with the actions authorized under the regulations in this paragraph (dd)(3) must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports in the upper basin (upstream of Glen Canyon Dam) must be made to the Service's Mountain-Prairie Region Law Enforcement Office, or the Service's Upper Colorado River Endangered Fish Recovery Office. Reports in the lower basin (downstream Glen Canyon Dam) must be made to the Service's Southwest Region Law Enforcement Office, or the Service's Arizona Fish and Wildlife Conservation Office. Contact information for the Service's regional offices is set forth at 50 CFR 2.2, and the phone numbers of Law Enforcement offices are at 50 CFR 10.22. The Service may allow additional reasonable time for reporting if access to these offices is limited due to office closure or if the activity was conducted in an area without sufficient communication access.

(ee) Sickle darter (*Percina williamsi*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the sickle darter. Except as provided under paragraphs (ee)(2) and (3) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *General exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take sickle darter while carrying out the following legally conducted activities in accordance with this paragraph (ee)(3):

(i) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) and that take place between April 1 and January 31. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil,

rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(ii) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species and that take place between April 1 and January 31. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the region and habitat conditions. These methods will not include the sole use of quarried rock (riprap) or the use of rock baskets or gabion structures.

(iii) Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of sickle darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species and that take place between April 1 and January 31.

(iv) Transportation projects that provide for fish passage at stream crossings and that take place between April 1 and January 31.

(v) Silvicultural practices and forest management activities that implement State-approved best management practices. In order for this exception to apply to forestry-related activities, these best management practices must achieve all of the following:

(A) Establish a streamside management zone alongside the margins of each waterway.

(B) Restrain visible sedimentation caused by the forestry-related activity from entering the waterway.

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(C) Maintain native groundcover within the streamside management zone of the waterway, and promptly re-establish native groundcover if disturbed.

(D) Limit installation of vehicle or equipment crossings of the waterway to only where necessary for the forestry-related activity. Such crossings must:

(1) Have erosion and sedimentation control measures installed to divert surface runoff away and restrain visible sediment from entering the waterway;

(2) Allow for movement of aquatic organisms within the waterway; and

(3) Have native groundcover applied and maintained through completion of the forestry-related activity.

(E) Prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the waterway.

(F) Prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the waterway.

(G) Prohibit obstruction and impediment of the flow of water within the waterway that is caused by direct deposition of debris or soil by the forestry-related activity.

(H) Maintain shade over the waterway similar to that observed prior to the forestry-related activity.

(I) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

(ff) Upper Coosa River DPS of the frecklebelly madtom (*Noturus munitus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Upper Coosa River DPS. Except as provided under paragraph (ff)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this DPS:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set

forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this DPS, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration projects that create natural, physically stable, ecologically functioning streams. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with geomorphically stable stream channels that maintain the appropriate lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation and include stable riffle-run-pool complexes that consist of silt-free gravel, coarse sand, cobble, boulders, woody structure, and river weed (*Podostemum* spp.).

(B) Streambank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with natively vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the DPS. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Projects carried out in the DPS's range under the Working Lands for

Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, or similar projects conducted by the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program or the Environmental Protection Agency's 319 Grant Program, that are implemented with a primary objective of improving environmental conditions to support the native, aquatic biodiversity of flowing water habitats.

(D) Silviculture practices and forest management activities that implement State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

[40 FR 44415, Sept. 26, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §17.44, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

EFFECTIVE DATE NOTE: At 88 FR 66295, Sept. 27, 2023, §17.44 was amended by adding paragraphs (gg) and (hh), effective Oct. 27, 2023. For the convenience of the user, the added text is set forth as follows:

**§ 17.44 Special rules—fishes.**

\* \* \* \* \*

(gg) [Reserved]

(hh) Relict darter (*Etheostoma chienense*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to relict darter. Except as provided under paragraph (hh)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (4) for endangered wildlife.

(iii) Take as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration or improvement projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known relict darter spawning habitat, that take place between June 30 and March 1. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(B) Streambank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species and, if the projects involve known relict darter spawning habitat, that take place between June 30 and March 1. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of relict darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species, if completed between June 30 and March 1.

(D) Transportation projects that follow best management practices that eliminate sedimentation, do not block stream flow, do not channelize streams, and provide for fish passage under a wide range of hydrologic conditions at stream crossings and that are done between June 30 and March 1.

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(E) Projects carried out in the species' range by the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(1) Do not alter habitats known to be used by the relict darter beyond the fish's tolerances; and

(2) Are performed between June 30 and March 1 to avoid the time period when the relict darter will be found within its spawning habitat, if such habitat is affected by the activity.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

### § 17.45 Special rules—snails and clams.

(a) Atlantic pigtoe (*Fusconaia masoni*)—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Atlantic pigtoe. Except as provided under paragraphs (a)(2) and (3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *General exceptions from prohibitions*. In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken Atlantic pigtoe, as set forth at § 17.21(d)(2) through (4) for endangered wildlife.

(3) *Exceptions from prohibitions for specific types of incidental take*. The following entities and activities that cause take that is incidental to an oth-

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erwise lawful activity are not in violation of the prohibitions:

(i) Species restoration efforts by State wildlife agencies, including collection of broodstock, tissue collection for genetic analysis, captive propagation, and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species, and follow-up monitoring.

(ii) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Streams reconstructed in this way would offer suitable habitats for the Atlantic pigtoe and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species and its host fish for spawning, rearing, growth, feeding, migration, and other normal behaviors. Prior to restoration action, surveys to determine presence of Atlantic pigtoe must be performed, and if located, mussels must be relocated prior to project implementation.

(iii) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush

layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native vegetation includes woody species appropriate for the region and habitat conditions. These methods do not include the sole use of quarried rock (riparap) or the use of rock baskets or gabion structures.

(iv) Forestry-related activities, including silvicultural practices, forest management work, and fire control tactics, that implement State-approved best management practices. In order for this exception to apply to forestry-related activities, these best management practices must achieve all of the following:

(A) Establish a streamside management zone alongside the margins of each waterway.

(B) Restrain visible sedimentation caused by the forestry-related activity from entering the waterway.

(C) Maintain native groundcover within the streamside management zone of the waterway, and promptly re-establish native groundcover if disturbed.

(D) Limit installation of vehicle or equipment crossings of the waterway to only where necessary for the forestry-related activity. Such crossings shall:

(1) Have erosion and sedimentation control measures installed to divert surface runoff away and restrain visible sediment from entering the waterway;

(2) Allow for movement of aquatic organisms within the waterway; and

(3) Have native groundcover applied and maintained through completion of the forestry-related activity.

(E) Prohibit the use of tracked or wheeled vehicles for reforestation site preparation within the streamside management zone of the waterway.

(F) Prohibit locating log decks, skid trails, new roads, and portable mill sites in the streamside management zone of the waterway.

(G) Prohibit obstruction and impediment of the flow of water within the waterway that is caused by direct deposition of debris or soil by the forestry-related activity.

(H) Maintain shade over the waterway similar to that observed prior to the forestry-related activity.

(I) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

(b) Morro shoulderband snail (*Helminthoglypta walkeriana*)—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Morro shoulderband snail. Except as provided under paragraph (b)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions*. In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Native habitat restoration activities, inclusive of invasive and/or non-native species removal, conducted by a conservation organization pursuant to a Service-approved management or restoration plan.

(B) Fire-hazard reduction activities implemented by the California Department of Forestry and Fire Protection in accordance with a Service-approved plan within the range of the Morro shoulderband snail.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(c) [Reserved]

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(d) Longsolid (*Fusconaia subrotunda*) and round hickorynut (*Obovaria subrotunda*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the longsolid and round hickorynut. Except as provided under paragraph (d)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to these species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to these species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Conservation and restoration efforts for listed species conducted by State wildlife agencies, including, but not limited to, population monitoring, relocation, and collection of broodstock; tissue collection for genetic analysis; captive propagation; and subsequent stocking into currently occupied and unoccupied areas within the historical range of the species.

(B) Channel and bank restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable re-

connection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(C) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the region and habitat conditions. These methods will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. Prior to channel restoration and bank stabilization actions, surveys conducted in coordination with the appropriate Service field office to determine presence of longsolid and round hickorynut must be performed, and if located, relocation prior to project implementation may be necessary, with post-implementation monitoring. To qualify under this exemption, channel restoration and bank stabilization actions must satisfy all Federal, State, and local permitting requirements.

(D) Forest management activities that implement State-approved best management practices.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(e) [Reserved]

(f) “Ouachita” fanshell (*Cyprogenia* cf. *aberti*) and western fanshell (*Cyprogenia aberti*)—(1) *Prohibitions.* The

following prohibitions that apply to endangered wildlife also apply to the “Ouachita” fanshell and western fanshell. Except as provided under paragraph (f)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel and bank restoration projects for creation of natural, physically stable, ecologically functioning streams, taking into consideration connectivity with floodplain and groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; connection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. For bank stabilization projects that use bioengineering methods to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing

bank erosion and instream sedimentation and improving habitat conditions for the species, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Bank restoration projects require planting appropriate native vegetation, including woody species appropriate for the region and habitat. These projects will not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. To qualify under this exception, restoration projects must include the following:

(1) Surveys to determine presence of “Ouachita” fanshell and western fanshell prior to the commencement of restoration actions;

(2) If either mussel is present, coordination with the Service’s local Ecological Services field office for relocation of “Ouachita” fanshell and western fanshell mussels to suitable habitat outside of the project footprint prior to project implementation; and

(3) If relocation of mussels occurs, monitoring of relocated mussels post-implementation of restoration activities.

(B) Silviculture practices and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

(C) Transportation projects that avoid or do not include instream disturbance in waters occupied by the species.

(v) Purposeful take that results from capture, handling, and release related to presence/absence surveys, studies to document habitat use, and population monitoring by individuals permitted to conduct these same activities for other species of mussels until January 25, 2024.

(vi) Possess and engage in other acts with unlawfully taken wildlife, as set

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forth at § 17.21(d)(2) for endangered wildlife.

[86 FR 64034, Nov. 16, 2021, as amended at 87 FR 6077, Feb. 3, 2022; 88 FR 14839, Mar. 9, 2023; 88 FR 41757, June 27, 2023]

### § 17.46 Special rules—crustaceans.

(a) Madison Cave isopod (*Antrolana lira*). (1) All provisions of § 17.31 (a) and (b) apply to this species except that it may be taken for scientific purposes without Federal permits issued pursuant to these regulations: *Provided*, that all other Federal, State, or local laws, regulations, ordinances or other restrictions or limitations have been complied with.

(b) Panama City crayfish (*Procambarus econfinae*)—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Panama City crayfish. Except as provided under paragraph (b)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions*. In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Development practices that:

(1) Maintain existing structures, and build or rebuild structures that occur within the existing footprint of previously developed areas;

(2) Build new structures that occur within 100 feet of existing structures on an individual private landowner's property and with a new footprint less than 1,000 square feet, such as a pool or shed associated with an existing house;

(3) Install culverts for individual landowners not associated with housing developments on lands greater than one acre;

(4) Build platforms or boardwalks for recreational purposes on conservation lands that allow sunlight of sufficient levels to maintain herbaceous groundcover; and

(5) Build paths used for nonmotorized activities as long as the project footprint, including construction impacts, alter no more than 5 percent of the acreage in core or secondary soils within lands under a conservation easement.

(B) Certain land management activities, including:

(1) Silvicultural (forestry) activities located in secondary soils that follow State best management practices (BMPs);

(2) Prescribed burning and wildfire control efforts when following State BMPs, guidelines, or permit conditions;

(3) Herbicide application activities targeting exotic plants or shrub species when following all other State and Federal BMPs, guidelines, or permit conditions; and

(4) Agricultural maintenance activities in pasture and rangelands (including cattle operations) that were established prior to January 3, 2018, and that implement State and Federal BMPs for existing farms and ranches if they have no indirect impacts to adjacent Panama City crayfish habitat.

(C) Utility actions, including:

(1) Ditch mowing and maintenance outside of critical habitat units;

(2) Ditch mowing or maintenance within critical habitat units after development of BMPs in coordination with the local Service office;

(3) Culvert replacements or maintenance on individual landowner properties that do not adversely affect, but improve or restore, the natural hydrology; and

(4) After coordination with the local Service office, the following activities: Maintenance associated with rights-of-

way (including mowing, use of herbicides, and mechanical side trimming); powerline and pole placements and replacements; replacement of critical structural components, such as cross-arms, insulators, conductors, etc.; and directional boring by utility owners.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(c) Big Creek crayfish (*Faxonius peruncus*) and St. Francis River crayfish (*Faxonius quadruncus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Big Creek crayfish and the St. Francis River crayfish. Except as provided under paragraph (c)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife. Activities that could result in take are those that:

(A) Impact crayfish habitat, riparian areas adjacent to crayfish sites, or habitat between connecting sites such that the species' reproduction or survival will be impacted or the effects of woodland crayfish invasion will be exacerbated. Such activities include, but are not limited to:

(1) Construction of instream low-water crossings;

(2) Destruction of riparian habitat that results in excessive sedimentation;

(3) Bridge construction; and

(4) Gravel mining.

(B) Lead to the introduction of heavy metals into streams. Such activities include, but are not limited to, heavy metal mining.

(C) Appreciably negatively affect water quality, chemistry, or quantity such that the species' reproduction or survival will be impacted. Such activities may include, but are not limited to, the release of wastewater effluent and agricultural runoff.

(D) Impact hydrological flows such that the species' reproduction or sur-

vival will be impacted. Such activities include, but are not limited to, construction of dams, modification of stream channels, and surface and groundwater withdrawals.

(E) Facilitate the spread of woodland crayfish or introduce additional woodland crayfish in occupied Big Creek crayfish or St. Francis River crayfish stream reaches. Such activities may include, but are not limited to, bait bucket dumping.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at §17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Restoration activities or other activities that will result in an overall benefit to one or both of the species or their habitat that are completed in coordination with the Missouri Ecological Services Field Office. Such activities include, but are not limited to, stream bank stabilization, habitat restoration, heavy metal remediation, and replacement of low water crossings that obstruct movement of aquatic organisms with crossings that facilitate the movement of aquatic species (aquatic organism passages).

(B) A person conducting research or education under a valid Missouri Department of Conservation Wildlife Collector's permit.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

[47 FR 43701, Oct. 4, 1982, as amended at 87 FR 576, Jan. 5, 2022; 88 FR 25538, Apr. 27, 2023]

**§ 17.47 Special rules—insects.**

(a) Cassius blue butterfly (*Leptotes cassius theonus*), Ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and Nickerbean blue butterfly (*Cyclargus ammon*).

(1) The provisions of § 17.31(c) apply to these species (cassius blue butterfly, ceraunus blue butterfly, nickerbean blue butterfly), regardless of whether in the wild or in captivity, and also apply to the progeny of any such butterfly.

(2) Any violation of State law will also be a violation of the Act.

(3) Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, will not apply to the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly.

(4) Collection of the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly is prohibited in coastal counties south of Interstate 4 and extending to the boundaries of the State of Florida at the endpoints of Interstate 4 at Tampa and Daytona Beach. Specifically, such activities are prohibited in the following counties: Brevard, Broward, Charlotte, Collier, De Soto, Hillsborough, Indian River, Lee, Manatee, Pinellas, Sarasota, St. Lucie, Martin, Miami-Dade, Monroe, Palm Beach, and Volusia.

(b) Dakota skipper (*Hesperia dacotae*).

(1) *Which populations of the Dakota skipper are covered by this special rule?* This rule covers the distribution of Dakota skipper in the United States.

(2) *Prohibitions.* Except as noted in paragraph (b)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the Dakota skipper.

(3) *Exemptions from prohibitions.* Incidental take of Dakota skipper will not be a violation of section 9 of the Act if it occurs as a result of the following activities (except where explicitly stated otherwise, these activities must be associated with livestock ranching):

(i) *Fence construction and maintenance.*

(ii) *Livestock gathering and management.* The installation and maintenance of corrals, loading chutes, and other livestock working facilities must be carefully sited with respect to the

location and distribution of important Dakota skipper habitat.

(iii) *Development and maintenance of livestock watering facilities.*

(iv) *Noxious weed control.* Incidental take of Dakota skipper that results from spraying of herbicides is not a violation of section 9 of the Act, except such take that results from broadcast spraying, which is the application of herbicides evenly across the entire application area. Incidental take that results from mowing to control one or more noxious weed species would also not be a violation of section 9 of the Act.

(v) *Haying.* For the purposes of this rule, native haylands do not include lands that had previously been plowed and were then replanted to native or nonnative vegetation, but native haylands do include areas within transportation (e.g., road, highway, railroad) rights-of-ways and corridors where native grasses are mowed for hay. Haying of native haylands no earlier than July 16 (after July 15) would not be a violation of section 9 of the Act. Mowing of replanted grasslands (grasslands replanted on formerly plowed or cultivated lands) or tame haylands or grasslands (planted hayland or grassland comprising primarily nonnative grass species, such as smooth brome (*Bromus inermis inermis*)) would also not be a violation of section 9 of the Act at any time of the year.

(vi) *Mowing section line rights-of-way and recreational trails.* Mowing of section line rights-of-way (typically disturbed soil that has been contoured for a roadway) would not be a violation of section 9 of the Act. Mowing of recreational trails (travelways established either through construction or use that are intended for and passable by foot traffic, bicycles, in-line skates, wheelchairs, or cross-country skis) would not be a violation of section 9 of the Act, regardless of whether the trails are associated with livestock ranching.

(vii) *Livestock (cattle, bison, or horse) grazing on private, State, or tribal land.*

(c) Western glacier stonefly (*Zapada glacier*) and meltwater lednian stonefly (*Lednia tumana*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to western glacier stonefly and meltwater lednian

stonefly except as provided under paragraph (c)(2) of this section and §§17.4 and 17.5. It is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to these species:

(i) Import or export, as set forth at §17.21(b).

(ii) Take, as set forth at §17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e).

(v) Sale or offer for sale, as set forth at §17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at §17.21(c)(3) and (4) for endangered wildlife.

(iii) Possess and engage in other acts, as set forth at §17.21(d)(2) for endangered wildlife.

(iv) In addition to any other provisions of this part, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, take those threatened species of wildlife that are covered by an approved cooperative agreement to carry out conservation programs.

(d) American burying beetle (*Nicrophorus americanus*)—(1) *Prohibitions.* The following prohibitions apply to the American burying beetle:

(i) *Take of the American burying beetle.* Take of the American burying beetle, except that take that is incidental to otherwise lawful activity (incidental take) is prohibited only when the take occurs on suitable American burying beetle habitat:

(A) In the New England and Northern Plains Analysis Areas where the inci-

dental take results from soil disturbance; or

(B) In the Southern Plains Analysis Areas where the incidental take occurs on defined conservation lands, except where incidental take is in compliance with a Service-approved conservation plan.

(ii) *Possession and other acts with unlawfully taken American burying beetles.* It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any American burying beetle that was taken in violation of paragraph (d)(1)(i) of this section or State law. Notwithstanding the preceding sentence, Federal and State law enforcement officers may possess, deliver, carry, transport, or ship any American burying beetle taken in violation of the Act as necessary in performing their official duties.

(iii) *Import and export of the American burying beetle.* It is unlawful to import or export the American burying beetle.

(iv) *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, the American burying beetle.

(v) *Sale or offer for sale.* It is unlawful to sell or to offer for sale in interstate or foreign commerce any American burying beetle.

(2) *Exceptions from prohibitions.* (i) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take American burying beetles, provided that, for State conservation agencies, the American burying beetle is covered by an approved cooperative agreement to carry out conservation programs.

(ii) Federal or State government agencies may incidentally take American burying beetles when conducting wildlife management activities in the Northern Plains Analysis Areas.

(iii) Incidental take of American burying beetles resulting from ranching and grazing activities is allowed.

(3) *Definitions.* For the purposes of this paragraph (d), we define the following terms:

(i) *Conservation lands* means lands included within the existing boundaries:

(A) In Arkansas, of Fort Chaffee (approximately 64,000 acres); and

(B) In Oklahoma, of McAlester Army Ammunition Plant (approximately 45,000 acres) and Camp Gruber/Cherokee Wildlife Management Area (approximately 64,000 acres).

(ii) *New England Analysis Area* means Block Island in Rhode Island and Nantucket Island in Massachusetts.

(iii) *Northern Plains Analysis Areas* means portions of Nebraska and South Dakota, as presented in the map at paragraph (d)(4) of this section, to initially include an 18.6-mile buffer around each capture location to determine the outside boundaries of the analysis area. For specific information regarding whether a parcel of land is inside the Northern Plains Analysis Areas, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(iv) *Ranching and grazing* means activities involved in grazing livestock (e.g., cattle, bison, horse, sheep, goats, or other grazing animals) such as: Gathering of livestock; construction and maintenance of fences associated with livestock grazing; installation and

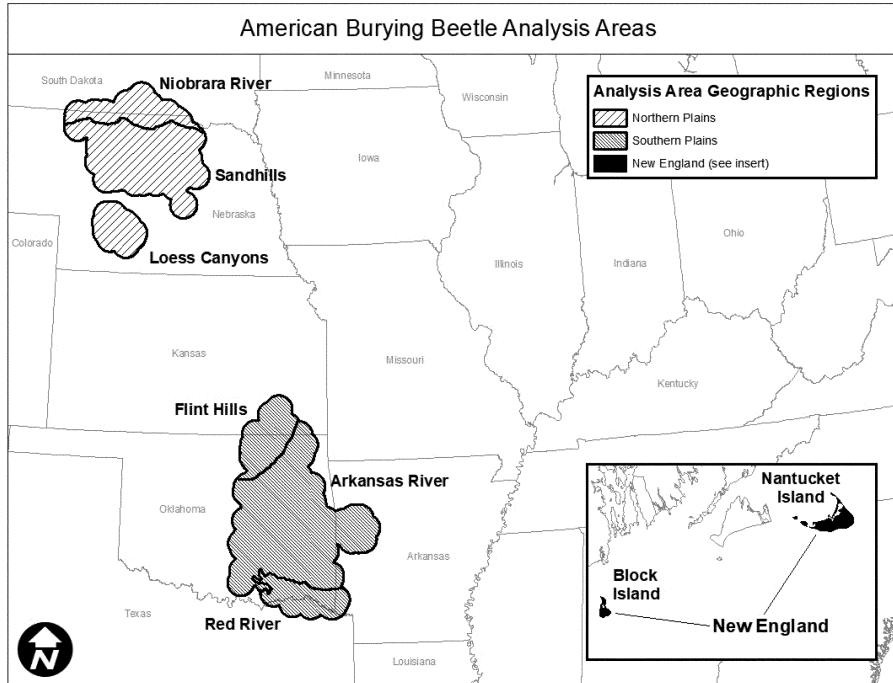
maintenance of corrals, loading chutes, and other livestock working facilities; development and maintenance of livestock watering facilities; placement of supplements such as salt blocks for grazing livestock; and, when associated with livestock grazing, the control of noxious weeds, haying, mowing, and prescribed burning. Ranching and grazing does not include any form of farming, conversion of grassland to cropland, or management of cropland.

(v) *Soil disturbance* means movement or alteration of soil. Soil disturbance includes actions such as grading, filling, soil excavating, or topsoil stripping. Soil disturbance also includes non-physical alterations such as chemical treatment.

(vi) *Southern Plains Analysis Areas* means portions of Arkansas, Kansas, Oklahoma, and Texas, as presented in the map at paragraph (d)(4) of this section, to initially include an 18.6-mile buffer around each capture location to determine the outside boundaries of the analysis area. For specific information regarding whether a parcel of land is inside the Southern Plains Analysis Areas, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(4) *Map of American Burying Beetle Analysis Areas.*

Figure 1 to Paragraph (d)(4)



(e) *Hermes* copper butterfly (*Lycaena hermes*).—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to *Hermes* copper butterfly. Except as provided under paragraph (e)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

- (i) Import or export, as set forth at §17.21(b) for endangered wildlife.
- (ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.
- (iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions*. In regard to this species, you may:

- (i) Conduct activities as authorized by a permit under §17.32.
- (ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.
- (iii) Take as set forth at §17.31(b).
- (iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.
- (v) Conduct the activities listed in paragraph (e)(2)(vi) of this section, including take, outside the area delineated in paragraph (e)(2)(vii) of this section if the activities are conducted in a manner that:

(A) Maintains contiguity of suitable habitat for the species within and dispersal corridor connectivity among populations, allowing for maintenance of populations and recolonization of unoccupied, existing habitat;

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(B) Does not increase the risk of wildfire in areas occupied by the Hermes copper butterfly while preventing further habitat fragmentation and isolation, or degradation of potentially suitable habitat; and

(C) Does not preclude efforts to augment or reintroduce populations of the Hermes copper butterfly within its historical range with management of the host plant, spiny redberry (*Rhamnus crocea*).

(vi) Take the Hermes copper butterfly outside the area delineated in paragraph (e)(2)(vii) of this section if the take results from any of the following activities when conducted within habitats occupied by the Hermes copper butterfly:

(A) Survey and monitoring work in coordination with and reported to the Service as part of scientific inquiry involving quantitative data collection (such as population status determinations).

(B) Habitat management or restoration activities, including removal of nonnative, invasive plants, expected to provide a benefit to Hermes copper butterfly or other sensitive species of the chaparral and coastal sage scrub ecosystems, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(C) Activities necessary to maintain the minimum clearance (defensible space) requirement from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and to reduce wildfire risks consistent with the State of California fire codes or local fire codes or ordinances.

(D) Fire management actions on protected/preserve lands to maintain, protect, or enhance coastal sage scrub and chaparral vegetation. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(E) Maintenance of existing fuel breaks identified by local fire authorities to protect existing structures.

(F) Firefighting activities associated with actively burning fires to reduce risk to life or property.

(G) Collection, transportation, and captive-rearing of Hermes copper butterfly for the purpose of population augmentation or reintroduction, maintaining refugia, or as part of scientific inquiry involving quantitative data collection (such as survival rate, larval weights, and post-release monitoring) in coordination with and reported to the Service. This does not include activities such as personal “hobby” collecting and rearing intended for photographic purposes and re-release.

(H) Research projects involving collection of individual fruits, leaves, or stems of the Hermes copper butterfly host plant, spiny redberry, in coordination with and reported to the Service.

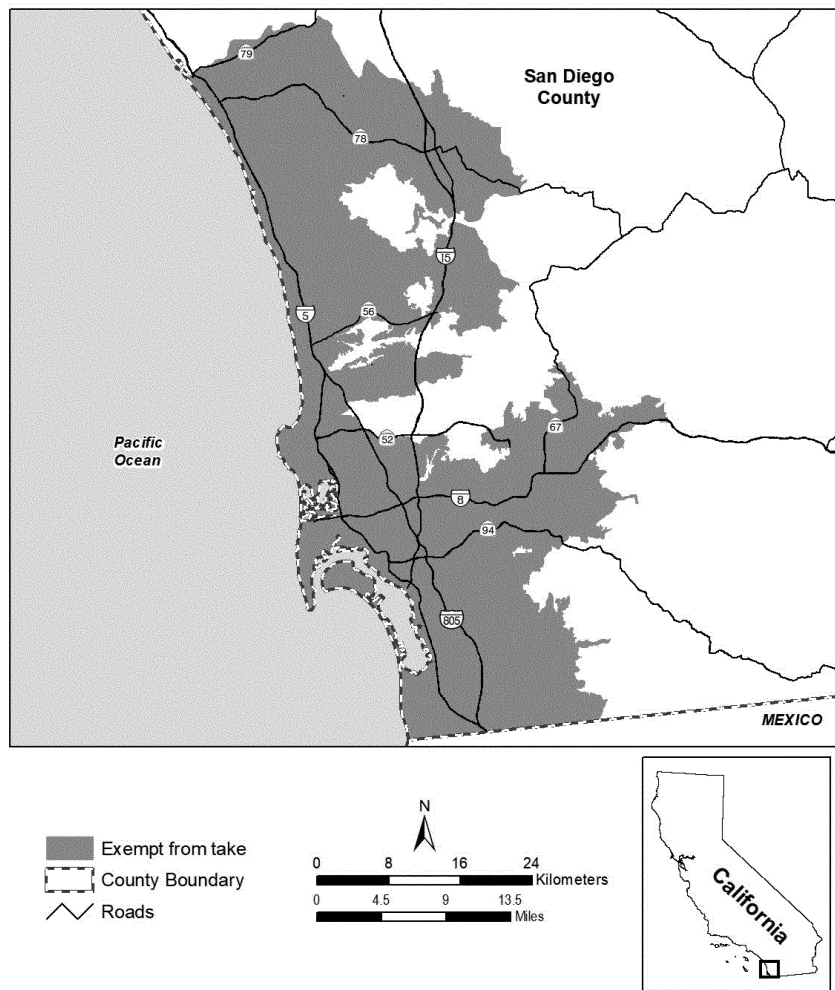
(vii) Take the Hermes copper butterfly within the portion of the range described in paragraphs (e)(2)(vi)(A) and (B) of this section:

(A) The southern edge is the Mexican border, and the western edge is the Pacific coast. The eastern and northern edges of the boundary follow the development that would isolate any extant populations found within the boundaries.

(B) Note: The map of areas exempted from take prohibitions follows:

Figure 1 to paragraph (e)(2)(vii)(B)

**Portion of Hermes copper butterfly's (*Lycaena hermes*) range exempt from take prohibitions under section 9(a)(1)(B) of the Endangered Species Act  
San Diego County, California**



(f) Fender's blue butterfly (*Icaricia icarioides fenderi*)—(1) *Definitions*. As used in this paragraph (f), the following terms have these meanings:

(i) *Occupied habitat*. Habitat within the historical range of Fender's blue butterfly in the Willamette Valley of

Oregon that supports or may support lupine, unless a qualified biologist using direct observation has conducted surveys for adult Fender's blue butterfly during the April 15 to June 30 flight period and documented no adult

butterflies. Occupied habitat also includes all nectar habitat within 0.5 kilometers (km) (0.3 miles (mi)) of habitat containing at least one of the three host lupine species and that is occupied by Fender's blue butterfly. Unsurveyed areas within 2 km (1.25 mi) of a known Fender's blue butterfly population shall be assumed occupied if no surveys are conducted.

(ii) *Qualified biologist.* An individual with a combination of academic training in the area of wildlife biology or related discipline and demonstrated field experience in the identification and life history of Fender's blue butterfly, or in habitat restoration methods to benefit Fender's blue butterfly. If capture of individuals is required for accurate identification, the individual must hold a valid permit under section 10(a)(1)(A) of the Act.

(iii) *Lupine.* Any one of the three species of lupines known to be required as host plants for the larvae of Fender's blue butterfly: Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*), longspur lupine (*L. arbustus*), and sickle-keeled lupine (*L. albicaulis*).

(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Fender's blue butterfly. Except as provided under paragraph (f)(3) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at §17.21(b) for endangered wildlife.

(ii) Take, as set forth at §17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at §17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

(iii) Take, as set forth at §17.21(c)(2) through (4) for endangered wildlife.

(iv) Take, as set forth at §17.31(b).

(v) Take incidental to an otherwise lawful activity caused by:

(A) *Mechanical removal of invasive and/or nonnative plant species.* Mechanical treatments for invasive and nonnative plant control (including encroaching native woody species) that do not result in ground disturbance are authorized within occupied habitat outside the butterfly's flight period of April 15 to June 30, provided:

(1) Landowners or their agents conducting invasive or nonnative plant removal use reasonable care, which includes, but is not limited to, procuring and/or implementing technical assistance from a qualified biologist on timing and location of habitat management activities and avoidance of ground disturbance to avoid impacts to larvae or pupae. Best management practices for felling of trees, removal of vegetation off-site, and temporary piling of cut vegetation on-site are available from the Oregon Fish and Wildlife Office.

(2) Reasonable care during all activities includes best efforts to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(B) *Manual removal of invasive and/or nonnative plant species.* Manual treatments for invasive and nonnative plant control (including encroaching native woody species) that do not result in ground disturbance are authorized within occupied habitat year-round, provided:

(1) Landowners or their agents conducting invasive or nonnative plant removal use reasonable care, which includes, but is not limited to, procuring and/or implementing technical assistance from a qualified biologist on location of habitat management activities and avoidance of ground disturbance to avoid impacts to larvae or pupae. Best management practices for felling of

trees, removal of vegetation off-site, and temporary piling of cut vegetation on-site are available from the Oregon Fish and Wildlife Office.

(2) Reasonable care during all activities includes best efforts to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(C) *Mowing.* Tractor mowing for invasive and nonnative plant control (including encroaching native woody species) and the maintenance of early seral conditions is authorized throughout occupied Fender's blue butterfly habitat before February 15 when lupine emerges and after August 15 when lupine undergoes senescence.

(1) Mowing with handheld mowers is authorized throughout the year; however, a buffer of at least 8 meters (25 feet) must be maintained between the mower and any individual lupine plant during Fender's blue butterfly flight season (April 15 to June 30).

(2) Prior to and during mowing, landowners or their agents must use reasonable care, which includes, but is not limited to, procuring and implementing technical assistance from a qualified biologist on timing and location of habitat management activities prior to conducting work; avoidance of ground disturbance to avoid impacts to larvae or pupae; and using best efforts during all activities to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(D) *Herbicide application for removal of invasive and/or nonnative plant species by hand wiping, wicking, and spot-spray applications.* Hand wiping, wicking, and spot-spray applications of herbicides for either the removal of nonnative, invasive plant species or to prevent resprouting of woody species subsequent to cutting are authorized year-round.

(E) *Herbicide application for removal of invasive and/or nonnative plant species by weed wiping and broadcast application.* Weed wiping and broadcast application of herbicides are authorized outside of

the flight period of April 15 to June 30; however, additional timing and use restrictions are required based on the chemicals used. Contact the Oregon Fish and Wildlife Office prior to herbicide application for a list of currently acceptable herbicides, their application methods, their appropriate timing of use, and best management practices associated with herbicide use.

(1) Prior to and during herbicide application, landowners or their agents must use reasonable care, which includes, but is not limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities prior to conducting the work; complying with all State and Federal regulations and guidelines for application of herbicides; and avoiding broadcast spraying in areas adjacent to occupied habitat if wind conditions are such that drift into the occupied area is possible.

(2) Landowners or their agents conducting herbicide application must use best efforts to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(F) *Ground disturbance for the purpose of planting native vegetation.* Limited ground disturbance (digging and placement by hand) is authorized for the purpose of planting native vegetation as part of habitat restoration efforts, especially native food resources used by larvae and adults, in areas occupied by Fender's blue butterfly.

(1) Larvae of Fender's blue butterfly require lupine. For adults, preferred native nectar sources include, but are not limited to, the following flower species: tapertip onion (*Allium acuminatum*), narrowleaf onion (*Allium amplexans*), Tolmie's mariposa lily (*Calochortus tolmiei*), small camas (*Camassia quamash*), Clearwater cryptantha (*Cryptantha intermedia*), Oregon sunshine (*Eriophyllum lanatum*), Oregon geranium (*Geranium oregonum*), Oregon iris (*Iris tenax*), meadow checkermallow (*Sidalcea campestris*), rose checkermallow (*Sidalcea virgata*), and purple vetch (*Vicia americana*).

(2) Prior to and during planting of native vegetation, landowners or their agents must use reasonable care, which includes, but is not limited to, procuring and implementing technical assistance from a qualified biologist on timing and location of habitat management activities and using best efforts during all activities to avoid trampling

or damaging Fender’s blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(G) *Summary of authorized methods and timing of habitat restoration activities for Fender’s blue butterfly.*

TABLE 1 TO PARAGRAPH (f)(3)(v)(G)

Management activity	Dates authorized for use in occupied habitat
Mechanical treatments .....	Outside of the flight period of April 15 to June 30.
Manual treatments .....	Year-round.
Mowing—tractors .....	Before February 15 and after August 15.
Mowing—handheld .....	Year-round, with a buffer of 8 meters (25 feet) between the mower and any individual lupine plant during the flight period of April 15 to June 30.
Herbicides—hand wiping .....	Year-round.
Herbicides—wicking .....	Year-round.
Herbicides—spot-spray .....	Year-round.
Herbicides—broadcast spray ...	Outside of the flight period of April 15 to June 30.*
Herbicides—weed wiping .....	Outside of the flight period of April 15 to June 30.*
Planting native vegetation .....	Year-round.

\* Additional timing restrictions will apply based on the chemicals used. Contact the Oregon Fish and Wildlife Office for additional information.

(H) *Reporting and disposal requirements.* Any injury or mortality of Fender’s blue butterfly associated with the actions excepted under paragraphs (f)(3)(v)(A) through (E) of this section must be reported to the Service and authorized State wildlife officials within 5 calendar days, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service’s Office of Law Enforcement (contact information is at §10.22 of this subchapter) or the Service’s Oregon Fish and Wildlife Office and to the State of Oregon Department of Parks and Recreation, Stewardship Section, which has jurisdiction over invertebrate species. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

(g) Puerto Rican harlequin butterfly (*Atlantea tulita*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Puerto Rican harlequin butterfly. Except as provided under paragraph (g)(2) of this section and §17.4, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of

the following acts in regard to this species:

- (i) Import or export, as set forth at §17.21(b).
- (ii) Take, as set forth at §17.21(c)(1).
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at §17.21(d)(1).
- (iv) Interstate or foreign commerce in the course of commercial activity, as set forth at §17.21(e).
- (v) Sale or offer for sale, as set forth at §17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

- (i) Conduct activities as authorized by a permit under §17.32.
- (ii) Take, as set forth at §17.21(c)(2) through (c)(4) for endangered wildlife.
- (iii) Take as set forth at §17.31(b).
- (iv) Take incidental to an otherwise lawful activity caused by:

(A) Normal agricultural practices, including pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices, as long as the practices do not include:

- (1) Clearing or disturbing forest or prickly bush (*Oplonia spinosa*) to create or expand agricultural areas; or
- (2) Applying pesticides in or contiguous to habitat known to be occupied

by the Puerto Rican harlequin butterfly.

(B) Normal residential and urban activities, such as mowing, weeding, edging, and fertilizing.

(C) Maintenance of recreational trails in Commonwealth Forests by mechanically clearing vegetation, only when approved by or under the auspices of the Puerto Rico Department of Natural and Environmental Resources, or conducted on lands established by private organizations or individuals solely for conservation or recreation.

(D) Habitat management or restoration activities expected to provide a benefit to Puerto Rican harlequin butterfly or other sensitive species, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(E) Projects requiring removal of the host plant to access and remove illicit garbage dumps that are potential sources of intentionally set fires, provided such projects are conducted in coordination with and reported to the Service.

(F) Fruit fly trapping by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, provided trapping activities do not disturb the host plant.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at §17.21(d)(2) for endangered wildlife.

[77 FR 20986, Apr. 6, 2012, as amended at 79 FR 67348, Oct. 24, 2014; 84 FR 64227, Nov. 21, 2019; 85 FR 65260, Oct. 15, 2020; 86 FR 72427, Dec. 20, 2021; 87 FR 73678, Dec. 1, 2022; 88 FR 2036, Jan. 12, 2023]

**§ 17.48 Special rules—common sponges and other forms. [Reserved]**

**Subpart E—Similarity of Appearance**

SOURCE: 42 FR 32377, June 24, 1977, unless otherwise noted.

**§ 17.50 General.**

(a) Whenever a species which is not Endangered or Threatened closely resembles an Endangered or Threatened

species, such species may be treated as either Endangered or Threatened if the director makes such determination in accordance with section 4(e) of the Act and the criteria of paragraph (b) of this section. After the Director has made such determination in accordance with the notification procedures specified in the Act, such species shall appear in the list in §17.11 (Wildlife) or §17.12 (Plants) with the notation “(S/A)” (similarity of appearance) in the “Status” column, following either a letter “E” or a letter “T” to indicate whether the species is being treated as Endangered or Threatened.

(b) In determining whether to treat a species as Endangered or Threatened due to similarity of appearance, the Director shall consider the criteria in section 4(e) of the Act, as indicated below:

(1) The degree of difficulty enforcement personnel would have in distinguishing the species, at the point in question, from an Endangered or Threatened species (including those cases where the criteria for recognition of a species are based on geographical boundaries);

(2) The additional threat posed to the Endangered or Threatened species by the loss of control occasioned because of the similarity of appearance; and

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

[42 FR 32377, June 24, 1977, as amended at 81 FR 51605, Aug. 4, 2016]

**§ 17.51 Treatment as endangered or threatened.**

(a) Any species listed in §17.11 or §17.12, pursuant to §17.50, shall be treated as Endangered or Threatened, as indicated in the “Status” column.

(b) All of the provisions of subparts C (Endangered Wildlife), D (Threatened Wildlife), F (Endangered Plants) or G (Threatened Plants), as appropriate, shall apply to any such species.

**§ 17.52 Permits—similarity of appearance.**

Upon receipt of a complete application and unless otherwise indicated in a rule found at §§17.40 through 17.48, §§17.73 through 17.78, or §§17.84 through