ENVIRONMENTAL GUIDANCE PROGRAM REFERENCE BOOK

ENDANGERED SPECIES ACT AND
THE FISH AND WILDLIFE COORDINATION ACT

Prepared for

ASSISTANT SECRETARY FOR ENVIRONMENT,
SAFETY AND HEALTH

OFFICE OF ENVIRONMENTAL GUIDANCE
AND COMPLIANCE

(B/A No. HA 01 02 00 0; EHHA002)

Prepared by the
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Oak Ridge, Tennessee 37831-6285
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PREFACE

This Reference Book contains a current copy of the Endangered Species Act and the Fish and Wildlife Coordination Act and those regulations that implement the statutes and appear to be most relevant to DOE activities. The document is provided to DOE and contractor staff for informational purposes only and should not be interpreted as legal guidance. Questions concerning this Reference Book may be directed to Timothy Harms, EH-231 (FTS: 896-6073).

UPDATE INSTRUCTIONS
ENVIRONMENTAL GUIDANCE PROGRAM REFERENCE BOOK
ENDANGERED SPECIES ACT AND
THE FISH AND WILDLIFE COORDINATION ACT
January 1, 1989

This Reference Book on the Endangered Species Act and the Fish and Wildlife Coordination Act has been completely revised and is current through January 1, 1989.

Instructions for updating the Reference Book with January 1, 1989, revision 5 materials are as follows:

- o Remove all existing materials, Sections 1-4, and replace with new materials in a loose-leaf binder.

Any information regarding modifications in the distribution of this Reference Book, including additions, deletions, and address changes, should be conveyed to Cynthia Heckman by calling her (FTS: 624-7317) or by sending them to her at the following address:

Cynthia G. Heckman
Building 1505, MS-6036
Oak Ridge National Laboratory
P.O. Box 2008
Oak Ridge, TN 37831-6036

Date_____

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Coastal Zone Management Act _____

Comprehensive Environmental Response,
Compensation, and Liability Act _____

Endangered Species Act and the Fish and
Wildlife Coordination Act _____

Hazardous Materials Transportation Act _____

Marine Protection, Research, and Sanctuaries Act
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SECTION 1. SUMMARY

The Endangered Species Act and the Fish and Wildlife Coordination Act are major federal statutes designed to protect plant and animal resources from adverse effects due to development projects. Both Acts require consultation with wildlife authorities prior to committing resources to certain types of projects. The purposes and requirements of the two statutes are summarized in the following subsections. Also presented is a list of contacts in the regional and field offices of the U.S. Fish and Wildlife Service.

ENDANGERED SPECIES ACT

The Endangered Species Act (ESA), P.L. 93-205, originally passed in 1973 and recently reauthorized until 1992, provides for the designation and protection of wildlife, fish, and plant species which are in danger of becoming extinct and conserves the ecosystems on which such species depend. The Act defines an endangered species as any species, other than a recognized insect pest, which is in danger of becoming extinct throughout all or a significant portion of its range. A threatened species is one which is likely to become endangered in the foreseeable future. The Act makes it illegal for any individual to kill, collect, remove, harass, import, or export an endangered or threatened species without a permit from the Secretary of Interior (hereafter "Secretary"). Most administrative and regulatory actions under the Act are performed by the Department of Interior's Fish and Wildlife Service (FWS). The National Marine Fisheries Service (NMFS) in the Department of Commerce is involved in actions affecting marine species.

To be protected by the Act, a species must first be listed by the Secretary as endangered or threatened. The species listing process generally begins with a petition to the Secretary. Consultation with the affected states is required prior to listing, but the final decision is made by the Secretary. Whenever possible, the listing of an endangered or threatened species is to be accompanied by a designation of critical habitat. The Secretary is required to publish and periodically update the lists and to develop and implement "recovery plans" for the conservation and survival of endangered and threatened species.

Under the Act, the Secretaries of Interior and Commerce are directed to establish programs to conserve fish, wildlife, and plants, including endangered and threatened species. Also the Department of Agriculture is involved in overseeing the import and export of endangered and threatened species. Implementation of such programs is to include acquisition of lands pursuant to authority under the Act itself as well as under the Fish and Wildlife Coordination Act, P.L. 85-624, 1958, as amended, the Fish and Wildlife Act of 1956, P.L. 92-159, as amended, and the Migratory Bird Conservation Act of 1929, P.L. 70-770.

The Act mandates cooperation between the federal government and state and foreign governments. The Secretary is to cooperate with the states concerning land acquisition and management and is authorized to enter into

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cooperative agreements to provide assistance to those states which establish programs for the conservation of endangered and threatened species. The President and the Secretary of Interior may provide financial and technical assistance to foreign countries to encourage conservation of fish, wildlife, and plants. The Secretary is also responsible for carrying out obligations of the United States under two international agreements: the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

All federal agencies are to utilize their authorities to carry out programs for the conservation of endangered and threatened species. DOE should review its projects' plans and consult with the Secretary before engaging in activities that might destroy or disrupt any endangered or threatened species. In particular,

"Each Federal agency shall, in consultation with and with the assistance of the Secretary [of DOI], insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary ... to be critical ..." [ESA Section 7(a)(2)]

The Section 7 consultation process generally involves preparation and submittal by a federal agency such as DOE of a biological assessment to identify any endangered or threatened species which is likely to be affected by a proposed action. After consultation, the Secretary renders an opinion on the impacts of DOE's proposed action on the species or its habitat. If jeopardy or adverse modification is found, the Secretary suggests alternatives to the proposed action that would not violate Section 7(a)(2). Then DOE must decide if the project should be modified as suggested or abandoned or if an application for an exemption should be filed (which has rarely been done).

If DOE chooses to apply for an exemption, it first submits an application to the Secretary who must certify that DOE has met certain requirements regarding good faith consultation, preparation of the biological assessment, and noncommitment of resources. The Secretary then conducts a hearing and submits a report to the Endangered Species Committee [a seven-membered body created by Section 7(e)]. The Committee may grant an exemption if it determines:

- o there are no reasonable and prudent alternatives to DOE's action;
- o the benefits of the action clearly outweigh the benefits of alternatives consistent with conserving the species or its habitat, and the action is in the public interest;

- o the action is of regional or national significance; and
- o the agency has refrained from making any irreversible or irretrievable commitment of resources.

Regulations promulgated under Section 7 of the Act define the process whereby proposed federal actions which may affect threatened or endangered species are approved, disapproved, and appealed. These regulations are presented in Section 3 of the Reference Book.

The ESA lists generally prohibited acts (Section 9) and provides for both civil and criminal penalties for violators. To enforce the law, the Secretaries of Interior, Treasury, and Transportation are given the powers of inspection and seizure. Private citizens may bring civil suit to enjoin other citizens or government agencies from undertaking actions that allegedly violate the Act or to compel the Secretary to take certain actions. The Secretary may, under certain circumstances, issue permits granting exceptions to the prohibited acts (e.g., for incidental take, actions to enhance propagation or survival, and economic hardship).

FISH AND WILDLIFE COORDINATION ACT

The purpose of the Fish and Wildlife Coordination Act (FWCA), P.L. 85-624, is to assure that fish and wildlife resources receive equal consideration with other values during the planning of development projects that affect water resources. The Act was passed because the goals of water-related projects, for example, flood control, irrigation, navigation, and hydroelectric power, may, at times, conflict with the goal of conserving fish and wildlife resources. Conversely, water development projects can, in many cases, be designed to enhance the quality and enjoyment of fish and wildlife resources if such goals are incorporated into project plans.

The Act authorizes the Secretary of the Interior to:

- o provide assistance to and cooperate with federal, state, and public or private agencies and organizations in the development and protection of wildlife resources and habitat;
- o make surveys and investigations of the wildlife in the public domain; and
- o accept donations of land and funds which will further the purposes of the Act.

The FWCA requires all federal agencies to consult with the U.S. Fish and Wildlife Service in the Department of the Interior whenever an agency plans to conduct, license, or permit an activity involving the impoundment, diversion, deepening, control, or modification of a stream or a body of water. DOE may be affected if any of its water development projects fall under these

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described activities. The Act also requires consultation with the head of the state agency that administers wildlife resources in the affected state. The purpose of this process is to promote conservation of wildlife resources by preventing loss of and damage to such resources and to provide for the development and improvement of wildlife resources in connection with the agency action. Although the recommendations of the Secretary of the Interior and state officials are not binding, the federal agency must give them full consideration. Furthermore, any reports and recommendations made by those officials are to be made an integral part of any report prepared by the responsible federal agency when seeking authorization for the water-resource development project. Such a report must also include an estimate of the wildlife benefits or losses to be derived from the proposed project and a description of whatever conservation measures the agency finds should be adopted to obtain maximum overall project benefits.

The FWCA authorizes federal agencies to acquire lands in connection with water development projects for use in activities designed to conserve and enhance wildlife resources. These activities are to be conducted in accordance with plans approved by the federal agency, the Secretary of the Interior, and the head of the applicable state agency. The probable extent of land acquisition is to be described in the report prepared in connection with the authorization request.

In other conservation provisions, FWCA authorizes the Secretary (through the Fish and Wildlife Service and the Bureau of Mines) to investigate and report to Congress on the effects of domestic sewage; mine, petroleum, and industrial wastes; erosion silt; and other pollutants on wildlife, and to make recommendations for alleviating these effects. It also directs the U.S. Army Corps of Engineers to give full consideration to fish and wildlife resource and habitat in its management of water levels in the upper Mississippi River.

Two general types of activities are exempt from the Act: (1) water impoundments with a surface area of less than ten acres and (2) programs for land management and use carried out by federal agencies on land under their jurisdiction. In addition, the provisions of the Act do not apply to the Tennessee Valley Authority.

U.S. FISH AND WILDLIFE SERVICE PERSONNEL DIRECTORY

The following table lists the personnel of the U.S. Fish and Wildlife Service both in Washington, D.C. and in the regional offices.

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U.S. FISH AND WILDLIFE SERVICE PERSONNEL DIRECTORY

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ORGANIZATIONAL LISTING

Washington Office

<u>OFFICE</u>	<u>CHIEF</u>	<u>LOCATION</u>	<u>PHONE</u>
DIRECTOR	Frank Dunkle	MI-3256	343-4717
Confidential Assistant	Trish Pearce	MI-3256	343-4717
Secretary	Connie Walker	MI-3256	343-4717
Deputy Director	Steve Robinson	MI-3256	343-4545
Special Assistant	Vacant	MI-3256	343-4545
Secretary	Mary Bernasco	MI-3256	343-4545
Special Assistant to the Director	Robert E. Gilmore	MI-3140	343-4678
Office for Human Resources	Jerome M. Butler	MI-3058	343-3195
Complaints and Investigations	Melodee Stith	MI-3441	343-5486
Program Planning and Evaluation	Nathaniel Brown	MT-552	653-7687
Special Program and Development	Patricia Callis	MT-552	653-7687
Assistant Director - External Affairs	Joseph S. Marler	MI-3251	343-2500
Staff Assistant	Teiko Saito	MI-3249	343-2500
Secretary	Joanne Miller	MI-3249	343-2500
Office of International Affairs	Lawrence N. Mason	MI-2058	343-5188
Office of Legislative Services	Owen Ambur	MI-3038	343-5403
Office of Public Affairs	Guy P. Million	MI-3240	343-4131
Deputy Chief	Michael L. Smith	MI-3240	343-4131
Audio Visual Staff	Steven R. Hillebrand	MI-8070	343-5611
Current Information Staff	Megan Durham	MI-2541	343-5634
Printing	Tom Nebel	RD-843	653-7501
Assistant Director - Policy, Budget and Administration	Jay L. Gerst (Acting)	MI-3252	343-4888
Special Assistant	Vacant	MI-3347	343-2505
Secretary	Shirley J. Essary	MI-3252	343-4888
Secretary	Denise T. Vann	MI-3252	343-4888
Deputy Assistant Director - Policy, Budget and Administration	James C. Leupold (Act.)	MI-3349	343-2505
Division of Budget	Kathy Tynan (Acting)	MI-2557	343-2444
Branch of Budget Formulation	Kathy Tynan	MI-2559	343-2444
Branch of Technical Budget	Susan Kaplan	MI-2559	343-2444
Division of Contracting and General Services	Joel G. Greenstein	RD-821	653-8703
Branch of Contracts	Richard H. Reckeweg	RD-821A	653-8705
Branch of Policy and Procurement Management	Laurie Waker	RD-819	653-8705
Branch of Property Management and General Services	Carlton B. Haakinson	RD-816B	653-8700
Division of Engineering	Paul J. Camp	MT-643	653-8232
Branch of Engineering Services	David L. Guthrie	MT-721	653-2862
Branch of Maintenance and Energy Management	Leslie L. Cunningham	MT-565	653-8756
Division of Finance	Howard H. Hulbert	MI-2542	343-8991
Branch of Policy and Technical Assistance	Paul Henne	MI-2546	343-4166
Finance Center	John O'Grady		FTS-776-2331
Payroll	Emma Moton	MI-3442	343-3006
Division of Information Resource Management	Phillip Dawson	RD-859	653-7526
Branch of Automation Technology	Claude Christiansen	RD-859	653-7526
Branch of Telecommunications Management & Service	Vacant	RD-859	653-7526

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ORGANIZATIONAL LISTING

Washington Office

<u>OFFICE</u>	<u>CHIEF</u>	<u>LOCATION</u>	<u>PHONE</u>
Division of Personnel Management	Edward H. Cynar	MI-3458	343-6104
Branch of Headquarters Operations	Bernard G. French	MI-3454	343-3104
Processing and Records	Pamela Keene	MI-3452	343-4564
Branch of Policy and Field Liaison	Judith C. Blaha	MI-3459	343-4562
Branch of Training, Evaluation, and Labor Management Relations	Joseph L. Wood	MI-3453	343-7905
Division of Policy and Directives Management	John R. Caracciolo	MI-2556	343-4633
Branch of Directives Management	James E. Pinkerton	RD-859	653-7563
Branch of Policy and Management Analysis	Joseph J. Charbonneau	MI-2556	343-4633
Division of Safety, Security and Aircraft Management	Freeman Walker, Jr.	RD-851	653-7912
Assistant Director - Refuges and Wildlife	Marvin Plenert (Acting)	MI-3250	343-5333
Secretary	Ellnor Beaver	MI-3250	343-5333
Deputy Assistant Director - Refuges and Wildlife	Marvin L. Plenert	MI-3246	343-5333
Wildlife Support Staff	Leonard P. Tinsley	MI-2026	343-6351
Division of Refuges	James F. Gillett	MI-2343	343-4311
Administrative Officer	Nancy Smith	MI-2347	343-3718
Chief, Branch of Operations	Bob Delaney	MI-2348	343-5869
Chief, Special Projects	Tom Folliath	MI-2345	343-4311
Chief, Resource Management	Denny Holland	MI-2340	343-4048
Division of Realty	William F. Hartwig	MT-516	653-7650
Assistant Chief	Vacant	MT-520	653-7650
Administrative Officer	Earlena P. Scott	MT-528	653-7650
Chief Appraiser	David H. Kimbrell	MT-538	653-7650
Graphic Services	Warren C. Wilcox	MT-520	653-7650
Branch of Acquisition Management	Clyde D. Schnack	MT-518	653-7650
Branch of Operations	Vacant	MT-530	653-7650
Office of Migratory Bird Management	Rollin D. Sparrowe	MT-536	254-3207
Assistant Chief	Byron K. Williams	MT-536	254-3207
Administration	Mary Lou Hill	MT-536	254-3207
Operations	Morton M. Smith	MT-546	254-3207
Populations and Habitat Management	Thomas J. Dwyer	MT-536	254-3207
Surveys (Laurel Staff)	Robert I. Smith	PWRC	498-0221
Staff Specialist	Fant W. Martin	MT-546	254-3207
Staff Specialist	Keith A. Morehouse	MT-558	254-3207
Division of Law Enforcement	Clark R. Bavin	HM-300	343-9242
Deputy Chief	Jerome S. Smith	HM-300	343-9242
Forensic Science	Kenneth W. Goddard	HM-300	343-9242
Investigations	Thomas L. Striegler	HM-300	343-9242
Special Operations	John D. Gavitt	HM-300	343-9242
Assistant Director - Fisheries	Gary Edwards	MI-3245	343-6394
Secretary	Louise C. Herring	MI-3245	343-6394
Deputy Assistant Director - Fisheries	H. Dale Hall	MI-3245	343-6394
Division of Fish Hatcheries	Joseph Webster (Act.)	MT-637	653-8746
Division of Fish and Wildlife Management Assistance	Lynn B. Starnes	MT-514	632-7463
Office of Administration	Gary L. Reinitz	MT-629	653-8746

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ORGANIZATIONAL LISTING Washington Office

<u>OFFICE</u>	<u>CHIEF</u>	<u>LOCATION</u>	<u>PHONE</u>
Assistant Director - Fish and Wildlife Enhancement	Ronald E. Lambertson	MI-3024	343-4646
Secretary	Marjorie Nash	MI-3024	343-4646
Deputy Assistant Director - Fish and Wildlife Enhancement	Vacant	MI-3024	343-4646
Division of Endangered Species and Habitat Conservation	William Knapp (Acting)	BY-500	235-2771
Branch of Federal Activities	Frank DeLuise	BY-500	235-2418
Branch of Listing and Recovery	Kenneth Stansell	BY-500	235-1975
Branch of Special Projects	Robert Misso	BY-500	235-2760
Branch of Technical Information and Support Services	James Beers	BY-500	235-2760
Division of Federal Aid	Conley Moffett	BY-500	235-1526
Division of Environmental Contaminants	John G. Rogers, Jr.	BY-500	235-1904
Office of Management Authority	Marshall Jones (Acting)	HM-400	343-4968
Branch of Permits	Richard K. Robinson	HM-400	343-4955
Branch of Management Operations	Arthur Lazarowitz (Act.)	HM-400	343-4963

BUILDING CODES

<u>SYMBOLS</u>	<u>BUILDING NAME</u>	<u>BUILDING LOCATION</u>
BY	Broyhill Building	1000 N. Glebe Road Arlington, Virginia
HM	Hamilton Building	1375 K Street, NW Washington, D. C.
MI	Main Interior Building	18th and C Streets, NW Washington, D. C.
MT	Matomic Building	1717 H Street, NW Washington, D. C.
RD	Riddell Building	1730 K Street, NW Washington, D. C.

ORGANIZATIONAL LISTING

Regional Offices

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Region 1 -- Portland, OR- (CA,HI,ID,NV,OR,WA)
500 N. E. Multnomah Street, Suite 1692
Portland, OR 97232
Com'l: 503-231-6118

Regional Director
Secretary
Deputy Regional Director
Special Assistant to the Regional Director
Assistant Regional Director - Public Affairs
Assistant Regional Director - Human Resources
Assistant Regional Director - Budget and Administration
Assistant Regional Director - Fishery Resources (Acting)
Assistant Regional Director - Fish and Wildlife Enhancement
Assistant Regional Director - Wildlife Resources
Assistant Regional Director - Law Enforcement
Pacific Island Administrator

FTS

Rolf Wallenstrom	429-6118
Carol Williams	429-6116
Wally Steucke	429-6122
Jerry R. Van Meter	429-6135
Diane K. Hoobler	429-6121
Nancy Hopper	429-2260
Don Weathers	429-6115
Bill Shake	429-5967
David F. Riley	429-6159
Lawrence W. DeBates	429-6214
David L. McMullen	429-6125
Allan Marmelstein	8-551-1221

Region 2 -- Albuquerque, NM (AZ,NM,OK,TX)
P.O. Box 1306
500 Gold Avenue, S.W. - Room 1306
Albuquerque, NM 87103
Com'l: 505-766-2321

Regional Director
Secretary
Deputy Regional Director
Assistant Regional Director - Public Affairs
Assistant Regional Director - Human Resources
Assistant Regional Director - Budget and Administration
Assistant Regional Director - Fisheries and Federal Aid
Assistant Regional Director - Fish and Wildlife Enhancement
Assistant Regional Director - Refuges and Wildlife
Assistant Regional Director - Law Enforcement

Michael J. Spear	474-2321
Kathy Griego	474-2321
R. D. Earnest	474-2322
Tom Smylie	474-3940
Roger Abeyta	474-3644
Pat Langley	474-1888
Conrad A. Fjetland	474-2323
James A. Young	474-2324
W. Ellis Klett	474-1829
John L. Cross	474-2091

Region 3 -- Twin Cities, MN (IA,IL,IN,MI,MN,MO,OH,WI)
Federal Building, Fort Snelling
Twin Cities, MN 55111
Com'l: 612-725-3563

Regional Director
Secretary
Deputy Regional Director
Assistant Regional Director - Public Affairs
Assistant Regional Director - Human Resources
Assistant Regional Director - Budget and Administration
Assistant Regional Director - Fisheries and Federal Aid
Assistant Regional Director - Fish and Wildlife Enhancement
Assistant Regional Director - Refuges and Wildlife
Assistant Regional Director - Law Enforcement

James C. Gritman	725-3563
Dianne E. Wilds	725-3563
Marvin Moriarty	725-3503
George Sura	725-3519
Hansel C. Hall	725-3300
Thomas J. Kerze	725-3568
John Popowski	725-3505
Gerald R. Lowry	725-3510
John R. Eadie	725-3507
Larry Hood	725-3530

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ORGANIZATIONAL LISTING

Regional Offices

Region 4 -- Atlanta, GA (AL,AR,FL,GA,KY,LA,MS,NC,FR,SC,TN,VI)

Richard B. Russell Federal Building, Room 1200

75 Spring Street, S.W.

Atlanta, GA 30303

Com'l: 404-331-3588

FTS

Regional Director	James W. Pulliam, Jr.	242-3588
Secretary	Carol L. Marbutt	242-3588
Deputy Regional Director	David B. Allen	242-3588
Assistant Regional Director - Public Affairs	Donald W. Pfitzer	242-3594
Assistant Regional Director - Human Resources	Bennie E. Boyd	242-3586
Assistant Regional Director - Budget and Administration	Francis J. Pratt	242-3591
Assistant Regional Director - Fisheries and Federal Aid	John Brown	242-3576
Assistant Regional Director - Fish and Wildlife Enhancement	Warren T. Olds, Jr.	242-6343
Assistant Regional Director - Refuges and Wildlife	Harold W. Benson	242-0837
Assistant Regional Director - Law Enforcement	Danny M. Searcy	242-5872

Region 5 -- Newton Corner, MA (CT,DC,DE,MA,MD,ME,NH,NJ,NY,PA,RI,VA,VT,WV)

One Gateway Center, Suite 700

Newton Corner, MA 02158

Com'l: 617-965-5100

Regional Director	Howard N. Larsen	829-9200
Secretary	Barbara Burke	829-9200
Deputy Regional Director	William C. Ashe	829-9200
Assistant Regional Director - Public Affairs	Inez Connor	829-9206
Assistant Regional Director - Human Resources (Acting)	Hector Ruiz	829-9256
Assistant Regional Director - Budget and Administration	Dale Coggeshall	829-9235
Assistant Regional Director - Fisheries and Federal Aid	James E. Weaver	829-9208
Assistant Regional Director - Fish and Wildlife Enhancement	Ralph Tisafra	829-9217
Assistant Regional Director - Refuges and Wildlife	Donald Young	829-9222
Assistant Regional Director - Law Enforcement	Eugene Hester	829-9254

* Region 6 -- Denver, CO (CO,KS,MT,ND,NE,SD,UT,WY)

P.O. Box 25486

Denver Federal Center

Denver, CO 80225

Com'l: 303-236-7920

Regional Director	Galen L. Buterbaugh	776-7920
Secretary	Barbara Henry	776-7920
Deputy Regional Director	John Spinks	776-7920
Assistant Regional Director - Public Affairs	John Hallowell	776-7904
Assistant Regional Director - Human Resources	Rudy Chambers	776-7903
Assistant Regional Director - Budget and Administration	Elliott N. Sutta	776-7917
Assistant Regional Director - Fisheries and Federal Aid	Bill Martin	776-8154
Assistant Regional Director - Fish and Wildlife Enhancement	Bob Jacobsen	776-8189
Assistant Regional Director - Refuges and Wildlife	Nelson B. Kverno	776-8145
Assistant Regional Director - Law Enforcement	Terry L. Grosz	776-7540

* For visitation and delivery purposes, the physical location is:
Lake Plaza North Building, 134 Union Boulevard, Lakewood, CO 80228

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ORGANIZATIONAL LISTING

Regional Offices

Region 7 -- Anchorage, AK (AK)

1011 E. Tudor Road

Anchorage, AK 99503

FTS and Com'l: 907-786-3542

FTS

Regional Director

Secretary

Deputy Regional Director

Associate Regional Director

Assistant Regional Director - Public Affairs

Assistant Regional Director - Human Resources

Assistant Regional Director - Budget and Administration

Assistant Regional Director - Fish and Wildlife Enhancement

Assistant Regional Director - Refuges and Wildlife

Assistant Regional Director - Law Enforcement

Walter O. Stieglitz 907-786-3542

Mary Smith 907-786-3542

David L. Olsen 907-786-3543

John Doebe1 907-786-3543

Bruce Batten 907-786-3486

Norma DeBaker 907-786-3552

Edward R. White 907-786-3489

Rowan Gould 907-786-3546

John P. Rogers 907-786-3545

R. David Purinton 907-786-3311

Region 8 -- Washington, D.C.

Department of the Interior

U.S. Fish and Wildlife Service

Matomic Building, Room 527

18th & C Streets, N.W.

Washington, D.C. 20240

FTS and Com'l: 202-653-8791

Regional Director

Secretary

Deputy Regional Director

Office of Scientific Authority

Assistant Regional Director-Human Resources

Assistant Regional Director-Technical

and Administrative Support

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SECTION 2. HISTORY AND STATUTES

ENDANGERED SPECIES ACT

Prior to the Endangered Species Act of 1973, several statutes were designed to protect plants and animals in danger of extinction. They include the Endangered Species Preservation Act of 1966 and the Endangered Species Conservation Act of 1969. The Endangered Species Act of 1973 (P.L. 93-205) repealed these earlier statutes and forms the basis of the current law. The most important amendment (P.L. 95-632) became law November 10, 1978. It greatly expanded the Section 7 provisions regarding interagency cooperation, created the Endangered Species Committee, and established the exemption process. It also authorized the Secretary to enter into cooperative agreements with the states. The 1979 amendment (P.L. 96-159) further refined the interagency consultation and exemption processes and provided for implementation of the Conventions on International Trade in Endangered Species of Wild Fauna and Flora and on Nature Protection and Wildlife Preservation in the Western Hemisphere. P.L. 97-304, enacted on October 13, 1982, further refined the processes for designating endangered and threatened species, interagency consultation, and exemption consideration. In particular, it reduced the time allotted for consideration of exemption applications. The 1982 amendments also modified Convention implementation and provisions dealing with permits and exceptions. Title IV, Section 411 of P.L. 99-659, enacted on November 14, 1986, further amended the Endangered Species Act by incorporating provisions dealing with the incidental taking of depleted marine mammals pursuant to the Marine Mammal Protection Act of 1972. More recently, P.L. 100-478, enacted on October 7, 1988, reauthorized the Endangered Species Act through fiscal 1992. Major provisions of the reauthorization included the following: (1) increased protection for plants, (2) monitoring of species awaiting listing and those recently recovered, (3) new requirements for the preparation of recovery plans, (4) a new funding source for matching grants to the states to assist them in protecting species, (5) requirement for public education and study by the EPA before proposal of regulations banning the use of pesticides, (6) delay of schedule for shrimpers to begin using Turtle Excluder Devices on their nets, (7) requirement of annual reports detailing recovery expenditures on a case-by-case basis, (8) increased penalties for violations of the act, and (9) establishment of new programs for the protection of African elephants. P.L. 100-653, enacted on November 14, 1988, further amends the Endangered Species Act at Sect. 9(d)(1)(A) making a technical correction to include plants.

FISH AND WILDLIFE COORDINATION ACT

The Fish and Wildlife Coordination Act was first passed in 1934 and has been amended five times in 1939, 1940, 1946, 1958, and 1965. The current version of the Act consists primarily of the 1958 and 1965 amendments (P.L. 85-624 and P.L. 89-72). The 1958 amendments were the first to require federal agencies to consult with the Fish and Wildlife Service about planned

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and on-going water development projects. This amendment required the Secretary of Agriculture to consult with the Fish and Wildlife Service on projects affecting wildlife resources and directed federal agencies to incorporate needed measures for wildlife protection into project plans.

The 1965 amendments (P.L. 89-72) were primarily directed at establishing a clear and uniform policy of considering fish and wildlife resources as part of the planning of federal projects. It repealed a provision of the Fish and Wildlife Coordination Act which had made the cost of mitigating damage to fish and wildlife nonreimbursable in the case of federal reclamation projects.

ENDANGERED SPECIES ACT

(Enacted by the Act of December 28, 1973, PL 93-205, 87 Stat. 884 et seq., 16 USC §§1531 et seq., Amended by PL 94-325, June 30, 1976; PL 94-359, July 12, 1976; PL 95-212, December 19, 1977; PL 95-632, November 10, 1978; PL 96-159, December 28, 1979; PL 96-246, May 23, 1980; PL 97-79, November 16, 1981; PL 97-304, October 13, 1982; PL 98-327, June 25, 1984; PL 99-659, November 14, 1986; PL 100-478, October 7, 1988; PL 100-653, November 14, 1988)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Endangered Species Act of 1973"

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FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS. — The Congress finds and declares that —

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) The United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to —

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

[2(4)(G) amended by PL 100-478]

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

[(5) amended by PL 96-159]

(b) PURPOSES. — The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be

conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) **POLICY.** — (1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

[(c)(1) designated by PL 97-304]

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

[(c)(2) added by PL 97-304]

DEFINITIONS

SEC. 3. For the purposes of this Act —

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

[3(1) added by PL 95-632]

(2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms “conserve”, “conserving”, and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) the term “critical habitat” for a threatened or endangered species means —

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to

the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for these species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

[3(5) added by PL 95-632]

(6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insect as determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) The term “Federal agency” means any department, agency, or instrumentality of the United States.

[3(7) added by PL 95-632]

(8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term “foreign commerce” includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) [Repealed by PL 97-304]

(12) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

[3(12) added by PL 95-632]

(13) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

[3(13) amended by PL 100-478]

(14) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

[3(15) amended by PL 100-478]

(16) The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

[3(16) amended by PL 95-632]

(17) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term "State agency" means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

[3(18) amended by PL 95-632]

(19) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term "United States," when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL. — (1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

[4(a)(1) revised by PL 95-632; PL 97-304]

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of

such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

[4(a)(3) added by PL 97-304]

(b) **BASIS FOR DETERMINATIONS.**— (1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a state or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger or extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted, but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from such lists species for which the protections of the Act are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species.

[4(b)(3)(C)(iii) added by PL 100-478]

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information

indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that—

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A)

by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

[4(b) revised by PL 97-304]

(c) **LISTS.**— (1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range

it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b).

[4(c)(1) amended by PL 97-304]

(2) The Secretary shall —

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should —

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).

[4(c)(2), (3) deleted and [(4) redesignated as (2) PL 97-304]

(d) **PROTECTIVE REGULATIONS.** — Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) **SIMILARITY OF APPEARANCE CASES.** —

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that —

[4(e) amended by PL 100-478]

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f)(1) Recovery Plans.— The Secretary shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable —

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan —

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information pre-

sented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

[Sec. 4(f) deleted and (g) redesignated as (f) and amended by PL 97-304; revised by PL 100-478]

(g) Monitoring. — (1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c).

(2) The Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

[New 4(g) added by PL 100-478]

(h) AGENCY GUIDELINES. — The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to —

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

[4(h)(1) through (4) added by PL 96-159; redesignated as (g) and amended by PL 97-304; redesignated as (h) by PL 100-478]

(i) If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with

subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3), the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

[4(h) added by PL 97-304; redesignated as (i) by PL 100-478]

[*Editor's note:* PL 29-304 §2(b) provides:

"(b)(1) Any petition filed under section 4(c)(2) of the Endangered Species Act of 1973 (as in effect on the day before the date of the enactment of the Act) and any regulation proposed under section 4(f) of such Act of 1973 (as in effect on such day) that is pending on such date of enactment shall be treated as having been filed or proposed on such date of enactment under section 4(b) of such Act of 1973 (as amended by subsection (a)); and the procedural requirements specified in such section 4(b) (as so amended) regarding such petition or proposed regulation shall be deemed to be complied with to the extent that like requirements under such section 4 (as in effect before the date of the enactment of this Act) were complied with before such date of enactment.

(2) Any regulation proposed after, or pending on, the date of the enactment of this Act to designate critical habitat for a species that was determined before such date of enactment to be endangered or threatened shall be subject to the procedures set forth in section 4 of such Act of 1973 (as amended by subsection (a)) for regulations proposing revisions to critical habitat instead of those for regulations proposing the designation of critical habitat.

(3) Any list of endangered species or threatened species (as in effect under section 4(c) of such Act of 1973 on the day before the date of the enactment of this Act) shall remain in effect unless and until determinations regarding species and designations and revisions of critical habitats that require changes to such list are made in accordance with subsection (b)(5) of such Act of 1973 (as added by subsection (a)).

(4) Section 4(a)(3)(A) of such Act of 1973 (as added by subsection (a)) shall not apply with respect to any species which was listed as an endangered species or a threatened species before November 10, 1978."]

LAND ACQUISITION

SEC. 5(a) PROGRAM. — The Secretary and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened

species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) ACQUISITIONS. — Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

SEC. 6(a) GENERAL. — In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) MANAGEMENT AGREEMENTS. — The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c) (1) COOPERATIVE AGREEMENTS. — In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program —

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened, or that under the State program —

(i) the requirements set forth in paragraphs (C), (D), and (E) of this subsection are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause and this subparagraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and

threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program —

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program —

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

[6(c) revised by PL 95-212, PL 95-632]

(d) ALLOCATION OF FUNDS. — (1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 4(b)(3) and recovered species pursuant to section 4(g). The Secretary shall allocate each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of —

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and pur-

poses of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State;

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species;

(F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species; and

(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary.

So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

[6(d)(1) revised by PL 100-478]

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that —

(i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 90 percent whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

[6(d)(2)(i) and (ii) amended by PL 97-304]

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS. — Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS. — Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION. — (1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State —

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when —

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such

species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) **REGULATIONS.** — The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) **APPROPRIATIONS.** — (1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to 5 percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.

[6(i) added by PL 100-478]

INTERAGENCY COOPERATION

[7 revised by PL-632]

SEC. 7. (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS. — (1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemp-

tion for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

[7(a) amended by PL 96-159; PL 97-304]

(b) **OPINION OF SECRETARY.**—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required,

(II) the information that is required to complete the consultation, and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modifications is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion issued by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2), the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972;

[7(b)(4)(C) added by PL 99-659]

the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 with regard to such taking, and

[New 7(b)(4)(iii) added by PL 99-659]

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

[Former 7(b)(4)(iii) redesignated as (iv) by PL 99-659]

(c) BIOLOGICAL ASSESSMENT. — (1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

[7(c) amended by PL 96-159; PL 97-304]

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

[7(c)(2) added by PL 96-159]

(d) LIMITATION ON COMMITMENT OF RESOURCES. — After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

[7(d) amended by PL 96-159]

(e)(1) ESTABLISHMENT OF COMMITTEE. — There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this section for the action set forth in such application.

[7(e)(2) amended by PL 96-159]

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to

the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

[7(e)(10) amended by PL 97-304]

(f) REGULATIONS. — Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to —

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

[7(f)(1), (2) amended by PL 96-159]

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE AND. — (1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the 'exemption applicant' in this section.

[7(g)(1) amended by PL 96-159; PL 97-304]

(2) (A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term final agency action means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review.

[7(2)(A) amended by PL 96-159; PL 97-304]

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the applicant in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

[7(g)(2)(B) amended by PL 97-304]

[7(g)(3) and (4) repealed and (5)-(7) amended and redesignated as (3)-(5) by PL 97-304]

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A)(i), (ii), and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b)(1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

[7(g)(8) redesignated as (6) by PL 97-304]

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

[7(g)(9) repealed and (10) amended and redesignated as (7) by PL 97-304]

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

[7(g)(11) repealed and (12) amended and redesignated as (8) by PL 97-304]

(h) EXEMPTION. -- (1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person --

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4) and on such other testimony or evidence as it may receive, that--

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

[7(h)(1)(A) amended by PL 97-304]

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

[Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action --

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless --

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

[If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

[7(h)(2) amended by PL 96-159]

(i) REVIEW BY SECRETARY OF STATE. -- Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) SPECIAL PROVISIONS. -- An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have

been previously prepared with respect to any agency action exempted by such order.

(1) **COMMITTEE ORDERS.** — (1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) **NOTICE.** — The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

[7(m) amended by PL 96-159]

(n) **JUDICIAL REVIEW.** — Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the

record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) Notwithstanding sections 4(d) and 9(a)(1)(B) and (C), sections 101 and 102 of the Marine Mammal Protection Act of 1972, or any regulation promulgated to implement any such section —

[7(o) amended by PL 97-304; PL 99-659]

(1) any action for which an exemption is granted under subsection (h) shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

[7(o)(1) designated and amended by PL 97-304]

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) shall not be considered to be a prohibited taking of the species concerned.

[7(o)(2) amended by PL 97-304; PL 99-659]

(p) **EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.** — In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

(q) [Repealed by PL 97-304]

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE — As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the

Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) **ENCOURAGEMENT OF FOREIGN PROGRAMS.** — In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage —

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 4 of this Act:

[8(b)(1) amended by PL 96-159]

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

[8(b)(3) amended by PL 96-159]

(c) **PERSONNEL.** — After consultation with the Secretary of State, the Secretary may —

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants, and

[8(c)(1) amended by PL 96-159]

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) **INVESTIGATIONS.** — After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and

research abroad as he deems necessary to carry out the purposes of this Act.

CONVENTION IMPLEMENTATION

[8A added by PL 96-159]

Sec. 8A. (a) **MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.** — The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) **MANAGEMENT AUTHORITY FUNCTIONS.** — The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

[8A(c), (d) and (c) amended by PL 97-304]

(c) **SCIENTIFIC AUTHORITY FUNCTIONS.** —

(1) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State of make, estimates of population size in making such determinations or giving such advice.

[8A(c)(1) designated and (2) added by PL 97-304]

(d) **RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.** — If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

[8A(d) revised by PL 97-304]

(e) **WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.** — (1) The Secretary of the Interior (hereinafter in this subsection referred to as the 'Secretary'), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all

regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the 'Western Convention'). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provision of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

[8A(e) revised by PL 97-304]

PROHIBITED ACTS

SEC 9. (a) GENERAL — (1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to —

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to —

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

[New 9(a)(2)(B) added by PL 97-304; revised by PL 100-478]

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

[Former 9(a)(2)(B) — (D) redesignated as (C) — (E) by PL 97-304]

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: Provided, That such holding and

any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (A)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

[9(b)(1) revised by PL 97-304]

[9(b)(2) added by PL 95-632]

(2)(A) The provisions of subsection (a)(1) shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

[9(b)(2)(A) amended by PL 97-304]

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION. — (1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if —

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II of the Convention.

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.—

[9(d) revised by PL 100-478]

(1) IN GENERAL. — It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

[9(d)(1)(A) amended by PL 100-653]

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS. — Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as willfully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, and opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS. — The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OR AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED. — In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS. — It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS. — (1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States

any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS. — It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. (a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

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

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit."

[10(a) revised by PL 97-304]

(b) HARDSHIP EXEMPTIONS. — (1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW. — The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every state of the proceeding.

[10(c) amended by PL 100-478]

(d) PERMIT AND EXEMPTION POLICY. — The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

[10(d) amended by PL 97-304]

(e) ALASKA NATIVES. — (1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any en-

dangered species or threatened species, or the importation of any such species taken pursuant to this section, by

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection —

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lac-ing, beading, drawing, and painting.

[10(e)(3)(ii) amended by PL 100-478]

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)(1) As used in this subsection —

(A) The term "pre-Act endangered species part" means —

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving."

[10(f)(1)(B) amended by PL 97-304]

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

[10(f)(8)(A) added by PL 96-159; revised by PL 100-478]

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

[10(f)(8)(B) added by PL 96-159; amended by PL 100-478]

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

[10(f)(8)(C) added by PL 96-159]

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, and pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for product was held by such person on October 13, 1982.

[10(f)(8)(D) added by PL 100-478]

[(9) [Repealed by PL 100-478]]

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) CERTAIN ANTIQUE ARTICLES. — (1) Sections 4(d), 9(a), and 9(c) do not apply to any article which—

(A) is not less than 100 years of age;

[10(h)(1) and (1)(A) amended by PL 97-304]

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) NONCOMMERCIAL TRANSSHIPMENTS. — Any importation into the United States of fish or wildlife shall, if —

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the

United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provisions of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

[10(i) revised by PL 97-304]

(j) **EXPERIMENTAL POPULATIONS.** — (1) For purposes of this subsection, the term experimental population means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that —

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an

experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

[10(j) added by PL 97-304]

PENALTIES AND ENFORCEMENT

SEC. 11.(a) CIVIL PENALTIES — (1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or or any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation.

Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

[11(a)(1) amended by PL 95-632; PL 97-304; PL 100-478]

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

[11(a)(3) added by PL 95-632]

(2) Hearings held during proceedings for the assessment of civil penalties by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) **CRIMINAL VIOLATIONS.** — (1) Any person who knowingly violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six months, or both.

[11(b)(1) amended by PL 97-304; PL 100-478]

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses permits stamps, or other agreements pursuant to this section.

[11(b)(2) amended by PL 95-632]

(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

[11(b)(3) added by PL 95-632]

(c) **DISTRICT COURT JURISDICTION.** — The several district courts of the United States; including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) **REWARD.** — The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this Act or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this Act or any regulation issued hereunder, and (2) the reasonable and necessary cost incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this Act with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under the subsection. Whenever the balance of sums received under this section and section 6(d) of the Act of November 16, 1981 (16 U.S.C. 3375(d)), as penalties or fines, or from forfeitures of property, exceed \$500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 6(i) of this Act.

[11(d) amended by PL 98-327; PL 100-478]

(e) **ENFORCEMENT.** — (1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of the subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate

issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act or regulation issued under authority thereof.

[11(e)(6) added by PL 97-304]

(f) REGULATIONS. — The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS. — (1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf —

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary.

[11(g)(1)(C) added by PL 97-304]

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section —

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(B) No action may be commenced under subparagraph (1)(B) of this section —

(i) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

[11(g)(2)(C) added by PL 97-304]

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection,

may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) **COORDINATION WITH OTHER LAWS.**—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered, or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

SEC. 13.(a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant

to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species."

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 — 9(a)(1)) is amended by striking out:

"THREATENED SPECIES. — For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction," and inserting in lieu thereof the following:

"ENDANGERED SPECIES AND THREATENED SPECIES. — For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k-1), is amended to read as follows:

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91-135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

[15 revised by PL 97-304; PL 100-478]

SEC. 15. (a) IN GENERAL — Except as provided in subsections (b), (c), and (d), there are authorized to be appropriated —

(1) not to exceed \$35,000,000 for fiscal year 1988, \$36,500,000 for fiscal year 1989, \$38,000,000 for fiscal year 1990, \$39,500,000 for fiscal year 1991, and \$41,500,000 for fiscal year 1992 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

(2) not to exceed \$5,750,000 for fiscal year 1988, \$6,250,000 for each of fiscal years 1989 and 1990, and \$6,750,000 for each of fiscal years 1991 and 1992 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

(3) not to exceed \$2,200,000 for fiscal year 1988, \$2,400,000 for each of fiscal years 1989 and 1990, and \$2,600,000 for each of fiscal years 1991 and 1992, to

enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of plants.

(b) **EXEMPTIONS FROM ACT.** — There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under sections 7(e), (g), and (h) not to exceed \$600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992.

(c) **CONVENTION IMPLEMENTATION.** — There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 8 A(e) not to exceed \$400,000 for each of fiscal years 1988, 1989, 1990, and \$500,000 for each of fiscal years 1991 and 1992, and such sums shall remain available until expended.

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE [18 Added by PL 100-478]

SEC. 18. On or before January 15, 1990, and each January 15 thereafter, the Secretary of the Interior, acting through the Fish and Wildlife Service, shall submit to the Congress an annual report covering the preceding fiscal year which shall contain —

(1) an accounting on a species by species basis of all reasonably identifiable Federal expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act; and

(2) an accounting on a species by species basis of all reasonably identifiable expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act by States receiving grants under section 6.

[*Editor's note:* Section 1010 of Public Law 100-478 provides the following concerning the endangered species pesticides labeling program:

SEC 1010. EDUCATION, STUDY AND REPORT.

(a) **EDUCATION.** — The Administrator of the Environmental Protection Agency in cooperation with the Secretary of Agriculture and the Secretary of the Interior, promptly upon enactment of this Act, shall

conduct a program to inform and educate fully persons engaged in agricultural food and fiber commodity production of any proposed pesticide labeling program or requirements that may be imposed by the Administrator in compliance with the Endangered Species Act (16 U.S.C. 1531 et seq.). The Administrator also shall provide the public with notice of, and opportunity for comment on, the elements of any such program and requirements based on compliance with the Endangered Species Act, including (but not limited to) an identification of any pesticides affected by the program; an explanation of the restriction or prohibition on the user or applicator of any such pesticide; and identification of those geographic areas affected by any pesticide restriction or prohibition; an identification of the effects of any restricted or prohibited pesticide on endangered or threatened species; and an identification of the endangered or threatened species along with a general description of the geographic areas in which such species are located wherein the application of a pesticide will be restricted, prohibited, or its use otherwise limited, unless the Secretary of the Interior determines that the disclosure of such information may create a substantial risk of harm to such species or its habitat.

(b) **STUDY.** — The Administrator of the Environmental Protection Agency, jointly with the Secretary of Agriculture and the Secretary of the Interior, shall conduct a study to identify reasonable and prudent means available to the Administrator to implement the endangered species pesticides labeling program which would comply with the Endangered Species Act of 1973, as amended, and which would allow persons to continue production of agricultural food and fiber commodities. Such study shall include investigation by the Administrator of the best available methods to develop maps and the best available alternatives to mapping as means of identifying those circumstances in which use of pesticides may be restricted; identification of alternatives to prohibitions on pesticide use, including, but not limited to, alternative pesticides and application methods and other agricultural practices which can be used in lieu of any pesticides whose use may be restricted by the labeling program; examination of methods to improve coordination among the Environmental Protection Agency, Department of Agriculture, and Department of the Interior in administration of the labeling program; and analysis of the means of implementing the endangered species pesticides labeling program or alternatives to such a program, if any, to promote the conservation of endangered or threatened species and to minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators.

(c) **REPORT.** — The Administrator of the Environmental Protection Agency in cooperation with the Secretary of Agriculture and the Secretary of the Interior shall submit a report within one year of the date of enactment of this Act, presenting the results of the study conducted pursuant to subsection (b) of this section to

the Committee on Merchant Marine and Fisheries and the Committee on Agriculture of the United States House of Representatives, and the Committee on Environment and Public Works and the Committee on Agriculture, Nutrition, and Forestry of the United States Senate.”]

FISH AND WILDLIFE COORDINATION ACT

(16 U.S.C. 661-666c; P.L. 85-624, August 12, 1958; Amended by P.L. 89-72, July 9, 1965)

§661. Declaration of purpose; cooperation of agencies; surveys and investigations; donations

For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of sections 661-666c of this title in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of said sections; (2) to make surveys and investigations of the wildlife of the public domain, including lands and waters or interests therein acquired or controlled by any agency of the United States; and (3) to accept donations of land and contributions of funds in furtherance of the purposes of said sections.

§662. Impounding, diverting, or controlling of waters

(a) Consultations between agencies

Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

(b) Reports and recommendations; consideration

In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects, and any report of the head of the State agency exercising administration over the wildlife resources of the State, based on surveys and investigations conducted by the United States Fish and Wildlife Service and such

State agency for the purpose of determining the possible damage to wildlife resources and for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress or to any agency or person having the authority or the power, by administrative action or otherwise, (1) to authorize the construction of water-resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects, to which sections 661-666c of this title apply. Recommendations of the Secretary of the Interior shall be as specific as is practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages. The reporting officers in project reports of the Federal agencies shall give full consideration to the report and recommendations of the Secretary of the Interior and to any report of the State agency on the wildlife aspects of such projects, and the project plan shall include such justifiable means and measures for wildlife purposes as the reporting agency

finds should be adopted to obtain maximum overall project benefits.

(c) Modification of projects; acquisition of lands

Federal agencies authorized to construct or operate water-control projects are authorized to modify or add to the structures and operations of such projects, the construction of which has not been substantially completed on the date of enactment of the Fish and Wildlife Coordination Act, and to acquire lands in accordance with section 663 of this title, in order to accommodate the means and measures for such conservation of wildlife resources as an integral part of such projects: *Provided*, That for projects authorized by a specific Act of Congress before the date of enactment of the Fish and Wildlife Coordination Act (1) such modification or land acquisition shall be compatible with the purposes for which the project was authorized; (2) the cost of such modifications or land acquisition, as means and measures to prevent loss of and damage to wildlife resources to the extent justifiable, shall be an integral part of the cost of such projects; and (3) the cost of such modifications or land acquisition for the development or improvement of wildlife resources may be included to the extent justifiable, and an appropriate share of the cost of any project may be allocated for this purpose with a finding as to the part of such allocated cost, if any, to be reimbursed by non-Federal interests.

(d) Project costs

The cost of planning for and the construction or installation and maintenance of such means and measures adopted to carry out the conservation purposes of this section shall constitute an integral part of the cost of such projects: *Provided*, That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities.

(e) Transfer of funds

In the case of construction by a Federal agency, that agency is authorized to transfer to the United States Fish and Wildlife Service, out of appropriations or other funds made available for investigations, engineering, or construction, such funds as may be necessary to conduct all or part of the investigations required to carry out the purposes of this section.

(f) Estimation of wildlife benefits or losses

In addition to other requirements, there shall be included in any report submitted to Congress supporting a recommendation for authorization of any new project for the control or use of water as described herein (including any new division of such project or new supplemental works on such project) an estimation of the wildlife benefits or losses to be derived therefrom including benefits to be derived from measures recommended specifically for the development and improvement of wildlife resources, the cost of providing wildlife benefits (including the cost of additional facilities to be installed or lands to be acquired specifically for that particular phase of wildlife conservation relating to the development and improvement of wildlife), the part of the cost of joint-use facilities allocated to wildlife, and the part of such costs, if any, to be reimbursed by non-Federal interests.

(g) Applicability to projects

The provisions of this section shall be applicable with respect to any project for the control or use of water as prescribed herein, or any unit of such project authorized before or after the date of enactment of the Fish and Wildlife Coordination Act for planning or construction, but shall not be applicable to any project or unit thereof authorized before the date of enactment of the Fish and Wildlife Coordination Act if the construction of the particular project or unit thereof has been substantially completed. A project or unit thereof shall be considered to be substantially completed when sixty percent or more of the estimated construction cost has been obligated for expenditure.

(h) Exempt projects and activities

The provisions of sections 661-666c of this title shall not be applicable to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

§663. Impoundment or diversion of waters

(a) Conservation, maintenance, and management of wildlife resources; development and improvement

Subject to the exceptions prescribed in section 662(h) of this title, whenever the waters of any stream or other body of

water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled, modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impoundment, diversion, or other control, shall be made for the use thereof, together with any areas of land, water, or interests therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon, including the development and improvement of such wildlife resources pursuant to the provisions of section 662 of this title.

(b) Use and availability of waters, land, or interests therein

The use of such waters, land, or interests therein for wildlife conservation purposes shall be in accordance with general plans approved jointly (1) by the head of the particular department or agency exercising primary administration in each instance, (2) by the Secretary of the Interior, and (3) by the head of the agency exercising the administration of the wildlife resources of the particular State wherein the waters and areas lie. Such waters and other interests shall be made available, without cost for administration, by such State agency, if the management of the properties relate to the conservation of wildlife other than migratory birds, or by the Secretary of the Interior, for administration in such manner as he may deem advisable, where the particular properties have value in carrying out the national migratory bird management program: *Provided*, That nothing in this section shall be construed as affecting the authority of the Secretary of Agriculture to cooperate with the States or in making lands available to the States with respect to the management of wildlife and wildlife habitat on lands administered by him.

(c) Acquisition of land, waters, and interests therein; report to Congress

When consistent with the purposes of sections 661-666c of this title and the reports and findings of the Secretary of the Interior prepared in accordance with section 662 of this title, land, waters, and interests therein may be acquired by Federal construction agencies for the wildlife conservation and development purposes of sections 661-666c of this title in connection with a project as reasonably needed to

preserve and assure for the public benefit the wildlife potentials of the particular project area: *Provided*, That before properties are acquired for this purpose, the probable extent of such acquisition shall be set forth, along with other data necessary for project authorization, in a report submitted to the Congress, or in the case of a project previously authorized, no such properties shall be acquired unless specifically authorized by Congress, if specific authority for such acquisition is recommended by the construction agency.

(d) Use of acquired properties

Properties acquired for the purposes of this section shall continue to be used for such purposes, and shall not become the subject of exchange or other transactions if such exchange or other transaction would defeat the initial purpose of their acquisition.

(e) Availability of Federal lands acquired or withdrawn for Federal water-resource purposes

Federal lands acquired or withdrawn for Federal water-resource purposes and made available to the States or to the Secretary of the Interior for wildlife management purposes, shall be made available for such purposes in accordance with sections 661-666c of this title, notwithstanding other provisions of law.

(f) National forest lands

Any lands acquired pursuant to this section by any Federal agency within the exterior boundaries of a national forest shall, upon acquisition, be added to and become national forest lands, and shall be administered as a part of the forest within which they are situated, subject to all laws applicable to lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961), unless such lands are acquired to carry out the National Migratory Bird Management Program.

§664. Administration; rules and regulations; availability of lands to State agencies

Such areas as are made available to the Secretary of the Interior for the purposes of sections 661-666c of this title, pursuant to sections 661 and 663 of this title or pursuant to any other authorization, shall be administered by him directly or in accordance with cooperative agreements entered into pursuant to the provisions of section

661 of this title and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, as may be adopted by the Secretary in accordance with general plans approved jointly by the Secretary of the Interior and the head of the department or agency exercising primary administration of such areas: *Provided*, That such rules and regulations shall not be inconsistent with the laws for the protection of fish and game of the states in which such area is situated: *Provided further*, That lands having value to the National Migratory Bird Management Program may, pursuant to general plans, be made available without cost directly to the State agency having control over wildlife resources, if it is jointly determined by the Secretary of the Interior and such State agency that this would be in the public interest: *And provided further*, That the Secretary of the Interior shall have the right to assume the management and administration of such lands in behalf of the National Migratory Bird Management Program if the Secretary finds that the State agency has withdrawn from or otherwise relinquished such management and administration.

§665. Investigations as to effect of sewage, industrial wastes; reports

The Secretary of the Interior, through the Fish and Wildlife Service and the Bureau of Mines, is authorized to make such investigations as he deems necessary to determine the effects of domestic sewage, mine, petroleum, and industrial wastes, erosion silt, and other polluting substances on wildlife, and to make reports to the Congress concerning such investigations and of recommendations for alleviating dangerous and undesirable effects of such pollution. These investigations shall include (1) the determination of standards of water quality for the maintenance of wildlife; (2) the study of methods of abating and preventing pollution, including methods for the recovery of useful or marketable products and byproducts of wastes; and (3) the collation and distribution of data on the progress and results of such investigations for the use of Federal, State, municipal, and private agencies, individuals, organizations, or enterprises.

§665a. Maintenance of adequate water levels in upper Mississippi River

In the management of existing facilities (including locks, dams, and pools) in the Mississippi River between Rock Island, Illinois, and Minneapolis, Minnesota, administered by the United States Corps of Engineers of the Department of the Army, that Department is directed to give full consideration and recognition to the needs of fish and other wildlife resources and their habitat dependent on such waters, without increasing additional liability to the Government, and, to the maximum extent possible without causing damage to levee and drainage districts, adjacent railroads and highways, farm lands, and dam structures, shall generally operate and maintain pool levels as though navigation was carried on throughout the year.

§666. Authorization of Appropriations

There is authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions of sections 661-666c of this title and regulations made pursuant thereto, including the construction of such facilities, buildings, and other improvements necessary for economical administration of areas made available to the Secretary of the Interior under said sections, and the employment in the city of Washington and elsewhere of such persons and means as the Secretary of the Interior may deem necessary for such purposes.

§666a. Penalties

Any person who shall violate any rule or regulation promulgated in accordance with sections 661-666c of this title shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500 or imprisoned for not more than one year, or both.

§666b. Definitions

The terms "wildlife" and "wildlife resources" as used herein include birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

§666c. Applicability to Tennessee Valley Authority

The provisions of sections 661-666b of this title shall not apply to the Tennessee Valley Authority.

SECTION 3. IMPLEMENTING REGULATIONS

ENDANGERED SPECIES ACT

Regulations implementing the Endangered Species Act are found in Title 50 of the Code of Federal Regulations (CFR). Table 3-1 lists regulations implementing parts of the Act relevant to DOE activities. A brief summary of major regulations follows.

Title 50, Chapter I, Subchapter B

Chapter I of Title 50 contains regulations of the U.S. Fish and Wildlife Service (FWS) (Department of the Interior). Subchapter B deals with the "taking" (i.e., hunting, capturing, disturbance, etc.), possession, transportation, sale, purchase, barter, exportation, and importation of wildlife and plants. 50 CFR Part 17, Endangered and Threatened Wildlife and Plants, contains a list of threatened and endangered species (Sections 17.11 and 17.12), their critical habitats (Sections 17.94 - 17.96), and prohibitions and special rules concerning those species (Subparts C, D, F, and G).

Title 50, Chapter II, Subchapter C

Chapter II of Title 50 contains the regulations administered by the National Marine Fisheries Service (NMFS) of the U.S. Department of Commerce. The NMFS shares responsibility with the Fish and Wildlife Service for implementation of the Endangered Species Act. Regulations in 50 CFR 222, 225, 226, and 227 deal with endangered and threatened marine species and their critical habitats.

Title 50, Chapter IV, Subchapter A

Chapter IV of Title 50 contains joint regulations of the FWS and the NMFS for implementation of the Endangered Species Act. Particularly pertinent to DOE is 50 CFR 402, Interagency Cooperation. This section implements Section 7 of the ESA and describes the process by which projects affecting endangered or threatened species are to be reviewed. Regulations in 50 CFR 424 describe the process by which a plant or animal species is listed as threatened or endangered.

Title 50, Chapter IV, Subchapter C

This subchapter contains regulations pertaining to the endangered species exemption process. This process would be used by those persons desiring to perform an activity which is forbidden under the Endangered Species Act. Both application and review procedures are described in this subchapter.

TABLE 3-1. REGULATIONS IMPLEMENTING THE ENDANGERED SPECIES ACT
RELEVANT TO DOE ACTIVITIES

TITLE 50, CHAPTER I	
Subchapter B -	Taking Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants
Part 17 -	Endangered and Threatened Wildlife and Plants
TITLE 50, CHAPTER II	
Subchapter C -	Marine Mammals
Part 222 -	Endangered Fish or Wildlife
Part 225 -	Federal/State Cooperation in the Conservation of Endangered and Threatened Species
Part 226 -	Designated Critical Habitat
Part 227 -	Threatened Fish and Wildlife
TITLE 50, CHAPTER IV	
Subchapter A	
Part 402 -	Interagency Cooperation - Endangered Species Act of 1973
Part 424 -	Listing Endangered and Threatened Species and Designating Critical Habitat
Subchapter C -	Endangered Species Exemption Process
Part 450 -	General Provisions
Part 451 -	Application Procedure
Part 452 -	Consideration of Application by the Secretary
Part 453 -	Endangered Species Committee

FISH AND WILDLIFE COORDINATION ACT

To date, no regulations have been promulgated implementing the Fish and Wildlife Coordination Act. Regulations were proposed May 18, 1979 (44 FR 29300-29313) and December 18, 1980 (45 FR 83412), but withdrawn July 19, 1982 (47 FR 31299). Currently, the Act is being used directly in lieu of implementing regulations. Agencies are required under the Act to consult with the FWS during the planning of water development projects (see Section 1). The form of the consultation as well as its timing, scope, and specific project applicability are not specified.

Part 17

Sec.

- 17.6 State cooperative agreements. [Reserved]
- 17.7 Raptor exemption.

Subpart B—Lists

- 17.11 Endangered and threatened wildlife.
- 17.12 Endangered and threatened plants.

Subpart C—Endangered Wildlife

- 17.21 Prohibitions.
- 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.
- 17.23 Economic hardship permits.

Subpart D—Threatened Wildlife

- 17.31 Prohibitions.
- 17.32 Permits—general.
- 17.40 Special rules—mammals.
- 17.41 Special rules—birds.
- 17.42 Special rules—reptiles.
- 17.43 Special rules—amphibians.
- 17.44 Special rules—fishes.
- 17.45 Special rules—snails and clams. [Reserved]
- 17.46 Special rules—crustaceans.
- 17.47 [Reserved]
- 17.48 Special rules—common sponges and other forms. [Reserved]

Subpart E—Similarity of Appearance

- 17.50 General.
- 17.51 Treatment as endangered or threatened.
- 17.52 Permits—similarity of appearance.

Subpart F—Endangered Plants

- 17.61 Prohibitions.
- 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.
- 17.63 Economic hardship permits.

Subpart G—Threatened Plants

- 17.71 Prohibitions.
- 17.72 Permits—general.
- 17.73—17.78 [Reserved]

Subpart H—Experimental Populations

- 17.80 Definitions.
- 17.81 Listing.
- 17.82 Prohibitions.
- 17.83 Interagency cooperation.
- 17.84 Special rules—vertebrates.
- 17.85 Special rules—invertebrates. [Reserved]
- 17.86 Special rules—plants. [Reserved]

**PART 17—ENDANGERED AND
THREATENED WILDLIFE AND PLANTS**

**Subpart A—Introduction and General
Provisions**

Sec.

- 17.1 Purpose of regulations.
- 17.2 Scope of regulations.
- 17.3 Definitions.
- 17.4 Pre-Act wildlife.
- 17.5 Alaska natives.

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Sec.

Subpart I—Interagency Cooperation

- 17.94 Critical habitats.
- 17.95 Critical habitat—fish and wildlife.
- 17.96 Critical habitat—plants.

Subpart J—Manatee Protection Areas

- 17.100 Purpose.
- 17.101 Scope.
- 17.102 Definitions.
- 17.103 Establishment of protection areas.
- 17.104 Prohibitions.
- 17.105 Permits and exceptions.
- 17.106 Emergency establishment of protection areas.
- 17.107 Facilitating enforcement.
- 17.108 List of designated manatee protection areas.

AUTHORITY: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

SOURCE: 40 FR 44415, Sept. 26, 1975, unless otherwise noted.

Subpart A—Introduction and General Provisions

§ 17.1 Purpose of regulations.

(a) The regulations in this part implement the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, except for those provisions in the Act concerning the Convention on International Trade in Endangered Species of Wild Fauna and Flora, for which regulations are provided in Part 23 of this subchapter.

(b) The regulations identify those species of wildlife and plants determined by the Director to be endangered or threatened with extinction under section 4(a) of the Act and also carry over the species and subspecies of wildlife designated as endangered under the Endangered Species Conservation Act of 1969 (83 Stat. 275, 16 U.S.C. 668cc-1 to 6) which are deemed endangered species under section 4(c)(3) of the Act.

[40 FR 44415, Sept. 26, 1975, as amended at 42 FR 10465, Feb. 22, 1977]

§ 17.2 Scope of regulations.

(a) The regulations of this part apply only to endangered and threatened wildlife and plants.

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(b) By agreement between the Service and the National Marine Fisheries Service, the jurisdiction of the Department of Commerce has been specifically defined to include certain species, while jurisdiction is shared in regard to certain other species. Such species are footnoted in Subpart B of this part, and reference is given to special rules of the National Marine Fisheries Service for those species.

(c) The provisions in this part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife.

(d) The examples used in this part are provided solely for the convenience of the public, and to explain the intent and meaning of the regulation to which they refer. They have no legal significance.

(e) Certain of the wildlife and plants listed in §§ 17.11 and 17.12 as endangered or threatened are included in Appendix I, II or III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation and reexportation of such species are subject to additional regulations provided in Part 23 of this subchapter.

[40 FR 44415, Sept. 26, 1975, as amended at 42 FR 10465, Feb. 22, 1977]

§ 17.3 Definitions.

In addition to the definitions contained in Part 10 of this subchapter, and unless the context otherwise requires, in this Part 17:

"Act" means the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884);

"Alaskan Native" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1603(b) (85 Stat. 588)) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Na-

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tives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part;

"Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut, or Eskimo which (a) were commonly produced on or before December 28, 1973, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to § 18.23(c) of this subchapter (in the case of marine mammals) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups such as cooperatives, is permitted so long as no large scale mass production results;

"Bred in captivity" or "captive-bred" refers to wildlife, including eggs, born or otherwise produced in captivity from parents that mated or otherwise transferred gametes in captivity, if reproduction is sexual, or from parents that were in captivity when development of the progeny began, if development is asexual.

"Captivity" means that living wildlife is held in a controlled environment that is intensively manipulated by man for the purpose of producing wildlife of the selected species, and that has boundaries designed to prevent animal, eggs or gametes of the selected species from entering or leaving

the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food.

"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249.

"Enhance the propagation or survival," when used in reference to wildlife in captivity, includes but is not limited to the following activities when it can be shown that such activities would not be detrimental to the survival of wild or captive populations of the affected species:

(a) Provision of health care, management of populations by culling, contraception, euthanasia, grouping or handling of wildlife to control survivorship and reproduction, and similar normal practices of animal husbandry needed to maintain captive populations that are self-sustaining and that possess as much genetic vitality as possible;

(b) Accumulation and holding of living wildlife that is not immediately needed or suitable for propagative or scientific purposes, and the transfer of such wildlife between persons in order to relieve crowding or other problems hindering the propagation or survival of the captive population at the location from which the wildlife would be removed; and

(c) Exhibition of living wildlife in a manner designed to educate the public about the ecological role and conservation needs of the affected species.

"Endangered" means a species of wildlife listed in § 17.11 or a species of plant listed in § 17.12 and designated as endangered.

"Harass" in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

"Harm" in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modifi-

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cation or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

"Incidental taking" means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

"Industry or trade" in the definition of "commercial activity" in the Act means the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit;

"Native village or town" means any community, association, tribe, clan or group;

"Population" means a group of fish or wildlife in the same taxon below the subspecific level, in common spatial arrangement that interbreed when mature;

"Specimen" means any animal or plant, or any part, product, egg, seed or root of any animal or plant;

"Subsistence" means the use of endangered or threatened wildlife for food, clothing, shelter, heating, transportation and other uses necessary to maintain the life of the taker of the wildlife, or those who depend upon the taker to provide them with such subsistence, and includes selling any edible portions of such wildlife in native villages and towns in Alaska for native consumption within native villages and towns;

"Threatened" means a species of wildlife listed in § 17.11 or plant listed in § 17.12 and designated as threatened.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing or injury of endangered or threatened wildlife beyond those needed for subsistence purposes, or which results in the waste of a substantial portion of the wildlife, and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of the wildlife, or which is not immediately followed by a reasonable effort to retrieve the wildlife.

[40 FR 44415, Sept. 26, 1975, as amended at 42 FR 28058, June 1, 1977; 44 FR 54006, Sept. 17, 1979; 46 FR 54750, Nov. 4, 1981; 47

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FR 31387, July 20, 1982; 50 FR 39687, Sept. 30, 1985]

§ 17.4 Pre-Act wildlife.

(a) The prohibitions defined in Subparts C and D of this Part 17 shall not apply to any activity involving endangered or threatened wildlife which was held in captivity or in a controlled environment on December 28, 1973: *Provided*,

(1) That the purposes of such holding were not contrary to the purposes of the Act; and

(2) That the wildlife was not held in the course of a commercial activity.

Example 1. On January 25, 1974, a tourist buys a stuffed hawksbill turtle (an endangered species listed since June, 1970), in a foreign country. On December 28, 1973, the stuffed turtle had been on display for sale. The tourist imports the stuffed turtle into the United States on January 26, 1974. This is a violation of the Act since the stuffed turtle was held for commercial purposes on December 28, 1973.

Example 2. On December 27, 1973 (or earlier), a tourist buys a leopard skin coat (the leopard has been listed as endangered since March 1972) for his wife in a foreign country. On January 5, he imports it into the United States. He has not committed a violation since on December 28, 1973, he was the owner of the coat, for personal purposes, and the chain of commerce had ended with the sale on the 27th. Even if he did not finish paying for the coat for another year, as long as he had possession of it, and he was not going to resell it, but was using it for personal purposes, the Act does not apply to that coat.

Example 3. On or before December 28, 1973, a hunter kills a leopard legally in Africa. He has the leopard mounted and imports it into the United States in March 1974. The importation is not subject to the Act. The hunter has not engaged in a commercial activity, even though he bought the services of a guide, outfitters, and a taxidermist to help him take, preserve, and import the leopard. This applies even if the trophy was in the possession of the taxidermist on December 28, 1973.

Example 4. On January 15, 1974, a hunter kills a leopard legally in Africa. He has the leopard mounted and imports it into the United States in June 1974. This importation is a violation of the Act since the leopard was not in captivity or a controlled environment on December 28, 1973.

(b) Service officers or Customs officers may refuse to clear endangered or threatened wildlife for importation

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into or exportation from the United States, pursuant to § 14.53 of this subchapter, until the importer or exporter can demonstrate that the exemption referred to in this section applies. Exempt status may be established by any sufficient evidence, including an affidavit containing the following:

- (1) The affiant's name and address;
- (2) Identification of the affiant;
- (3) Identification of the endangered or threatened wildlife which is the subject of the affidavit;
- (4) A statement by the affiant that to the best of his knowledge and belief, the endangered or threatened wildlife which is the subject of the affidavit was in captivity or in a controlled environment on December 28, 1973, and was not being held for purposes contrary to the Act or in the course of a commercial activity;
- (5) A statement by the affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to recognize an exempt status regarding (*insert description of wildlife*), under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 18 U.S.C. 1001.

- (6) As an attachment, records or other available evidence to show:

- (i) That the wildlife in question was being held in captivity or in a controlled environment on December 28, 1973;

- (ii) The purpose for which the wildlife was being held; and

- (iii) The nature of such holding (to establish that no commercial activity was involved).

- (c) This section applies only to wildlife born on or prior to December 28, 1973. It does not apply to the progeny of any such wildlife born after December 28, 1973.

§ 17.5 Alaska natives.

- (a) The provisions of Subpart C of this part relating to the importation or the taking of endangered wildlife, and any provision of Subpart D of this part relating to the importation or the

taking of threatened wildlife, shall not apply to:

- (1) Any Indian, Aleut, or Eskimo who is an Alaskan native and who resides in Alaska; or

- (2) Any non-native permanent resident of an Alaskan native village who is primarily dependent upon the taking of wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing;

If the taking is primarily for subsistence purposes, and is not accomplished in a wasteful manner.

- (b) Edible portions of endangered or threatened wildlife taken or imported pursuant to paragraph (a) of this section may be sold in native villages or towns in Alaska for native consumption within native villages and towns in Alaska.

- (c) Non-edible by-products of endangered or threatened wildlife taken or imported pursuant to paragraph (a) of this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing.

§ 17.6 State cooperative agreements. [Reserved]

§ 17.7 Raptor exemption.

- (a) The prohibitions found in §§ 17.21 and 17.31 do not apply to any raptor [a live migratory bird of the Order *Falconiformes* or the Order *Strigiformes*, other than a bald eagle (*Haliaeetus leucocephalus*) or a golden eagle (*Aquila chrysaetos*)] legally held in captivity or in a controlled environment on November 10, 1978, or to any of its progeny, which is:

- (1) Possessed and banded in compliance with the terms of a valid permit issued under Part 21 of this chapter; and

- (2) Identified in the earliest applicable annual report required to be filed by a permittee under Part 21 of this chapter as in a permittee's possession on November 10, 1978, or as the progeny of such a raptor.

- (b) This section does not apply to any raptor intentionally returned to the wild.

[48 FR 31607, July 8, 1983]

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Title 50—Wildlife and Fisheries

**PART 17—ENDANGERED AND
THREATENED WILDLIFE AND PLANTS**

* * * * *

Subpart B—Lists

**§ 17.11 Endangered and threatened
wildlife.**

(a) The list in this section contains the names of all species of wildlife which have been determined by the Services to be Endangered or Threatened. It also contains the names of species of wildlife treated as Endangered or Threatened because they are sufficiently similar in appearance to Endangered or Threatened species (see § 17.50 *et seq.*).

(b) The columns entitled "Common Name," "Scientific Name," and "Vertebrate Population Where Endangered or Threatened" define the species of wildlife within the meaning of the Act. Thus, differently classified geographic populations of the same vertebrate subspecies or species shall be identified by their differing geographic boundaries, even though the other two columns are identical. The term "Entire" means that all populations throughout the present range of a vertebrate species are listed. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The Services shall use the most recently accepted scientific name. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The Services shall rely to the extent practicable on the *International Code of Zoological Nomenclature*.

(c) In the "Status" column the following symbols are used: "E" for Endangered, "T" for Threatened, and "E [or T] (S/A)" for similarity of appearance species.

(d) The other data in the list are nonregulatory in nature and are

provided for the information of the reader. In the annual revision and compilation of this title, the following information may be amended without public notice: the spelling of species' names, historical range, footnotes, references to certain other applicable portions of this title, synonyms, and more current names. In any of these revised entries, neither the species, as defined in paragraph (b) of this section, nor its status may be changed without following the procedures of Part 424 of this title.

(e) The "historic range" indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. This column does not imply any limitation on the application of the prohibitions in the Act or implementing rules. Such prohibitions apply to all individuals of the species, wherever found.

(f)(1) A footnote to the **Federal Register** publication(s) listing or reclassifying a species is indicated under the column "When listed." Footnote numbers to §§ 17.11 and 17.12 are in the same numerical sequence, since plants and animals may be listed in the same **Federal Register** document. That document, at least since 1973, includes a statement indicating the basis for the listing, as well as the effective date(s) of said listing.

(2) The "Special rules" and "Critical habitat" columns provide a cross reference to other sections in Parts 17, 222, 226, or 227. The "Special rules" column will also be used to cite the special rules that describe experimental populations and determine if they are essential or nonessential. Separate listing will be made for experimental populations, and the status column will include the following symbols: "XE" for an essential experimental population and "XN" for a nonessential experimental population. The term "NA" (not applicable) appearing in

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either of these two columns indicates that there are no special rules and/or critical habitat for that particular species. However, all other appropriate rules in Parts 17, 217 through 227, and 402 still apply to that species. In addition, there may be other rules in this title that relate to such wildlife, e.g., port-of-entry requirements. It is not intended that the references in the "Special rules" column list all the regulations of the two Services which might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxon includes all lower taxonomic units. For example, the genus *Hyllobates* (gibbons) is listed as Endangered throughout its entire range (China, India, and SE Asia); consequently, all species, subspecies, and populations of that genus are considered listed as Endangered for the purposes of the Act. In 1978 (43 FR 6230-6233) the species *Haliaeetus leucocephalus* (bald eagle) was listed as Threatened in "USA (WA, OR, MN, WI, MI)" rather than its entire population; thus, all individuals of the bald eagle found in those five States are considered listed as Threatened for the purposes of the Act.

(h) The "List of Endangered and Threatened Wildlife" is provided below:

Editorial Note: This is a compilation and special reprint of 50 CFR 17.11 and 17.12 and is current as of the date shown on the cover (January 1, 1989). Minor changes and corrections to the October 1, 1988, compilation of 50 CFR have been incorporated in this printing, as well as all published final rules that have subsequently appeared in the **Federal Register**. Otherwise no entry in these lists has been significantly affected. This list has been prepared by the staff of the Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Readers are requested to advise the Service of any errors in this list. Copies are available from the Publication Unit, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS								
Anoa, lowland		<i>Bubalus depressicornis</i> (= <i>B. anoa depressicornis</i>)	Indonesia	Entire	E	3	NA	NA
Anoa, mountain		<i>Bubalus quarlesi</i> (= <i>B. anoa quarlesi</i>)	do	do	E	15	NA	NA
Antelope, giant sable		<i>Hippotragus niger varians</i>	Angola	do	E	15	NA	NA
Argali		<i>Ovis ammon hodgsoni</i>	China (Tibet, Himalayas)	do	E	15	NA	NA
Armadillo, giant		<i>Phodopus maximus</i> (= <i>giganteus</i>)	Venezuela and Guyana to Argentina	do	E	15	NA	NA
Armadillo, pink tairy		<i>Chlamyphorus truncatus</i>	Argentina	do	E	3	NA	NA
Ass. African wild		<i>Equus asinus</i> (= <i>aficanus</i>)	Somalia, Sudan, Ethiopia	Somalia, Sudan, Ethiopia	E	3, 22	NA	NA
Ass. Asian wild (= kulan, onager)		<i>Equus hemionus</i>	Southwestern and Central Asia	Entire	E	3	NA	NA
Avahi		<i>Avahi</i> (= <i>Lichanotus</i>) <i>laniger</i> (= entire genus)	Malagasy Republic (= Madagascar)	do	E	3	NA	NA
Aye-Aye		<i>Daubentonia madagascariensis</i>	do	do	E	3	NA	NA
Babirusa		<i>Babirusa babirusa</i>	Indonesia	do	E	15	NA	NA
Baboon, gelada		<i>Theropithecus gelada</i>	Ethiopia	do	T	16	NA	17.40(c)
Bandicoot, barred		<i>Perameles bougainville</i>	Australia	do	E	4	NA	NA
Bandicoot, desert		<i>Perameles eremiana</i>	do	do	E	6	NA	NA
Bandicoot, lesser rabbit		<i>Macrotis leucura</i>	do	do	E	4	NA	NA
Bandicoot, pig-footed		<i>Chaeropus ecaudatus</i>	do	do	E	4	NA	NA
Bandicoot, rabbit		<i>Macrotis lagotis</i>	do	do	E	4	NA	NA
Banteng		<i>Bos javanicus</i> (= <i>banteng</i>)	Southeast Asia	do	E	3	NA	NA
Bat, Bulmer's fruit (flying fox)		<i>Aproteles bulmerae</i>	Papua New Guinea	do	E	139	NA	NA
Bat, bumblebee		<i>Craseonycteris thonglongyai</i>	Thailand	do	E	139	NA	NA
Bat, gray		<i>Myotis ginsens</i>	Central and Southeastern U.S.A.	do	E	13	NA	NA
Bat, Hawaiian hoary		<i>Lasius cinereus semotus</i>	U.S.A. (HI)	do	E	2	NA	NA
Bat, Indiana		<i>Myotis sodalis</i>	Eastern and Midwestern U.S.A.	do	E	1	17.95(a)	NA
Bat, little Mariana fruit		<i>Pteropus tokudae</i>	Western Pacific Ocean: U.S.A. (Guam)	do	E	156	NA	NA
Bat, Mariana fruit		<i>Pteropus manianus manianus</i>	Western Pacific Ocean: U.S.A. (Guam, Rota, Tinian, Saipan, Agiguan)	Guam	E	156	NA	NA
Bat, Mexican long-nosed		<i>Leptonycteris nivalis</i>	U.S.A. (NM, TX), Mexico, Central America	Entire	E	336	NA	NA
Bat, Ozark big-eared		<i>Plecotus townsendii ingens</i>	U.S.A. (MO, OK, AR)	do	E	85	NA	NA
Bat, Rodrigues fruit (flying fox)		<i>Pteropus rodrigensis</i>	Indian Ocean: Rodrigues Island	do	E	139	NA	NA
Bat, Sanborn's long-nosed		<i>Leptonycteris sanborni</i> (= <i>L. yerbabuena</i>)	U.S.A. (AZ, NM), Mexico, Central America	do	E	336	NA	NA
Bat, Singapore roundleaf horseshoe		<i>Hipposideros nileyi</i>	Malaysia	do	E	139	NA	NA
Bat, Virginia big-eared		<i>Plecotus townsendii virginianus</i>	U.S.A. (KY, NC, WV, VA)	do	E	85	17.95(a)	NA
Bear, Baluchistan		<i>Ursus tibetanus gedrosianus</i>	Iran, Pakistan	do	E	233	NA	NA
Bear, brown		<i>Ursus arctos pumilus</i>	China (Tibet)	do	E	15	NA	NA
Do		<i>Ursus arctos arctos</i>	Paleartic	Italy	E	15, 15A	NA	NA
Bear, brown or grizzly		<i>Ursus arctos</i> (= <i>U.a. horribilis</i>)	Holarctic	U.S.A.—48 conterminous States, Mexico	T	1, 2D, 9	NA	17.40(b)
Do		<i>Ursus arctos</i> (= <i>U.a. nelsoni</i>)	do	Mexico	E	3	NA	NA
Beaver		<i>Castor fiber brulei</i>	Mongolia	Entire	E	15	NA	NA
Bison, wood		<i>Bison bison athabascæ</i>	Canada, Northwestern U.S.A.	Canada	E	3	NA	NA
Bobcat		<i>Felis rufus escuinapæ</i>	Central Mexico	Entire	E	15	NA	NA
Bontebok (antelope)		<i>Damaliscus dorcas dorcas</i>	South Africa	do	E	15	NA	NA
Camel, Bactrian		<i>Camelus bactrianus</i> (= <i>ferus</i>)	Mongolia, China	do	E	15	NA	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Caribou, woodland			<i>Rangifer tarandus caribou</i>	Canada, U.S.A. (AK, ID, ME, MI, MN, MT, NH, VT, WA, WI).	Canada (that part of S.E. Brit. Col. bounded by the Can.-U.S.A. border, Columbia R., Kootenay R., Kootenay L., and Kootenai R.), U.S.A. (ID, WA).	E	128E, 136E, 143	NA	NA
			<i>Felis jacobita</i>	Chile, Peru, Bolivia, Argentina	Entire	E	15	NA	NA
	Cat, Andean		<i>Felis nigripes</i>	Southern Africa	do	E	15	NA	NA
	Cat, black-footed		<i>Felis planiceps</i>	Malaysia, Indonesia	do	E	15	NA	NA
	Cat, flat-headed		<i>Felis (Mayailurus) iriomotensis</i>	Japan (Iriomote Island, Ryukyu Islands)	do	E	50	NA	NA
	Cat, Iriomote		<i>Felis bengalensis bengalensis</i>	India, Southeast Asia	do	E	15	NA	NA
	Cat, leopard		<i>Felis marmorata</i>	Nepal, Southeast Asia, Indonesia	do	E	15	NA	NA
	Cat, marbled		<i>Felis margarita schaffeli</i>	Pakistan	do	E	139	NA	NA
	Cat, Pakistan sand		<i>Felis temminckii</i>	Nepal, China, Southeast Asia, Indonesia (Sumatra)	do	E	15	NA	NA
	Cat, Temminck's (= golden cat)		<i>Felis tigris</i>	Costa Rica to northern Argentina	do	E	5	NA	NA
	Cat, tiger		<i>Rupicapra rupicapra ornata</i>	Italy	do	E	15	NA	NA
	Chamois, Apennine		<i>Acinonyx jubatus</i>	Africa to India	do	E	3, 5	NA	NA
	Cheetah		<i>Pan troglodytes</i>	West and Central Africa	do	T	16	NA	17, 40(c)
	Chimpanzee		<i>Pan paniscus</i>	Zaire	do	T	16	NA	17, 40(c)
	Chimpanzee, pygmy		<i>Chinchilla breviceaudata boliviana</i>	Bolivia	do	E	15	NA	NA
	Chinchilla		<i>Viverra zibethica</i>	India	do	E	50	NA	NA
	Civet, Malabar large-spotted		<i>Phocoena sinus</i>	Mexico (Gulf of California)	do	E	169	NA	NA
	Cochito (= Gulf of California harbor porpoise)		<i>Felis concolor cougar</i>	Eastern North America	do	E	6	NA	NA
	Cougar, eastern		<i>Cervus elaphus bairdianus</i>	U.S.S.R., Afghanistan	do	E	50	NA	NA
	Deer, Bactrian		<i>Cervus elaphus barbanus</i>	Morocco, Tunisia, Algeria	do	E	50	NA	NA
	Deer, Barbary		<i>Axis (= Cervus) porcinus kuhli</i>	Indonesia	do	E	3	NA	NA
	Deer, Bawean		<i>Odocoileus hemionus cedrosensis</i>	Mexico (Cedros Island)	do	E	10	NA	NA
	Deer, Cedros Island mule		<i>Odocoileus virginianus leucurus</i>	U.S.A. (WA, OR)	do	E	1	NA	NA
	Deer, Columbian white-tailed		<i>Cervus elaphus corsicanus</i>	Corsica, Sardinia	do	E	50	NA	NA
	Deer, Corsican red		<i>Cervus eldi</i>	India to Southeast Asia	do	E	3	NA	NA
	Deer, Eld's brow-antlered		<i>Cervus nippon taiouanus</i>	Taiwan	do	E	50	NA	NA
	Deer, Formosan sika		<i>Axis (= Cervus) porcinus annamiticus</i>	Thailand, Indochina	do	E	15	NA	NA
	Deer, hog		<i>Odocoileus virginianus clavium</i>	U.S.A. (FL)	do	E	1	NA	NA
	Deer, key		<i>Blastocerus dichotomus</i>	Argentina, Uruguay, Paraguay, Bolivia, Brazil	do	E	3	NA	NA
	Deer, marsh		<i>Cervus elaphus macneilli</i>	China (Sinkiang, Tibet)	do	E	3	NA	NA
	Deer, McNeill's		<i>Moschus spp. (all species)</i>	Central and East Asia	do	E	15	NA	NA
	Deer, musk								
			<i>Cervus nippon mandarinus</i>	China (Shantung and Chihli Provinces)	do	E	50	NA	NA
	Deer, North China sika		<i>Ozotoceros bezoarticus</i>	Brazil, Argentina, Uruguay, Bolivia, Paraguay	do	E	15	NA	NA
	Deer, pampas		<i>Dama dama mesopotamica</i>	Iraq, Iran	do	E	3	NA	NA
	Deer, Persian fallow								

Common name	Species	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Deer, Philippine		<i>Axis (= Cervus) porcinus calamanianensis</i>	Philippines (Calamian Islands)	do	E	15	NA	NA
Deer, Ryukyu sika		<i>Cervus nippon keramae</i>	Japan (Ryukyu Islands)	do	E	50	NA	NA
Deer, Shansi sika		<i>Cervus nippon grassianus</i>	China (Shansi Province)	do	E	50	NA	NA
Deer, South China sika		<i>Cervus nippon kopschi</i>	Southern China	do	E	50	NA	NA
Deer, swamp (= barasingha)		<i>Cervus duvauceli</i>	India, Nepal	do	E	3	NA	NA
Deer, Visayan		<i>Cervus affinis</i>	Philippines	do	E	320	NA	NA
Deer, Yarkand		<i>Cervus elaphus yarkandensis</i>	China (Sinkiang)	do	E	50	NA	NA
Dhole (= Asiatic wild dog)		<i>Cuon alpinus</i>	U.S.S.R., Korea, China, India, Southeast Asia	do	E	3	NA	NA
Dibbler		<i>Antechinus apicalis</i>	Australia	do	E	4	NA	NA
Dog, African wild		<i>Lycan pictus</i>	Sub-Saharan Africa	do	E	139	NA	NA
Drill		<i>Papio leucophaeus</i>	Equatorial West Africa	do	E	16	NA	NA
Dugong		<i>Dugong dugon</i>	East Africa to southern Japan, including U.S.A. (Trust Territories)	Entire, except U.S.A.	E	4	NA	NA
Duiker, Jentink's		<i>Cephalophus jentinki</i>	Sierra Leone, Liberia, Ivory Coast	Entire	E	50	NA	NA
Eland, Western giant		<i>Taurotragus derbianus derbianus</i>	Senegal to Ivory Coast	do	E	50	NA	NA
Elephant, African		<i>Loxodonta africana</i>	Africa	do	T	40	NA	17.40(e)
Elephant, Asian		<i>Elephas maximus</i>	South-central and Southeast Asia	do	E	15	NA	NA
Ferret, black-footed		<i>Mustela nigripes</i>	Western U.S.A., Western Canada	do	E	1, 3	NA	NA
Fox, Northern swift		<i>Vulpes velox hebes</i>	U.S.A. (northern plains), Canada	Canada	E	3	NA	NA
Fox, San Joaquin kit		<i>Vulpes macrotis mulica</i>	U.S.A. (CA)	Entire	E	1	NA	NA
Fox, Simien		<i>Canis (Simenia) simensis</i>	Ethiopia	do	E	50	NA	NA
Gazelle, Arabian		<i>Gazella gazella</i>	Arabian Peninsula, Palestine, Sinai	do	E	50	NA	NA
Gazelle, Clark's (= Dibtag)		<i>Ammodorcas clarki</i>	Somalia, Ethiopia	do	E	3	NA	NA
Gazelle, Cuvier's		<i>Gazella cuvieri</i>	Morocco, Algeria, Tunisia	do	E	3	NA	NA
Gazelle, Mhor		<i>Gazella dama mhor</i>	Morocco	do	E	3	NA	NA
Gazelle, Moroccan (= Dorcas)		<i>Gazella dorcas massaesia</i>	Morocco, Algeria, Tunisia	do	E	3	NA	NA
Gazelle, Pelzelin's		<i>Gazella dorcas pelzelini</i>	Somalia	do	E	50	NA	NA
Gazelle, Rio de Oro Dama		<i>Gazella dama lozanoi</i>	Western Sahara	do	E	3	NA	NA
Gazelle, sand		<i>Gazella subgutturosa marica</i>	Jordan, Arabian Peninsula	do	E	50	NA	NA
Gazelle, Saudi Arabian		<i>Gazella dorcas saudiya</i>	Israel, Iraq, Jordan, Syria, Arabian Peninsula	do	E	50	NA	NA
Gazelle, slender-horned (= Rhim)		<i>Gazella leptoceros</i>	Sudan, Egypt, Algeria, Libya	do	E	3	NA	NA
Gibbons		<i>Hylobates</i> spp. (including <i>Nomascus</i>)	China, India, Southeast Asia	do	E	3, 15	NA	NA
Goat, wild (= Chilian markhor)		<i>Capra aegagrus (= falconeri chilianensis)</i>	Southwestern Asia	Chilian Range of west-central Pakistan	E	15	NA	NA
Goral		<i>Nemorhaedus goral</i>	East Asia	Entire	E	15	NA	NA
Gorilla		<i>Gorilla gorilla</i>	Central and Western Africa	do	E	3	NA	NA
Hare, hispid		<i>Caprolagus hispidus</i>	India, Nepal, Bhutan	do	E	15	NA	NA
Hartebeest, Swaine's		<i>Alcelaphus buselaphus swaynei</i>	Ethiopia, Somalia	do	E	3, 50	NA	NA
Hartebeest, Tora		<i>Alcelaphus buselaphus tora</i>	Ethiopia, Sudan, Egypt	do	E	50	NA	NA
Hog, pygmy		<i>Sus salvanius</i>	India, Nepal, Bhutan, Sikkim	do	E	3	NA	NA
Horse, Przewalski's		<i>Equus przewalskii</i>	Mongolia, China	do	E	15	NA	NA
Huemul, North Andean		<i>Hippocamelus antisensis</i>	Ecuador, Peru, Chile, Bolivia, Argentina	do	E	15	NA	NA
Huemul, South Andean		<i>Hippocamelus busulcus</i>	Chile, Argentina	do	E	15	NA	NA
Hutia, Cabrera's		<i>Capromys angelcabrerai</i>	Cuba	do	E	233	NA	NA
Hutia, dwarf		<i>Capromys nana</i>	do	do	E	233	NA	NA
Hutia, large-eared		<i>Capromys auritus</i>	do	do	E	233	NA	NA
Hutia, little earth		<i>Capromys sanctioensis</i>	do	do	E	233	NA	NA
Hyena, Barbary		<i>Hyaena hyaena barbara</i>	Morocco, Algeria, Tunisia	do	E	3	NA	NA
Hyena, brown		<i>Hyaena brunnea</i>	Southern Africa	do	E	3	NA	NA
Ibex, Pyrenean		<i>Capra pyrenaica pyrenaica</i>	Spain	do	E	3	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Ibex, Walla		<i>Capra walie</i>	Ethiopia	do.	E	3	NA	NA
Impala, black-faced		<i>Aepyceros melampus petersi</i>	Namibia, Angola	do.	E	3	NA	NA
Indri		<i>Indri indri</i> (= entire genus)	Malagasy Republic (= Madagascar)	do.	E	3	NA	NA
Jaguar		<i>Panthera onca</i>	U.S.A. (TX, NM, AZ), C. and S. America	Mexico southward	E	5	NA	NA
Jaguarundi		<i>Felis yagouaroundi cacomilli</i>	U.S.A. (TX), Mexico	Entire	E	15	NA	NA
Do		<i>Felis yagouaroundi fossata</i>	Mexico, Nicaragua	do.	E	15	NA	NA
Do		<i>Felis yagouaroundi panamensis</i>	Nicaragua, Costa Rica, Panama	do.	E	15	NA	NA
Do		<i>Felis yagouaroundi tolteca</i>	U.S.A. (AZ), Mexico	do.	E	15	NA	NA
Kangaroo, eastern gray		<i>Macropus giganteus</i> (all subspecies except <i>tasmaniensis</i>)	Australia	do.	T	7	NA	17.40(a)
Kangaroo, red		<i>Macropus (Megaleia) rufus</i>	do.	do.	T	7	NA	17.40(a)
Kangaroo, Tasmanian forester		<i>Macropus giganteus tasmaniensis</i>	Australia (Tasmania)	do.	E	6	NA	NA
Kangaroo, western gray		<i>Macropus fuliginosus</i>	Australia	do.	T	7	NA	17.40(a)
Kouprey		<i>Bos sauveli</i>	Vietnam, Laos, Cambodia, Thailand	do.	E	3	NA	NA
Langur, capped		<i>Presbytis pileata</i>	India, Burma, Bangladesh	do.	E	15	NA	NA
Langur, Douc		<i>Pygathrix nemaeus</i>	Cambodia, Laos, Vietnam	do.	E	3	NA	NA
Langur, entellus		<i>Presbytis entellus</i>	China (Tibet), India, Pakistan, Kashmir, Sri Lanka, Sikkim, Bangladesh.	do.	E	15	NA	NA
Langur, Francois'		<i>Presbytis francoisi</i>	China (Kwangsi), Indochina	do.	E	16	NA	NA
Langur, golden		<i>Presbytis geei</i>	India (Assam), Bhutan	do.	E	15	NA	NA
Langur, long-tailed		<i>Presbytis potenziani</i>	Indonesia	do.	T	16	NA	17.40(c)
Langur, Pagi Island		<i>Nasalis (Simias) concolor</i>	do.	do.	E	3	NA	NA
Langur, purple-faced		<i>Presbytis senex</i>	Sri Lanka (= Ceylon)	do.	T	16	NA	17.40(c)
Langur, Tonkin snub-nosed		<i>Pygathrix (Rhinopithecus) avunculus</i>	Vietnam	do.	T	16	NA	17.40(c)
Lechwe, red		<i>Kobus leche</i>	Southern Africa	do.	T	3, 15, 106	NA	NA
Lemurs		Lemuridae (incl. Cheirogaleidae, Lepilemuridae); all members of genera <i>Lemur</i> , <i>Phaner</i> , <i>Haplemur</i> , <i>Lepilemur</i> , <i>Microcebus</i> , <i>Allocebus</i> , <i>Cheirogaleus</i> , <i>Varecia</i> .	Malagasy Republic (= Madagascar)	do.	E	3, 15, 15A	NA	NA
Leopard		<i>Panthera pardus</i>	Africa, Asia	Wherever found, except where it is listed as Threatened as set forth below.	E	3, 5, 114	NA	NA
Do		do.	do.	In Africa, in the wild, south of, and including, the following countries: Gabon, Congo, Zaire, Uganda, Kenya.	T	3, 5, 114	NA	17.40(f)
Leopard, clouded		<i>Neofelis nebulosa</i>	Southeast and south-central Asia, Taiwan.	Entire	E	3, 15	NA	NA
Leopard, snow		<i>Panthera uncia</i>	Central Asia	do.	E	5	NA	NA
Linsang, spotted		<i>Prionodon pardicolor</i>	Nepal, Assam, Vietnam, Cambodia, Laos, Burma.	do.	E	15	NA	NA
Lion, Asiatic		<i>Panthera leo persica</i>	Turkey to India.	do.	E	3	NA	NA
Lion, lesser slow		<i>Nycticebus pygmaeus</i>	Indochina	do.	T	16	NA	17.40(c)
Lynx, Spanish		<i>Felis (= Lynx) pardina</i>	Spain, Portugal	do.	E	3	NA	NA
Macaque, Formosan rock		<i>Macaca cyclops</i>	Taiwan	do.	T	16	NA	17.40(c)

Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Macaque ^{1/2} , Japanese	<i>Macaca fuscata</i>	Japan (Shikoku, Kyushu and Honshu Islands)	do	T	16	NA	17.40(c)
Macaque, lion-tailed	<i>Macaca silenus</i>	India	do	E	3	NA	NA
Macaque, stump-tailed	<i>Macaca arctoides</i>	India (Assam) to southern China	do	T	16	NA	17.40(c)
Macaque, Toque	<i>Macaca sinica</i>	Sri Lanka (= Ceylon)	do	T	16	NA	17.40(c)
Manatee, Amazonian	<i>Trichechus inunguis</i>	South America (Amazon River Basin)	do	E	3	NA	NA
Manatee, West African	<i>Trichechus senegalensis</i>	West Coast of Africa from Senegal River to Cuanza River	do	T	52	NA	NA
Manatee, West Indian (Florida)	<i>Trichechus manatus</i>	U.S.A. (southeastern), Caribbean Sea, South America	do	E	1, 3	17.95(a)	NA
Mandrill	<i>Papio sphinx</i>	Equatorial West Africa	do	E	16	NA	NA
Mangabey, Tana River	<i>Cercocebus galienus</i>	Kenya	do	E	3	NA	NA
Mangabey, white-collared	<i>Cercocebus torquatus</i>	Senegal to Ghana; Nigeria to Gabon	do	E	16	NA	NA
Margay	<i>Felis wiedii</i>	U.S.A. (TX), C. and S. America	Mexico southward	E	5	NA	NA
Markhor, Kabal	<i>Capra falconeri jerdoni</i>	Afghanistan, Pakistan	do	E	15	NA	NA
Marmoset, bull-headed	<i>Callithrix jacchus</i>	Brazil	do	E	139	NA	NA
Marmoset, buffy tufted-ear	<i>Callithrix jacchus aurita</i>	do	do	E	233	NA	NA
Marmoset, cotton-top	<i>Saguinus oedipus</i>	Costa Rica to Colombia	do	E	16	NA	NA
Marmoset, Goeldi's	<i>Callimico goeldii</i>	Brazil, Colombia, Ecuador, Peru, Bolivia	do	E	3	NA	NA
Marmot, Vancouver Island	<i>Marmota vancouverensis</i>	Canada (Vancouver Island)	do	E	139	NA	NA
Marsupial, eastern jerboa	<i>Antechinus laniger</i>	Australia	do	E	4	NA	NA
Marsupial-mouse, large desert	<i>Sminthopsis psammophila</i>	do	do	E	4	NA	NA
Marsupial-mouse, long-tailed	<i>Sminthopsis longicaudata</i>	do	do	E	4	NA	NA
Marten, Formosan yellow-throated	<i>Martes flavigula chrysospila</i>	Taiwan	do	E	3	NA	NA
Monkey, black colobus	<i>Colobus satanas</i>	Equatorial Guinea, People's Republic of Congo, Cameroon, Gabon, Mexico, Guatemala, Belize	do	E	16	NA	NA
Monkey, black howler	<i>Alouatta pigra</i>	do	do	T	16	NA	17.40(c)
Monkey, Diana	<i>Cercopithecus diana</i>	do	do	E	16	NA	NA
Monkey, howler	<i>Alouatta palliata</i> (= <i>villosa</i>)	Coastal West Africa	do	E	15	NA	NA
Monkey, L'hoesi's	<i>Cercopithecus lhoesti</i>	Mexico to South America	do	E	16	NA	NA
Monkey, Preuss' red colobus	<i>Colobus badius preussi</i>	Upper Eastern Congo Basin, Cameroon	do	E	139	NA	NA
Monkey, proboscis	<i>Nasalis larvatus</i>	Cameroon	do	E	15	NA	NA
Monkey, red-backed squirrel	<i>Saimiri oerstedii</i>	Borneo	do	E	3	NA	NA
Monkey, red-bellied	<i>Cercopithecus erythrogaster</i>	Costa Rica, Panama	do	E	16	NA	NA
Monkey, red-eared nose-spotted	<i>Cercopithecus erythrolis</i>	Western Nigeria	do	E	16	NA	NA
Monkey, spider	<i>Ateles geoffroyi frontatus</i>	Nigeria, Cameroon, Fernando Po	do	E	3	NA	NA
Monkey, spider	<i>Ateles geoffroyi panamensis</i>	Costa Rica, Nicaragua	do	E	3	NA	NA
Monkey, Tana River red colobus	<i>Colobus rufomitratus</i> (= <i>badius</i>) <i>rufomitratus</i>	Costa Rica, Panama	do	E	3, 16	NA	NA
Monkey, woolly spider	<i>Brachyteles arachnoides</i>	Kenya	do	E	3	NA	NA
Monkey, yellow-tailed woolly	<i>Lagothrix flavicauda</i>	Brazil	do	E	16	NA	NA
Monkey, Zanzibar red colobus	<i>Colobus kirkii</i>	Andes of northern Peru	do	E	3	NA	NA
Mouse, Alabama beach	<i>Peromyscus polionotus ammobaetes</i>	Tanzania	do	E	183	17.95(a)	NA
Mouse, Australian native	<i>Zyromys</i> (= <i>Notomys</i>) <i>pedunculatus</i>	U.S.A. (AL)	do	E	15	NA	NA
Mouse, Australian native	<i>Notomys aequus</i>	Australia	do	E	15	NA	NA
Mouse, Choctawhatchee beach	<i>Peromyscus polionotus aliphys</i>	do	do	E	183	17.95(a)	NA
Mouse, Field's	<i>Pseudomys fieldi</i>	U.S.A. (FL)	do	E	4	NA	NA
Mouse, Gould's	<i>Pseudomys gouldii</i>	Australia	do	E	6	NA	NA
Mouse, Key Largo cotton	<i>Peromyscus gossypinus allapaticola</i>	do	do	E	131E, 160	NA	NA
Mouse, New Holland	<i>Pseudomys novaehollandiae</i>	U.S.A. (FL)	do	E	4	NA	NA
Mouse, Perdido Key beach	<i>Peromyscus polionotus trissyllepsis</i>	Australia	do	E	183	17.95(a)	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Mouse, salt marsh harvest			<i>Reithrodontomys raviventris</i>	U.S.A. (CA)	do	E	2	NA	NA
Mouse, Shark Bay			<i>Pseudomys praeconis</i>	Australia	do	E	4	NA	NA
Mouse, Shortridge's			<i>Pseudomys shortridgei</i>	do	do	E	4	NA	NA
Mouse, Smoky			<i>Pseudomys fumus</i>	do	do	E	4	NA	NA
Mouse, western			<i>Pseudomys occidentalis</i>	do	do	E	4	NA	NA
Muntjac, Fea's			<i>Muntiacus leae</i>	Northern Thailand, Burma	do	E	50	NA	NA
Native-cat, eastern			<i>Dasyurus viverrinus</i>	Australia	do	E	6	NA	NA
Numbat			<i>Myrmecobius fasciatus</i>	do	do	E	4, 6	NA	NA
Ocelot			<i>Felis pardalis</i>	U.S.A. (AZ, TX) to C. and S. America	do	E	5, 119	NA	NA
Orangutan			<i>Pongo pygmaeus</i>	Borneo, Sumatra	do	E	3	NA	NA
Oryx, Arabian			<i>Oryx leucoryx</i>	Arabian Peninsula	do	E	3	NA	NA
Otter, Cameroon clawless			<i>Aonyx (Paraonyx) congica microdon</i>	Cameroon, Nigeria	do	E	3	NA	NA
Otter, giant			<i>Pteronura brasiliensis</i>	South America	do	E	3	NA	NA
Otter, long-tailed			<i>Lutra longicaudis (incl. platensis)</i>	do	do	E	3, 15	NA	NA
Otter, marine			<i>Lutra felina</i>	Peru south to Straits of Magellan	do	E	15	NA	NA
Otter, southern river			<i>Lutra provocax</i>	Chile, Argentina	do	E	15	NA	NA
Otter, southern sea			<i>Enhydra lutris nereis</i>	West Coast, USA (WA, OR, CA) south to Mexico (Baja California)	Entire, except where listed below	E	21, 284	NA	NA
Do			do	do	All areas subject to U.S. jurisdiction south of Pl. Conception, CA (34° 26' 9" N. Lat.) [Note: status governed by Pub. L. 99-625, 100 Stat. 3500.]	[See 17.84 (d)]	21, 284	NA	17.84(d)
Panda, giant			<i>Ailuropoda melanoleuca</i>	People's Republic of China	Entire	E	139	NA	NA
Pangolin (= scaly anteater)			<i>Manis temmincki</i>	Africa	do	E	15	NA	NA
Panther, Florida			<i>Felis concolor coryi</i>	U.S.A. (LA and AR east to SC and FL)	do	E	1	NA	NA
Planigale, little			<i>Planigale ingrami subtilissima</i> (formerly <i>P. subtilissima</i>)	Australia	do	E	4	NA	NA
Planigale, southern			<i>Planigale tenuirostris</i>	do	do	E	4	NA	NA
Porcupine, thin-spined			<i>Chaetomys subspinosus</i>	Brazil	do	E	3	NA	NA
Possum, Leadbeater's			<i>Gymnobelideus leadbeateri</i>	do	do	E	233	NA	NA
Possum, mountain pygmy			<i>Burrinus parvus</i>	Australia	do	E	4	NA	NA
Possum, scaly-tailed			<i>Wyulda squamicaudata</i>	do	do	E	4	NA	NA
Prairie dog, Mexican			<i>Cynomys mexicanus</i>	Mexico	do	E	3	NA	NA
Prairie dog, Utah			<i>Cynomys parvidens</i>	U.S.A. (UT)	do	E	6, 149	NA	17.40(g)
Pronghorn, peninsular			<i>Antilocapra americana peninsularis</i>	Mexico (Baja California)	do	E	10	NA	NA
Pronghorn, Sonoran			<i>Antilocapra americana sonoriensis</i>	U.S.A. (AZ), Mexico	do	E	1, 3	NA	NA
Pudu			<i>Antilocapra americana sonoriensis</i>	Southern South America	do	E	15	NA	NA
Puma, Costa Rican			<i>Felis concolor costaricensis</i>	Nicaragua, Panama, Costa Rica	do	E	15	NA	NA
Quokka			<i>Setonix brachyurus</i>	Australia	do	E	6	NA	NA
Rabbit, Ryukyu			<i>Penalagus furnessi</i>	Japan (Ryukyu Islands)	do	E	50	NA	NA
Rabbit, volcano			<i>Romerolagus diazi</i>	Mexico	do	E	3	NA	NA
Rat, false water			<i>Xeromys myodes</i>	Australia	do	E	4	NA	NA
Rat, Fresno kangaroo			<i>Dipodomys nitratoides exilis</i>	U.S.A. (CA)	do	E	170	17.95(a)	NA
Rat, giant kangaroo			<i>Dipodomys ingens</i>	do	do	E	251	NA	NA

Common name	Species	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Rat, Morro Bay kangaroo	<i>Dipodomys heermanni morroensis</i>	<i>Dipodomys heermanni morroensis</i>	do	do	E	2	17.95(a)	NA
Rat, Stephens kangaroo	<i>Dipodomys stephensi</i> (incl. <i>D. cascus</i>)	<i>Dipodomys stephensi</i> (incl. <i>D. cascus</i>)	do	do	E	338	NA	NA
Rat, stick-nest	<i>Leporillus conditor</i>	<i>Leporillus conditor</i>	Australia	do	E	6	NA	NA
Rat, Tipton kangaroo	<i>Dipodomys nitratoides nitratoides</i>	<i>Dipodomys nitratoides nitratoides</i>	U.S.A. (CA)	do	E	312	NA	NA
Rat-kangaroo, brush-tailed	<i>Bettongia penicillata</i>	<i>Bettongia penicillata</i>	Australia	do	E	4	NA	NA
Rat-kangaroo, Gaimard's	<i>Bettongia gaimardi</i>	<i>Bettongia gaimardi</i>	do	do	E	6	NA	NA
Rat-kangaroo, Lesuer's	<i>Bettongia lesueuri</i>	<i>Bettongia lesueuri</i>	do	do	E	4	NA	NA
Rat-kangaroo, plain	<i>Caloprymnus campestris</i>	<i>Caloprymnus campestris</i>	do	do	E	4	NA	NA
Rat-kangaroo, Queensland	<i>Bettongia tropica</i>	<i>Bettongia tropica</i>	do	do	E	4	NA	NA
Rhinoceros, black	<i>Diceros bicornis</i>	<i>Diceros bicornis</i>	Sub-Saharan Africa	do	E	97	NA	NA
Rhinoceros, great indian	<i>Rhinoceros unicornis</i>	<i>Rhinoceros unicornis</i>	India, Nepal	do	E	4	NA	NA
Rhinoceros, Javan	<i>Rhinoceros sondaicus</i>	<i>Rhinoceros sondaicus</i>	Indonesia, Indochina, Burma, Thailand, Sikkim, Bangladesh, Malaysia	do	E	3	NA	NA
Rhinoceros, northern white	<i>Ceratotherium simum cottoni</i>	<i>Ceratotherium simum cottoni</i>	Zaire, Sudan, Uganda, Central African Republic	do	E	3	NA	NA
Rhinoceros, Sumatran	<i>Dicerorhinus (= Didermoceros) sumatrensis</i>	<i>Dicerorhinus (= Didermoceros) sumatrensis</i>	Bangladesh to Vietnam to Indonesia (Borneo)	do	E	3	NA	NA
Saiga, Mongolian (antelope)	<i>Saiga tatarica mongolica</i>	<i>Saiga tatarica mongolica</i>	Mongolia	do	E	15	NA	NA
Saki, southern bearded	<i>Chiropotes satanas satanas</i>	<i>Chiropotes satanas satanas</i>	Brazil	do	E	233	NA	NA
Saki, white-nosed	<i>Chiropotes albinus</i>	<i>Chiropotes albinus</i>	do	do	E	3	NA	NA
Seal, Caribbean monk	<i>Monachus tropicalis</i>	<i>Monachus tropicalis</i>	Caribbean Sea, Gulf of Mexico	do	E	1, 2, 45	NA	NA
Seal, Guadalupe fur	<i>Arctocephalus townsendi</i>	<i>Arctocephalus townsendi</i>	U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)	do	T	212	NA	227.11
Seal, Hawaiian monk	<i>Monachus schauinslandi</i>	<i>Monachus schauinslandi</i>	U.S.A. (HI)	do	E	18	226.11	NA
Seal, Mediterranean monk	<i>Monachus monachus</i>	<i>Monachus monachus</i>	Mediterranean, Northwest African Coast and Black Sea	do	E	3	NA	NA
Seledang (= Gaur)	<i>Bos gaurus</i>	<i>Bos gaurus</i>	Bangladesh, Southeast Asia, India	do	E	3	NA	NA
Serow	<i>Capricornis sumatraensis</i>	<i>Capricornis sumatraensis</i>	East Asia, Sumatra	do	E	15	NA	NA
Serval, Barbary	<i>Felis serval constantina</i>	<i>Felis serval constantina</i>	Algeria	do	E	3	NA	NA
Shapo	<i>Ovis vignei vignei</i>	<i>Ovis vignei vignei</i>	Kashmir	do	E	15	NA	NA
Shou	<i>Cervus elaphus wallichi</i>	<i>Cervus elaphus wallichi</i>	Tibet, Bhutan	do	E	3	NA	NA
Shrew, Dismal Swamp southeastern	<i>Sorex longirostris fisheri</i>	<i>Sorex longirostris fisheri</i>	U.S.A. (VA, NC)	do	E	246	NA	NA
Siamang	<i>Symphalangus syndactylus</i>	<i>Symphalangus syndactylus</i>	Malaysia, Indonesia	do	T	15	NA	NA
Siakas	<i>Propithecus</i> spp. (all species)	<i>Propithecus</i> spp. (all species)	Madagascar	do	E	4	NA	NA
Sloth, Brazilian three-toed	<i>Bradypus torquatus</i>	<i>Bradypus torquatus</i>	Brazil	do	E	3, 4	NA	NA
Solenodon, Cuban	<i>Solenodon (Atopogale) cubanus</i>	<i>Solenodon (Atopogale) cubanus</i>	Cuba	do	E	3	NA	NA
Solenodon, Haitian	<i>Solenodon paradoxus</i>	<i>Solenodon paradoxus</i>	Dominican Republic, Haiti	do	E	3	NA	NA
Squirrel, Carolina northern flying	<i>Glaucomys sabrinus coloratus</i>	<i>Glaucomys sabrinus coloratus</i>	U.S.A. (NC, TN)	do	E	189	NA	NA
Squirrel, Delmarva Peninsula fox	<i>Sciurus niger cinereus</i>	<i>Sciurus niger cinereus</i>	U.S.A. (Delmarva Peninsula to south-east PA)	do	E	1, 161, 168	NA	NA
Do	do	do	do	Entire, except Sussex Co., DE	XN	161	NA	17.84(a)
Squirrel, Mount Graham red	<i>Tamiasciurus hudsonicus grahamensis</i>	<i>Tamiasciurus hudsonicus grahamensis</i>	U.S.A. (AZ)	do	E	268	NA	NA
Squirrel, Virginia northern flying	<i>Glaucomys sabrinus fuscus</i>	<i>Glaucomys sabrinus fuscus</i>	U.S.A. (VA, WV)	do	E	189	NA	NA
Slag, Barbary	<i>Cervus elaphus barbarus</i>	<i>Cervus elaphus barbarus</i>	Tunisia, Algeria	do	E	3	NA	NA
Slag, Kashmir	<i>Cervus elaphus hanglu</i>	<i>Cervus elaphus hanglu</i>	Kashmir	do	E	3	NA	NA
Suni, Zanzibar	<i>Neotragus (Nesotragus) moschatus moschatus</i>	<i>Neotragus (Nesotragus) moschatus moschatus</i>	Zanzibar (and nearby islands)	do	E	50	NA	NA
Tahr, Arabian	<i>Hemitragus jayakari</i>	<i>Hemitragus jayakari</i>	Oman	do	E	50	NA	NA
Tamaraw	<i>Bubalus mindorensis</i>	<i>Bubalus mindorensis</i>	Philippines	do	E	4	NA	NA
Tamarin, golden-rumped (= golden-headed Tamarin; = golden-lion Mar. moset)	<i>Leontopithecus (= Leontideus) spp.</i> (all species)	<i>Leontopithecus (= Leontideus) spp.</i> (all species)	Brazil	do	E	3	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Tamarin, pied		<i>Saguinus bicolor</i>	do	do	E	16	NA	NA
Tamarin, white-footed		<i>Saguinus leucopus</i>	Colombia	do	T	16	NA	17.40(c)
Tapir, Asian		<i>Tapirus indicus</i>	Burma, Laos, Cambodia, Vietnam, Malaysia, Indonesia, Thailand	do	E	15	NA	NA
Tapir, Brazilian		<i>Tapirus terrestris</i>	Colombia and Venezuela south to Paraguay and Argentina	do	E	3	NA	NA
Tapir, Central American		<i>Tapirus bairdii</i>	Southern Mexico to Colombia and Ecuador	do	E	3	NA	NA
Tapir, mountain		<i>Tapirus pinchaque</i>	Colombia, Ecuador and possibly Peru and Venezuela	do	E	3	NA	NA
Tarsier, Philippine		<i>Tarsius syrichta</i>	Philippines	do	T	16	NA	17.40(c)
Tiger		<i>Panthera tigris</i>	Temperate and Tropical Asia	do	E	3, 5	NA	NA
Tiger, Tasmanian (= Thylacine)		<i>Thylacinus cynocephalus</i>	Australia	do	E	3	NA	NA
Uakari (all species)		<i>Cacajao</i> spp. (all species)	Peru, Brazil, Ecuador, Colombia, Venezuela	do	E	3	NA	NA
Urial		<i>Ovis musimon</i> (= <i>orientalis</i>) ophion	Cyprus	do	E	15	NA	NA
Vicuña		<i>Vicugna vicugna</i>	South America (Andes)	do	E	3	NA	NA
Vole, Amargosa		<i>Microtus californicus scirpensis</i>	U.S.A. (CA)	do	E	166	17.95(a)	NA
Vole, Huasteca Mexican		<i>Microtus mexicanus huastecus</i>	U.S.A. (AZ)	do	E	292	NA	NA
Wallaby, banded hare		<i>Lagostrophus fasciatus</i>	Australia	do	E	4	NA	NA
Wallaby, brindled nail-tailed		<i>Onychogalea fraenata</i>	do	do	E	4	NA	NA
Wallaby, crescent nail-tailed		<i>Onychogalea lunata</i>	do	do	E	4	NA	NA
Wallaby, Parma		<i>Macropus parma</i>	do	do	E	4	NA	NA
Wallaby, Western hare		<i>Lagorchestes hirsutus</i>	do	do	E	4	NA	NA
Wallaby, yellow-footed rock		<i>Petrogale xanthopus</i>	do	do	E	6	NA	NA
Whale, blue		<i>Balaenoptera musculus</i>	Oceanic	do	E	3	NA	NA
Whale, bowhead		<i>Balaena mysticetus</i>	Oceanic (north latitudes only)	do	E	3	NA	NA
Whale, finback		<i>Balaenoptera physalus</i>	Oceanic	do	E	3	NA	NA
Whale, gray		<i>Eschrichtius robustus</i>	North Pacific Ocean: coastal and Bering Sea; formerly North Atlantic Ocean	do	E	3	NA	NA
Whale, humpback		<i>Megaptera novaeangliae</i>	Oceanic	do	E	3	NA	NA
Whale, right		<i>Balaena glacialis</i>	do	do	E	3	NA	NA
Whale, Sei		<i>Balaenoptera borealis</i>	do	do	E	3	NA	NA
Whale, sperm		<i>Physeter catodon</i>	do	do	E	3	NA	NA
Wolf, gray		<i>Canis lupus</i>	Holarctic	U.S.A. (48 contiguous States, except MN), Mexico	E	1, 6, 13, 15, 35	17.95(a)	NA
Do		do	do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Wolf, maned		<i>Chrysocyon brachyurus</i>	Argentina, Bolivia, Brazil, Paraguay, Uruguay	Entire	E	4	NA	NA
Wolf, red		<i>Canis rufus</i>	U.S.A. (SE U.S.A., west to central TX)	Entire, except Dare, Tyrrell, Hyde, and Washington Counties, NC	E	1, 248	NA	NA
Do		do	do	U.S.A.: NC-Dare, Tyrrell, Hyde, & Washington Cos.	XN	248	NA	17.84(c)
Wombat, hairy-nosed (= Barnard's and Queensland hairy-nosed)		<i>Lasiorchinus krefftii</i> (formerly <i>L. barnardi</i> and <i>L. gillespiei</i>)	Australia	Entire	E	4, 6	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Woodrat, Key Largo		<i>Neotoma floridana smalli</i>	U.S.A. (FL)	do	E	131E, 160	NA	NA
		<i>Bos grunniens</i>	China (Tibet), India	do	E	3	NA	NA
Yak, wild		<i>Equus grevyi</i>	Kenya, Ethiopia, Somalia	do	T	54	NA	NA
		<i>Equus zebra hartmannae</i>	Namibia, Angola	do	T	54, 111	NA	NA
Zebra, Hartmann's mountain		<i>Equus zebra zebra</i>	South Africa	do	E	15, 111	NA	NA
BIRDS								
Akepa, Hawaii (honeycreeper)		<i>Loxops coccineus coccineus</i>	U.S.A. (HI)	do	E	2	NA	NA
Akepa, Maui (honeycreeper)		<i>Loxops coccineus occideus</i>	do	do	E	2	NA	NA
Akialoa, Kauai (honeycreeper)		<i>Hemignathus procerus</i>	do	do	E	1	NA	NA
Akiapolaau (honeycreeper)		<i>Hemignathus munroi (= wilsoni)</i>	do	do	E	1	NA	NA
Albatross, short-tailed		<i>Diomedea albatrus</i>	North Pacific Ocean: Japan, U.S.S.R., U.S.A. (AK, CA, HI, OR, WA)	Entire, except U.S.A.	E	3	NA	NA
Blackbird, yellow-shouldered		<i>Agelaius xanthomus</i>	U.S.A. (PR)	Entire	E	17	17.95(b)	NA
Bobwhite, masked (quail)		<i>Colinus virginianus ridgwayi</i>	U.S.A. (AZ), Mexico (Sonora)	do	E	1, 3	NA	NA
Booby, Abbott's		<i>Sula abbotti</i>	Indian Ocean: Christmas Island	do	E	15	NA	NA
Bristlebird, western		<i>Dasyornis brachypterus longirostris</i>	Australia	do	E	3	NA	NA
Bristlebird, western rufous		<i>Dasyornis broadbentii littoralis</i>	do	do	E	15	NA	NA
Broadbill, Guam		<i>Myiagra freycineti</i>	Western Pacific Ocean: U.S.A. (Guam)	do	E	156	NA	NA
Bulbul, Mauritius oliveaceous		<i>Hypsipetes borbonicus olivaceus</i>	Indian Ocean: Mauritius	do	E	3	NA	NA
Bullfinch, Sao Miguel (finch)		<i>Pyrrhula pyrrhula murina</i>	Eastern Atlantic Ocean: Azores	do	E	3	NA	NA
Bushwren, New Zealand		<i>Xenicus longipes</i>	New Zealand	do	E	3	NA	NA
Bustard, great Indian		<i>Chonotus nigricaps</i>	India, Pakistan	do	E	3	NA	NA
Cahow (= Bermuda Petrel)		<i>Pterodroma cahow</i>	North Atlantic Ocean: Bermuda	do	E	3	NA	NA
Caracara, Audubon's crested		<i>Polyborus plancus auduboni</i>	U.S.A. (AZ, FL, LA, NM, TX) south to Panama; Cuba	U.S.A. (FL)	E	280	NA	NA
Condor, Andean		<i>Vultur gryphus</i>	Colombia to Chile and Argentina	Entire	E	4	NA	NA
Condor, California		<i>Gymnogyps californianus</i>	U.S.A. (OR, CA), Mexico (Baja California)	U.S.A. only	E	1	17.95(b)	NA
Cool, Hawaiian (= alae keo keo)		<i>Fulica americana alai</i>	U.S.A. (HI)	Entire	E	2	NA	NA
Colinga, banded		<i>Colinga maculata</i>	Brazil	do	E	15	NA	NA
Colinga, white-winged		<i>Xipholena altopurpurea</i>	do	do	E	15	NA	NA
Crane, black-necked		<i>Grus nigricollis</i>	China (Tibet)	do	E	15	NA	NA
Crane, Cuba sandhill		<i>Grus canadensis nesiotis</i>	West Indies: Cuba	do	E	15	NA	NA
Crane, hooded		<i>Grus monacha</i>	Japan, U.S.S.R.	do	E	4	NA	NA
Crane, Japanese		<i>Grus japonensis</i>	China, Japan, Korea, U.S.S.R.	do	E	3	NA	NA
Crane, Mississippi sandhill		<i>Grus canadensis pulla</i>	U.S.A. (MS)	do	E	6	17.95(b)	NA
Crane, Siberian white		<i>Grus leucogeranus</i>	U.S.S.R. (Siberia) to India, including Iran and China	do	E	4	NA	NA
Crane, white-naped		<i>Grus vipio</i>	Mongolia	do	E	15	NA	NA
Crane, whooping		<i>Grus americana</i>	Canada, U.S.A. (Rocky Mountains east to Carolinas), Mexico	do	E	1, 3	17.95(b)	NA
Creepers, Hawaii		<i>Oreomystis (= Loxops) mana</i>	U.S.A. (HI)	do	E	10	NA	NA
Creepers, Molokai (= kakawahie)		<i>Paroreomys (= Oreomystis, = Loxops) flammea</i>	do	do	E	2	NA	NA
Creepers, Oahu (= alauawaho)		<i>Paroreomys (= Oreomystis, = Loxops) maculata</i>	do	do	E	2	NA	NA
Crow, Hawaiian (= 'alala)		<i>Corvus hawaiiensis (= tropicus)</i>	Western Pacific Ocean: U.S.A. (Guam, Rota)	do	E	1	NA	NA
Crow, Mariana		<i>Corvus kubaryi</i>	Indian Ocean: Mauritius	do	E	156	NA	NA
Cuckoo-shrike, Mauritius		<i>Coquus (= Coracina) typicus</i>	Indian Ocean: Mauritius	do	E	3	NA	NA
Cuckoo-shrike, Reunion		<i>Coquus (= Coracina) newtoni</i>	Indian Ocean: Reunion	do	E	3	NA	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Curassow, razor-billed			<i>Mitu (= Crax) mitu mitu</i>	Brazil (Eastern)	do.	E	15	NA	NA
Curassow, red-billed			<i>Crax blumenbachii</i>	Brazil	do.	E	4	NA	NA
Curassow, Trinidad white-headed			<i>Pipile pipile pipile</i>	West Indies: Trinidad	do.	E	3	NA	NA
Curlew, Eskimo			<i>Numenius borealis</i>	Alaska and northern Canada to Argentina.	do.	E	1, 3	NA	NA
Dove, cloven-feathered			<i>Drepanoptila holosericea</i>	Southwest Pacific Ocean: New Caledonia	do.	E	3	NA	NA
Dove, Grenada gray-fronted			<i>Leptotila rufaxilla wellsi</i>	West Indies: Grenada	do.	E	3	NA	NA
Duck, Hawaiian (= koloa)			<i>Anas wyvilliana</i>	U.S.A. (HI)	do.	E	1	NA	NA
Duck, Laysan			<i>Anas laysanensis</i>	do.	do.	E	1	NA	NA
Duck, pink-headed			<i>Rhodonessa caryophyllacea</i>	India	do.	E	15	NA	NA
Duck, white-winged wood			<i>Cairina scutulata</i>	India, Malaysia, Indonesia, Thailand	do.	E	3	NA	NA
Eagle, bald			<i>Haliaeetus leucocephalus</i>	North America south to northern Mexico.	U.S.A. (conterminous U.S., except WA, OR, MN, WI, MI)	E	1, 34	NA	NA
Do.			do.	do.	U.S.A. (WA, OR, MN, WI, MI)	T	34	NA	17.41(a)
Eagle, Greenland white-tailed			<i>Haliaeetus albicilla groenlandicus</i>	Greenland and adjacent Atlantic islands.	Entire	E	15	NA	NA
Eagle, harpy			<i>Harpia harpyja</i>	Mexico south to Argentina	do.	E	15	NA	NA
Eagle, Philippine (= monkey-eating)			<i>Pithecophaga jefferyi</i>	Philippines	do.	E	3	NA	NA
Eagle, Spanish imperial			<i>Aquila heliaca adalberti</i>	Spain, Morocco, Algeria	do.	E	3	NA	NA
Egret, Chinese			<i>Egretta eulophotes</i>	China, Korea	do.	E	3	NA	NA
Falcon, American peregrine			<i>Falco peregrinus anatum</i>	Nests from central Alaska across north-central Canada to central Mexico, winters south to South America.	do.	E	2, 3, 145	17.95(b)	NA
Falcon, Arctic peregrine			<i>Falco peregrinus tundrus</i>	Nests from northern Alaska to Greenland; winters south to Central and South America	do.	T	2, 3, 145	NA	NA
Falcon, Eurasian peregrine			<i>Falco peregrinus peregrinus</i>	Europe, Eurasia south to Africa and Midwest	do.	E	15	NA	NA
Falcon, northern aplomado			<i>Falco leucurus septentrionalis</i>	U.S.A. (AZ, NM, TX), Mexico, Guatemala.	do.	E	216	NA	NA
Falcon, peregrine			<i>Falco peregrinus</i>	Worldwide, except Antarctica and most Pacific islands.	Wherever found in wild in the conterminous 48 States.	E(S/A)	145	NA	NA
Finch, Laysan (honeycreeper)			<i>Telespiza (= Psittirostra) cantans</i>	U.S.A. (HI)	Entire	E	1	NA	NA
Finch, Nihoa (honeycreeper)			<i>Telespiza (= Psittirostra) ultima</i>	do.	do.	E	1	NA	NA
Flycatcher, Euler's			<i>Empidonax euleri johnstonei</i>	West Indies: Grenada	do.	E	3	NA	NA
Flycatcher, Seychelles paradise			<i>Terpsiphone corvina</i>	Indian Ocean: Seychelles	do.	E	3	NA	NA
Flycatcher, Tahiti			<i>Pomarea nigra</i>	South Pacific Ocean: Tahiti	do.	E	3	NA	NA
Fody, Seychelles (weaver-finch)			<i>Foudia sechellarum</i>	Indian Ocean: Seychelles	do.	E	3	NA	NA
Frigatebird, Andrew's			<i>Fregata andrewsi</i>	East Indian Ocean	do.	E	15	NA	NA
Goose, Aleutian Canada			<i>Branta canadensis leucopareia</i>	U.S.A. (AK, CA, OR, WA), Japan	do.	E	1, 3	NA	NA
Goose, Hawaiian (= nene)			<i>Nesochen (= Branta) sandvicensis</i>	U.S.A. (HI)	do.	E	1	NA	NA
Goshawk, Christmas Island			<i>Accipiter fasciatus natalis</i>	Indian Ocean: Christmas Island	do.	E	3	NA	NA
Grackle, slender-billed			<i>Quiscalus (= Cassin's) palustris</i>	Mexico	do.	E	3	NA	NA
Grasswren, Eyrean (flycatcher)			<i>Amytornis goulderi</i>	Australia	do.	E	3	NA	NA
Grebe, Aitken			<i>Podilymbus gigas</i>	Guatemala	do.	E	3	NA	NA
Greenshank, Nordmann's			<i>Tringa guttifer</i>	U.S.S.R., Japan, south to Malaya, Borneo.	do.	E	15	NA	NA

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Guan, horned		<i>Oreophaps derbianus</i>	Guatemala, Mexico	do.	E	3	NA	NA
Gull, Audouin's		<i>Larus audouinii</i>	Mediterranean Sea	do.	E	3	NA	NA
Gull, relic		<i>Larus relictus</i>	India, China	do.	E	15	NA	NA
Hawk, Anjouan Island sparrow		<i>Accipiter francesii pusillus</i>	Indian Ocean: Comoro Islands	do.	E	3	NA	NA
Hawk, Galapagos		<i>Buteo galapagoensis</i>	Ecuador (Galapagos Islands)	do.	E	3	NA	NA
Hawk, Hawaiian (= lb)		<i>Buteo solitarius</i>	U.S.A. (HI)	do.	E	1	NA	NA
Hermit, hook-billed (hummingbird)		<i>Glaucis (= Ramphodon) dohrnii</i>	Brazil	do.	E	15	NA	NA
Honeycreeper, crested (= 'akohekohe)		<i>Palmeria dolei</i>	U.S.A. (HI)	do.	E	1	NA	NA
Honeyeater, helmeted		<i>Meliphaga cassidix</i>	Australia	do.	E	4	NA	NA
Hornbill, helmeted		<i>Rhinoplax vigil</i>	Thailand, Malaysia	do.	E	15	NA	NA
Ibis, Japanese crested		<i>Nipponia nippon</i>	China, Japan, U.S.S.R., Korea	do.	E	3	NA	NA
Jay, Florida scrub		<i>Apelocoma coerulescens coerulescens</i>	U.S.A. (FL)	do.	T	267	NA	NA
Kagu		<i>Rhynchelidon jubatus</i>	South Pacific Ocean: New Caledonia	do.	E	3	NA	NA
Kakapo (= owl-parrot)		<i>Strigops habroptilus</i>	New Zealand	do.	E	3	NA	NA
Kestrel, Mauritius		<i>Falco punctatus</i>	Indian Ocean: Mauritius	do.	E	3	NA	NA
Kestrel, Seychelles		<i>Falco araea</i>	Indian Ocean: Seychelles Islands	do.	E	3	NA	NA
Kingfisher, Guam Micronesian		<i>Halcyon cinnamomina cinnamomina</i>	Western Pacific Ocean: U.S.A. (Guam)	do.	E	156	NA	NA
Kite, Cuba hook-billed		<i>Chondrohierax ucinatus wilsonii</i>	West Indies: Cuba	do.	E	3	NA	NA
Kite, Everglade snail		<i>Rostrhamus sociabilis plumbeus</i>	U.S.A. (FL)	Florida	E	1	17 95(b)	NA
Kite, Grenada hook-billed		<i>Chondrohierax ucinatus mirus</i>	West Indies: Grenada	Entire	E	3	NA	NA
Kokako (wattlebird)		<i>Callaeas cinerea</i>	New Zealand	do.	E	15	NA	NA
Macaw, glaucous		<i>Anodorhynchus glaucus</i>	Paraguay, Uruguay, Brazil	do.	E	15	NA	NA
Macaw, indigo		<i>Anodorhynchus leari</i>	Brazil	do.	E	15	NA	NA
Macaw, little blue		<i>Gyanopsitta spixii</i>	do.	do.	E	15	NA	NA
Magpie-robin, Seychelles (thrush)		<i>Copsychus sechellarum</i>	Indian Ocean: Seychelles Islands	do.	E	3	NA	NA
Malikoh, red-faced (cuckoo)		<i>Phaenicophaeus pyrrhocephalus</i>	Sri Lanka (= Ceylon)	do.	E	3	NA	NA
Mallard, Mariana		<i>Anas ostateleti</i>	West Pacific Ocean: U.S.A. (Guam, Mariana Islands)	do.	E	23	NA	NA
Megapode, Maleo		<i>Macrocephalon maleo</i>	Indonesia (Celebes)	do.	E	3	NA	NA
Megapode, Micronesian (= La Perouse's)		<i>Megapodius laperouse</i>	West Pacific Ocean: U.S.A. (Palau Island, Mariana Islands)	do.	E	3	NA	NA
Millerbird, Nihoa (old world warbler)		<i>Acrocephalus familiaris kingi</i>	U.S.A. (HI)	do.	E	1	NA	NA
Monarch, Tinian (old world flycatcher)		<i>Monarcha takatsukae</i>	Western Pacific Ocean: U.S.A. (Mariana Islands)	do.	T	3, 261	NA	NA
Moorhen (= gallinule), Hawaiian common		<i>Gallinula chloropus sandwicensis</i>	U.S.A. (HI)	do.	E	1	NA	NA
Moorhen (= gallinule), Mariana common		<i>Gallinula chloropus guami</i>	Western Pacific Ocean: U.S.A. (Guam, Tinian, Saipan, Pagan)	do.	E	156	NA	NA
Nightjar (= whip-poor-will), Puerto Rican		<i>Caprimulgus noctitherus</i>	U.S.A. (PR)	do.	E	6	NA	NA
Nukup'u (honeycreeper)		<i>Hemignathus lucidus</i>	U.S.A. (HI)	do.	E	1, 2	NA	NA
O'o, Kauai (= 'O'o 'A'a) (honeyeater)		<i>Moho braccatus</i>	do.	do.	E	1	NA	NA
Ostrich, Arabian		<i>Struthio camelus syriacus</i>	Jordan, Saudi Arabia	do.	E	3	NA	NA
Ostrich, West African		<i>Struthio camelus spatzi</i>	Spanish Sahara	do.	E	3	NA	NA
O'u (honeycreeper)		<i>Psittirostra psittacea</i>	U.S.A. (HI)	do.	E	1	NA	NA
Owl, Anjouan scops		<i>Otus rutilus capnodes</i>	Indian Ocean: Comoro Island	do.	E	3	NA	NA
Owl, giant scops		<i>Otus gurneyi</i>	Philippines: Marinduque and Mindanao Island	do.	E	15	NA	NA
Owl, Seychelles		<i>Otus insularis</i>	Indian Ocean: Seychelles Islands	do.	E	3	NA	NA
Owlet, Morden's (= Sokoke)		<i>Otus irenae</i>	Kenya	do.	E	3	NA	NA
Pallia (honeycreeper)		<i>Loxia (= Psittirostra) bailleui</i>	U.S.A. (HI)	do.	E	1	17 95(b)	NA
Parakeet, Forbes		<i>Cyanoramphus auriceps forbesi</i>	New Zealand	do.	E	3, 15	NA	NA
Parakeet, golden		<i>Aratinga guarouba</i>	Brazil	do.	E	4	NA	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Sta- tus	When listed	Critical habitat	Special rules
Parakeet, golden-shouldered (= hooded)			<i>Psephotus chrysopleurygius</i>	Australia	do	E	3	NA	NA
Parakeet, Mauritius			<i>Psittacula echo</i>	Indian Ocean: Mauritius	do	E	3	NA	NA
Parakeet, ochre-marked			<i>Pyrrhura cruentata</i>	Brazil	do	E	3	NA	NA
Parakeet, orange-bellied			<i>Neophema chrysogaster</i>	Australia	do	E	4	NA	NA
Parakeet, paradise (= beautiful)			<i>Psephotus pulcherrimus</i>	do	do	E	4	NA	NA
Parakeet, scarlet-chested (= splendid)			<i>Neophema splendida</i>	do	do	E	4	NA	NA
Parakeet, turquoise			<i>Neophema pulchella</i>	do	do	E	3	NA	NA
Parrot, Australian			<i>Geopsittacus occidentalis</i>	do	do	E	3	NA	NA
Parrot, Bahaman or Cuban			<i>Amazona leucocephala</i>	West Indies: Cuba, Bahamas, Caymans	do	E	3, 15	NA	NA
Parrot, ground			<i>Pezoporus wallicus</i>	Australia	do	E	6	NA	NA
Parrot, imperial			<i>Amazona imperialis</i>	West Indies: Dominica	do	E	3	NA	NA
Parrot, Puerto Rican			<i>Amazona vittata</i>	U.S.A. (PR)	do	E	1	NA	NA
Parrot, red-browed			<i>Amazona rhodocorytha</i>	Brazil	do	E	3	NA	NA
Parrot, red-capped			<i>Pionopsitta pileata</i>	do	do	E	15	NA	NA
Parrot, red-necked			<i>Amazona arausiaca</i>	West Indies: Dominica	do	E	50	NA	NA
Parrot, red-spectacled			<i>Amazona pretrei pretrei</i>	Brazil, Argentina	do	E	15	NA	NA
Parrot, St. Lucia			<i>Amazona versicolor</i>	West Indies: St. Lucia	do	E	3	NA	NA
Parrot, St. Vincent			<i>Amazona guildingii</i>	West Indies: St. Vincent	do	E	3	NA	NA
Parrot, thick-billed			<i>Rhynchopsitta pachyrhyncha</i>	Mexico, U.S.A. (AZ, NM)	Mexico	E	3	NA	NA
Parrot, vinaceous-breasted			<i>Amazona vinacea</i>	Brazil	Entire	E	15	NA	NA
Parrotbill, Maui (honeycreeper)			<i>Pseudonestor xanthophrys</i>	U.S.A. (HI)	do	E	1	NA	NA
Pelican, brown			<i>Pelecanus occidentalis</i>	U.S.A. (Carolinian to TX, CA), West Indies, C. and S. America: Coastal	Entire, except coast, FL, AL	E	2, 3, 171	NA	NA
Penguin, Galapagos			<i>Spheniscus mendiculus</i>	Ecuador (Galapagos Islands)	Entire	E	3	NA	NA
Petrel, Hawaiian dark-rumped			<i>Pterodroma phaeopygia sandwichensis</i>	U.S.A. (HI)	do	E	2, 4, 1	NA	NA
Pheasant, bar-tailed			<i>Symaticus humale</i>	Burma, China	do	E	3	NA	NA
Pheasant, Blyth's tragopan			<i>Tragopan blythii</i>	Burma, China, India	do	E	3	NA	NA
Pheasant, brown eared			<i>Crossoptilon manichincum</i>	China	do	E	3	NA	NA
Pheasant, Cabot's tragopan			<i>Tragopan caboli</i>	do	do	E	3	NA	NA
Pheasant, Chinese monal			<i>Lophophorus lhuysii</i>	do	do	E	3	NA	NA
Pheasant, Edward's			<i>Lophura edwardsi</i>	Vietnam	do	E	3	NA	NA
Pheasant, Elliot's			<i>Symaticus ellioti</i>	China	do	E	15	NA	NA
Pheasant, imperial			<i>Lophura imperialis</i>	Vietnam	do	E	3	NA	NA
Pheasant, Mikado			<i>Symaticus mikado</i>	Taiwan	do	E	3	NA	NA
Pheasant, Palawan peacock			<i>Polyplectron emphanum</i>	Philippines	do	E	3	NA	NA
Pheasant, Slater's monal			<i>Lophophorus sclateri</i>	Burma, China, India	do	E	3	NA	NA
Pheasant, Swinhoe's			<i>Lophura swinhoi</i>	Taiwan	do	E	3	NA	NA
Pheasant, western tragopan			<i>Tragopan melanolephalus</i>	India, Pakistan	do	E	3	NA	NA
Pheasant, white eared			<i>Crossoptilon crossoptilon</i>	China (Tibet), India	do	E	4	NA	NA
Pigeon, Azores wood			<i>Columba palumbus azorica</i>	East Atlantic Ocean: Azores	do	E	3	NA	NA
Pigeon, Chatham Island			<i>Hemiphaga novaeseelandiae chathamensis</i>	New Zealand	do	E	3	NA	NA
Pigeon, Mindoro zone-tailed			<i>Ducula mindorensis</i>	Philippines	do	E	15	NA	NA
Pigeon, Puerto Rican plain			<i>Columba inornata welmorei</i>	U.S.A. (PR)	do	E	2	NA	NA
Piping-guan, black-fronted			<i>Pipile jaculunga</i>	Argentina	do	E	15	NA	NA
Pitta, Koch's			<i>Pitta kochi</i>	Philippines	do	E	15	NA	NA
Plover, New Zealand shore			<i>Thinornis novaeseelandiae</i>	New Zealand	do	E	3	NA	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Plover, piping			<i>Charadrius melodus</i>	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Province of Ontario.	E	211	NA	NA
Do			do	do	Entire, except those areas where listed as endangered above.	T	211	NA	NA
Po'ouli (honeycreeper)			<i>Melanerpes formicivorus</i>	U.S.A. (HI)	Entire	E	10	NA	NA
Prairie-chicken, Attwater's greater			<i>Tympanuchus cupido attwateri</i>	U.S.A. (TX)	do	E	1	NA	NA
Quail, Merriam's Montezuma			<i>Cyrtonyx montezumae merriami</i>	Mexico (Vera Cruz)	do	E	15	NA	NA
Quetzal, resplendent			<i>Pharomachrus mocinno</i>	Mexico to Panama	do	E	15	NA	NA
Rail, Auckland Island			<i>Rallus pectoralis muelleri</i>	New Zealand	do	E	3	NA	NA
Rail, California clapper			<i>Rallus longirostris obsoletus</i>	U.S.A. (CA)	do	E	2	NA	NA
Rail, Guam			<i>Rallus owstoni</i>	Western Pacific Ocean: U.S.A. (Guam)	do	E	146E, 156	NA	NA
Rail, light-footed clapper			<i>Rallus longirostris levipes</i>	U.S.A. (CA), Mexico (Baja California)	U.S.A. only	E	2	NA	NA
Rail, Lord Howe wood			<i>Tricholimnas sylvestris</i>	Australia (Lord Howe Island)	Entire	E	15	NA	NA
Rail, Yuma clapper			<i>Rallus longirostris yumanensis</i>	Mexico, U.S.A. (AZ, CA)	U.S.A. only	E	1	NA	NA
Rhea, Darwin's			<i>Pterocnemia pennata</i>	Argentina, Bolivia, Peru, Uruguay	Entire	E	3	NA	NA
Robin, Chatham Island			<i>Petroica traversi</i>	New Zealand	do	E	3	NA	NA
Robin, scarlet-breasted (flycatcher)			<i>Petroica multicolor multicolor</i>	Australia (Norfolk Island)	do	E	3	NA	NA
Rockfowl, grey-necked			<i>Picathartes oreas</i>	Cameroon, Gabon	do	E	3	NA	NA
Rockfowl, white-necked			<i>Picathartes gymnocephalus</i>	Africa: Togo to Sierra Leone	do	E	3	NA	NA
Roller, long-tailed ground			<i>Urolonchus chinensis</i>	Madagascar	do	E	3	NA	NA
Scrub-bird, noisy			<i>Atrichornis clamosus</i>	Australia	do	E	3	NA	NA
Shama, Cebu black (thrush)			<i>Copsychus niger cebuensis</i>	Philippines	do	E	3	NA	NA
Shearwater, Newell's Townsend's (formerly Manx) (= 'A'o)			<i>Puffinus pacificus</i> (formerly <i>puffinus newelli</i>)	U.S.A. (HI)	do	T	10	NA	NA
Shrike, San Clemente loggerhead			<i>Lanius ludovicianus mearnsi</i>	U.S.A. (CA)	do	E	26	NA	NA
Siskin, red			<i>Carduelis (= Spinus) cucullata</i>	South America	do	E	15	NA	NA
Sparrow, Cape Sable seaside			<i>Ammodramus (= Ammospiza) maritimus mirabilis</i>	U.S.A. (FL)	do	E	1	17.95(b)	NA
Sparrow, dusky seaside			<i>Ammodramus (= Ammospiza) maritimus nigrescens</i>	do	do	E	1	17.95(b)	NA
Sparrow, Florida grasshopper			<i>Ammodramus savannarum floridanus</i>	do	do	E	239	NA	NA
Sparrow, San Clemente sage			<i>Ammodramus bellii clementae</i>	U.S.A. (CA)	do	T	26	NA	NA
Starling, Ponape mountain			<i>Aplonis pelzelni</i>	West Pacific Ocean: U.S.A. (Caroline Islands)	do	E	3	NA	NA
Starling, Rothschild's (myna)			<i>Leucopsar rothschildi</i>	Indonesia (Bali)	do	E	3	NA	NA
Stilt, Hawaiian (= Ae'o)			<i>Himantopus mexicanus (= himantopus knudseni)</i>	U.S.A. (Hawaii)	do	E	2	NA	NA
Stork, oriental white			<i>Ciconia ciconia boyciana</i>	China, Japan, Korea, U.S.S.R.	do	E	3	NA	NA
Stork, wood			<i>Mycteria americana</i>	U.S.A. (CA, AZ, TX, to Carolinas), Mexico, Central and South America.	U.S.A. (AL, FL, GA, NC, SC), Entire	E	142	NA	NA
Swiftlet, Mariana gray (= Vanikoro)			<i>Aerodramus (= Collocalia) vanikorensis barischi</i>	Western Pacific Ocean: U.S.A. (Guam), Rota, Tinian, Saipan, Agiguan.	do	E	156	NA	NA
Teal, Campbell Island flightless			<i>Anas aucklandica nesotis</i>	New Zealand (Campbell Island)	do	E	15	NA	NA
Tern, California least			<i>Sterna antillarum (= albitrons) browni</i>	Mexico, U.S.A. (CA)	do	E	2, 3	NA	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Tern, least			<i>Sterna antillarum</i>	U.S.A. (Atlantic and Gulf coasts, Miss. R. Basin, CA), Gr. and Lesser Antilles, Bahamas, Mexico; winters C. America, northern S. America.	U.S.A. (AR, CO, IA, IL, IN, KS, KY, LA (Miss. R. and tribs. N of Baton Rouge), MS (Miss. R.), MO, MT, NE, NM, ND, OK, SD, TN, TX (Except within 50 miles of coast)).	E	182	NA	NA
			<i>Sterna dougalii dougalii</i>	Tropical and temperate coasts of Atlantic Basin and East Africa.	U.S.A. (Atlantic Coast south to NC), Canada (NF, NS, QU), Bermuda.	E	296	NA	NA
		Do	do	do	Western Hemisphere and adjacent oceans, incl. U.S.A. (FL, PR, VI), where not listed as endangered.	T	296	NA	NA
Thrasher, white-breasted			<i>Ramphocinclus brachyurus</i>	West Indies: St. Lucia, Martinique	Entire	E	3	NA	NA
Thrush, large Kauai			<i>Myadestes (=Phaeornis) myadestinus</i>	U.S.A. (HI)	do	E	2	NA	NA
Thrush, Molokai (= oloma 'o)			<i>Myadestes (=Phaeornis) lanaiensis (=obscurus) rufa</i>	do	do	E	2	NA	NA
Thrush, New Zealand (wattlebird)			<i>Turnagra capensis</i>	New Zealand	do	E	3	NA	NA
Thrush, small Kauai (= puaihi)			<i>Myadestes (=Phaeornis) palmeri</i>	U.S.A. (HI)	do	E	1	NA	NA
Tinamou, solitary			<i>Tinamus solitarius</i>	Brazil, Paraguay, Argentina	do	E	15	NA	NA
Towhee, Inyo brown			<i>Pipilo fuscus eremophilus</i>	U.S.A. (CA)	do	T	282	17.95(b)	NA
Trembler, Martinique (thrasher)			<i>Cincloerchia ruficauda gutturalis</i>	West Indies: Martinique	do	E	3	NA	NA
Vireo, black-capped			<i>Vireo atricapillus</i>	U.S.A. (KS, LA, NE, OK, TX), Mexico	do	E	294	NA	NA
Vireo, least Bell's			<i>Vireo bellii pusillus</i>	U.S.A. (CA), Mexico	do	E	228	NA	NA
Wanderer, plain (collared-hemipode)			<i>Pedionomus torquatus</i>	Australia	do	E	6	NA	NA
Warbler (wood), Bachman's			<i>Vermivora bachmani</i>	U.S.A. (Southeastern), Cuba	do	E	1, 3	NA	NA
Warbler (wood), Barbados yellow			<i>Dendroica petechia petechia</i>	West Indies: Barbados	do	E	3	NA	NA
Warbler (wood), Kirtland's			<i>Dendroica kirtlandii</i>	U.S.A. (principally MI), Canada, West Indies: Bahama Islands.	do	E	1, 3	NA	NA
Warbler (old world), nightingale reed			<i>Acrocephalus luscini</i>	Western Pacific Ocean.	U.S.A. (Mariana Islands).	E	3, 4	NA	NA
Warbler (old world), Rodrigues			<i>Bebornis rodericanus</i>	Mauritius (Rodrigues Islands)	Entire	E	3	NA	NA
Warbler (wood), Semper's			<i>Leucopoea semperi</i>	West Indies: St. Lucia	do	E	3	NA	NA
Warbler (old world), Seychelles			<i>Bebornis sechellensis</i>	Indian Ocean: Seychelles Island.	do	E	3	NA	NA
Whipbird, Western			<i>Psophodes nigrogularis</i>	Australia	do	E	3	NA	NA
White-eye, bridled			<i>Zosterops conspiciatus conspiciatus</i>	Western Pacific Ocean: U.S.A. (Guam)	do	E	156	NA	NA
White-eye, Norfolk Island			<i>Zosterops albogularis</i>	Indian Ocean: Norfolk Islands	do	E	15	NA	NA
White-eye, Ponape greater			<i>Rukia longirostra (=sanfordi)</i>	West Pacific Ocean: U.S.A. (Caroline Islands).	do	E	3	NA	NA
White-eye, Seychelles			<i>Zosterops modesta</i>	Indian Ocean: Seychelles	do	E	3	NA	NA
Woodpecker, imperial			<i>Campephilus imperialis</i>	Mexico	do	E	3	NA	NA

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Woodpecker, ivory-billed		<i>Campephilus principalis</i>	U.S.A. (southeastern and southeastern), Cuba	do	E	1, 3	NA	NA
Woodpecker, red-cockaded		<i>Picoides (=Dendrocopos) borealis</i>	U.S.A. (southeastern and southeastern)	do	E	2	NA	NA
Woodpecker, Tristram's		<i>Dryocopus javensis richardsi</i>	Korea	do	E	3	NA	NA
Wren, Guadeloupe		<i>Troglodytes aedon guadeloupensis</i>	West Indies: Guadeloupe	do	E	3	NA	NA
Wren, St. Lucia house		<i>Troglodytes aedon mesoleucus</i>	West Indies: St. Lucia	do	E	3	NA	NA
REPTILES								
Alligator, American		<i>Alligator mississippiensis</i>	Southeastern U.S.A.	do	T(S/A)	1, 11, 20, 47, 51, 60, 113, 134, 186, 269	NA	17.42(a)
Alligator, Chinese		<i>Alligator sinensis</i>	China	do	E	15	NA	NA
Anole, Culebra Island giant		<i>Anolis roosevelti</i>	U.S.A. (PR: Culebra Island)	do	E	25	17.95(c)	NA
Boa, Jamaican		<i>Epicrates subflavus</i>	Jamaica	do	E	3	NA	NA
Boa, Mona		<i>Epicrates monensis monensis</i>	U.S.A. (PR)	do	T	33	17.95(c)	NA
Boa, Puerto Rican		<i>Epicrates inornatus</i>	do	do	E	2	NA	NA
Boa, Round Island [no common name]		<i>Casarea dussumieri</i>	Indian Ocean: Mauritius	do	E	88	NA	NA
Boa, Round Island [no common name]		<i>Bolyeria multocornata</i>	do	do	E	88	NA	NA
Boa, Virgin Islands tree		<i>Epicrates monensis granti</i>	U.S. and British Virgin Islands	do	E	2, 86	NA	NA
Caiman, Apaporis River		<i>Caiman crocodilus apaporisensis</i>	Colombia	do	E	15	NA	NA
Caiman, black		<i>Melanosuchus niger</i>	Amazon basin	do	E	15	NA	NA
Caiman, broad-snouted		<i>Caiman latirostris</i>	Brazil, Argentina, Paraguay, Uruguay	do	E	15	NA	NA
Caiman, Yacare		<i>Caiman crocodilus yacare</i>	Bolivia, Argentina, Peru, Brazil	do	E	3	NA	NA
Chuckwalla, San Esteban Island		<i>Sauromalus varius</i>	Mexico	do	E	88	NA	NA
Crocodile, African dwarf		<i>Osteolaemus tetraspis tetraspis</i>	West Africa	do	E	15	NA	NA
Crocodile, African slender-snouted		<i>Crocodilus cataphractus</i>	Western and central Africa	do	E	5	NA	NA
Crocodile, American		<i>Crocodylus acutus</i>	U.S.A. (FL), Mexico, South America, Central America, Caribbean	do	E	10, 87	17.95(c)	NA
Crocodile, Ceylon mugger		<i>Crocodylus palustris kimbula</i>	Sri Lanka	do	E	15	NA	NA
Crocodile, Congo dwarf		<i>Osteolaemus tetraspis osborni</i>	Congo River drainage	do	E	15	NA	NA
Crocodile, Cuban		<i>Crocodylus rhombifer</i>	Cuba	do	E	3	NA	NA
Crocodile, Morelet's		<i>Crocodylus moreletii</i>	Mexico, Belize, Guatemala	do	E	3	NA	NA
Crocodile, mugger		<i>Crocodylus palustris palustris</i>	India, Pakistan, Iran, Bangladesh	do	E	15	NA	NA
Crocodile, Nile		<i>Crocodylus niloticus</i>	Africa, Middle East	do	E	3, 279, 334	NA	NA
Do		do	do	Entire, except Zimbabwe	E	334	NA	NA
Crocodile, Orinoco		<i>Crocodylus intermedius</i>	South America: Orinoco River Basin	Zimbabwe	T	279, 334	NA	17.42(c)
Crocodile, Philippine		<i>Crocodylus novaeguineae mindorensis</i>	Philippine Islands	Entire	E	3	NA	NA
Crocodile, saltwater (= estuarine)		<i>Crocodylus porosus</i>	Southeast Asia, Australia, Papua-New Guinea, Pacific Islands	do	E	15	NA	NA
Crocodile, Siamese		<i>Crocodylus siamensis</i>	Southeast Asia, Malay Peninsula	Entire, except Papua-New Guinea	E	87	NA	NA
Gavial (= gharial)		<i>Gavialis gangeticus</i>	Pakistan, Burma, Bangladesh, India, Nepal	Entire	E	15	NA	NA
Gecko, day		<i>Phelsuma edwardnewtoni</i>	Indian Ocean: Mauritius	do	E	3	NA	NA
Gecko, Monito		<i>Sphaerodactylus microphthecus</i>	U.S.A. (PR)	do	E	125	17.95(c)	NA
Gecko, Round Island day		<i>Phelsuma guentheri</i>	Indian Ocean: Mauritius	do	E	3	NA	NA
Gecko, Serpent Island		<i>Cyrtodactylus serpentinus</i>	do	do	T	129	NA	NA
Iguana, Acklins ground		<i>Cyclura nilex nuchalis</i>	West Indies: Bahamas	do	T	129	NA	NA
Iguana, Allen's Cay		<i>Cyclura cychlura inornata</i>	do	do	T	129	NA	NA

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Iguana, Andros Island ground		Iguana, Andros Island ground	<i>Cyclura cychlura cychlura</i>	do.	do	T	129	NA	NA
Iguana, Aneгада ground		Iguana, Aneгада ground	<i>Cyclura pinguis</i>	West Indies: British Virgin Islands (Aneгада Island).	do	E	3	NA	NA
Iguana, Barrington land		Iguana, Barrington land	<i>Conolophus pallidus</i>	Ecuador (Galapagos Islands)	do	E	3	NA	NA
Iguana, Cayman Brac ground		Iguana, Cayman Brac ground	<i>Cyclura nubila caymanensis</i>	West Indies: Cayman Islands	do	T	129	NA	NA
Iguana, Cuban ground		Iguana, Cuban ground	<i>Cyclura nubila nubila</i>	Cuba	Entire (excluding population introduced in Puerto Rico).	T	129	NA	NA
Iguana, Exuma Island		Iguana, Exuma Island	<i>Cyclura cychlura figginsii</i>	West Indies: Bahamas	Entire	T	129	NA	NA
Iguana, Fiji banded		Iguana, Fiji banded	<i>Brachylophus fasciatus</i>	Pacific: Fiji, Tonga	do	E	88	NA	NA
Iguana, Fiji crested		Iguana, Fiji crested	<i>Brachylophus vitiensis</i>	Pacific: Fiji	do	E	88	NA	NA
Iguana, Grand Cayman ground		Iguana, Grand Cayman ground	<i>Cyclura nubila lewisi</i>	West Indies: Cayman Islands	do	E	129	NA	NA
Iguana, Jamaican		Iguana, Jamaican	<i>Cyclura collei</i>	West Indies: Jamaica	do	E	129	NA	NA
Iguana, Mayaguana		Iguana, Mayaguana	<i>Cyclura carinata bartschi</i>	West Indies: Bahamas	do	T	129	NA	NA
Iguana, Mona ground		Iguana, Mona ground	<i>Cyclura carinata bartschi</i>	U.S.A. (PR: Mona Island)	do	T	33	17.95(c)	NA
Iguana, Turks and Caicos		Iguana, Turks and Caicos	<i>Cyclura carinata carinata</i>	West Indies: Turks and Caicos Islands	do	T	129	NA	NA
Iguana, Watling Island ground		Iguana, Watling Island ground	<i>Cyclura nileyi nileyi</i>	West Indies: Bahamas	do	E	129	NA	NA
Iguana, White Cay ground		Iguana, White Cay ground	<i>Cyclura nileyi nileyi</i>	do	do	T	129	NA	NA
Lizard, blunt-nosed leopard		Lizard, blunt-nosed leopard	<i>Gambelia (= Crotaphytus) silus</i>	U.S.A. (CA)	do	E	1	NA	NA
Lizard, Coachella Valley fringe-toed		Lizard, Coachella Valley fringe-toed	<i>Uma inornata</i>	do	do	T	105	17.95(c)	NA
Lizard, Hierro giant		Lizard, Hierro giant	<i>Gallotia simonyi simonyi</i>	Spain (Canary Islands)	do	T	144	NA	NA
Lizard, Ibiza wall		Lizard, Ibiza wall	<i>Podarcis pityusensis</i>	Spain (Balearic Islands)	do	T	144	NA	NA
Lizard, Island night		Lizard, Island night	<i>Xantusia (= Klauberina) riversiana</i>	U.S.A. (CA)	do	T	26	NA	NA
Lizard, St. Croix ground		Lizard, St. Croix ground	<i>Ameiva polops</i>	U.S.A. (VI)	do	E	24	17.95(c)	NA
Monitor, Bengal		Monitor, Bengal	<i>Varanus bengalensis</i>	Iran, Iraq, India, Sri Lanka, Malaysia, Afghanistan, Burma, Vietnam, Thailand.	do	E	15	NA	NA
Monitor, desert		Monitor, desert	<i>Varanus griseus</i>	North Africa to Neareast, Caspian Sea through U.S.S.R. to Pakistan, North-west India.	do	E	15	NA	NA
Monitor, Komodo Island (= Komodo dragon)		Monitor, Komodo Island (= Komodo dragon)	<i>Varanus komodoensis</i>	Indonesia (Komodo, Rintja, Padar, and western Flores Island)	do	E	15	NA	NA
Monitor, yellow		Monitor, yellow	<i>Varanus flavescens</i>	West Pakistan through India to Bangladesh.	do	E	15	NA	NA
Python, Indian		Python, Indian	<i>Python molurus molurus</i>	Sri Lanka and India	do	E	15	NA	NA
Rattlesnake, Aruba Island		Rattlesnake, Aruba Island	<i>Crotalus unicolor</i>	Aruba Island (Netherlands Antilles)	do	T	129	NA	NA
Rattlesnake, New Mexican ridge-nosed		Rattlesnake, New Mexican ridge-nosed	<i>Crotalus willardi obscurus</i>	U.S.A. (NM), Mexico	do	T	43	17.95(c)	NA
Skink, blue-tailed mole		Skink, blue-tailed mole	<i>Eumeces egregius lividus</i>	U.S.A. (FL)	do	T	299	NA	17.42(d)
Skink, Round Island		Skink, Round Island	<i>Leiolopisma telfairi</i>	Indian Ocean: Mauritius	do	T	129	NA	NA
Skink, sand		Skink, sand	<i>Neoseps reynoldsi</i>	U.S.A. (FL)	do	T	299	NA	17.42(d)
Snake, Atlantic salt marsh		Snake, Atlantic salt marsh	<i>Nerodia fasciata taeniala</i>	do	do	T	30	NA	NA
Snake, Concho water		Snake, Concho water	<i>Nerodia harteri paucimaculata</i>	do	do	T	241	NA	NA
Snake, eastern indigo		Snake, eastern indigo	<i>Dymarchon corais couperi</i>	U.S.A. (AL, FL, GA, MS, SC)	do	T	32	NA	NA
Snake, San Francisco garter		Snake, San Francisco garter	<i>Thamnophis sirtalis tetrataenia</i>	U.S.A. (CA)	do	E	1	NA	NA
Tartaruga		Tartaruga	<i>Podocnemis expansa</i>	South America: Orinoco and Amazon River basins.	do	E	3	NA	NA
Terrapin, river (= Tuntong)		Terrapin, river (= Tuntong)	<i>Batagur baska</i>	Malaysia, Bangladesh, Burma, India, Indonesia.	do	E	3	NA	NA
Tomistoma		Tomistoma	<i>Tomistoma schlegelii</i>	Malaysia, Indonesia	do	E	15	NA	NA
Tortoise, angulated		Tortoise, angulated	<i>Geochelone ynniphora</i>	Malagasy Republic (= Madagascar)	do	E	15	NA	NA
Tortoise, Bolson		Tortoise, Bolson	<i>Gopherus flavomarginatus</i>	Mexico	do	E	46	NA	NA

Species		Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name					
Tortoise, desert	<i>Gopherus</i> (= <i>Xerobates</i> , = <i>Scaptochelys</i>) <i>agassizii</i>	Beaver Dam Slope, Utah.	T	103	17.95(c)	NA
Tortoise, Galapagos	<i>Geochelone elephantopus</i>	Entire	E	3	NA	NA
Tortoise, gopher	<i>Gopherus polyphemus</i>	Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	T	281	NA	NA
Tortoise, radiated	<i>Geochelone</i> (= <i>Testudo</i>) <i>radiata</i>	Entire	E	3	NA	NA
Tracaja	<i>Podocnemis unifilis</i>	South America: Orinoco and Amazon River basins.	E	3	NA	NA
Tuatara	<i>Sphenodon punctatus</i>	do	E	3	NA	NA
Turtle, Alabama red-bellied	<i>Pseudemys alabamensis</i>	do	E	278	NA	NA
Turtle, aquatic box	<i>Terrapene carolina</i>	do	E	6	NA	NA
Turtle, black softshell	<i>Trionyx nigricans</i>	do	E	15	NA	NA
Turtle, Burmese peacock	<i>Morenia ocellata</i>	do	E	15	NA	NA
Turtle, Central American river	<i>Desmarestemys mawii</i>	do	E	129	NA	NA
Turtle, Cuatro Ciénegas softshell	<i>Trionyx ater</i>	do	E	15	NA	NA
Turtle, flattened musk	<i>Sternotherus depressus</i>	Black Warrior River system upstream from Bankhead Dam.	T	272	NA	NA
Turtle, geometric	<i>Psammobates geometricus</i> (= <i>Geochelone geometrica</i>)	Entire	E	15	NA	NA
Turtle, green sea	<i>Chelonia mydas</i>	South Africa	T	2.42	NA	17.42(b) and Parts 220 and 227
Do	do	Circumglobal in tropical and temperate seas and oceans.	E	2.42	NA	NA
Turtle, hawksbill sea (= carey)	<i>Eretmochelys imbricata</i>	do	E	3	17.95(c)	NA
Turtle, Indian sawback	<i>Kachuga leuctica</i>	Tropical seas	E	15	NA	NA
Turtle, Indian softshell	<i>Trionyx gangeticus</i>	India	E	15	NA	NA
Turtle, Kemp's (= Atlantic) ridley sea	<i>Lepidochelys kempii</i>	Pakistan, India	E	4	NA	NA
Turtle, leatherback sea	<i>Dermochelys coriacea</i>	Tropical and temperate seas in Atlantic Basin, incl. Gulf of Mexico.	E	3	17.95(c), 226.71	NA
Turtle, longerhead sea	<i>Caretta caretta</i>	Tropical, temperate, and subpolar seas.	T	42	NA	17.42(b) and Parts 220 and 227
Turtle, olive (= Pacific) ridley sea	<i>Lepidochelys olivacea</i>	Circumglobal in tropical and temperate seas and oceans.	T	42	NA	17.42(b) and Parts 220 and 227

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Do	do			do	Breeding colony populations on Pacific coast of Mexico.	E	42	NA	NA
Turtle, peacock softshell			<i>Trionyx hurum</i>	India, Bangladesh	Entire	E	15	NA	NA
Turtle, Plymouth red-bellied			<i>Pseudemys (= Chrysemys) rubriventris bangsi</i>	U.S.A. (MA)	do	E	90	17.95(c)	NA
Turtle, ringed sawback			<i>Graptemys oculifera</i>	U.S.A. (LA, MS)	do	T	250	NA	NA
Turtle, short-necked or western swamp			<i>Pseudemys umbrina</i>	Australia	do	E	3	NA	NA
Turtle, spotted pond			<i>Geoclemys (= Damonia) hamiltonii</i>	North India, Pakistan	do	E	15	NA	NA
Turtle, three-keeled Asian			<i>Melanochelys (= Geoemyda, = Nicoria) tricarinata</i>	Central India to Bangladesh and Burma	do	E	15	NA	NA
Viper, Lar Valley			<i>Vipera latitii</i>	Iran	do	E	129	NA	NA
AMPHIBIANS									
Coqui, golden			<i>Eleutherodactylus jasper</i>	U.S.A. (PR)	do	T	29	17.95(d)	NA
Frog, Israel painted			<i>Discoglossus nigriventris</i>	Israel	do	E	3	NA	NA
Frog, Panamanian golden			<i>Atelopus varius zeteki</i>	Panama	do	E	15	NA	NA
Frog, Stephen Island			<i>Leiopelma hamiltoni</i>	New Zealand	do	E	3	NA	NA
Salamander, Chinese giant			<i>Andrias davidianus davidianus</i>	Western China	do	E	15	NA	NA
Salamander, desert slender			<i>Batrachoseps ardens</i>	U.S.A. (CA)	do	E	6	NA	NA
Salamander, Japanese giant			<i>Andrias davidianus japonicus</i>	Japan	do	E	15	NA	NA
Salamander, Red Hills			<i>Phaeognathus hubrichti</i>	U.S.A. (AL)	do	T	19	NA	NA
Salamander, San Marcos			<i>Eurycea nana</i>	U.S.A. (TX)	do	T	98	17.95(d)	17.43(a)
Salamander, Santa Cruz long-toed			<i>Ambystoma macrodactylum croceum</i>	U.S.A. (CA)	do	E	1	NA	NA
Salamander, Texas blind			<i>Typhlomolge rathbuni</i>	U.S.A. (TX)	do	E	1	NA	NA
Toad, African viviparous			<i>Nectophrynoides</i> spp.	Tanzania, Guinea, Ivory Coast, Cameroon, Liberia, Ethiopia	do	E	15	NA	NA
Toad, Cameroon			<i>Bufo superciliaris</i>	Equatorial Africa	do	E	15	NA	NA
Toad, Houston			<i>Bufo houstonensis</i>	U.S.A. (TX)	do	E	2	17.95(d)	NA
Toad, Monte Verde			<i>Bufo pengelensis</i>	Costa Rica	do	E	15	NA	NA
Toad, Puerto Rican crested			<i>Peltophryne lemur</i>	U.S.A. (PR), British Virgin Islands	do	T	283	NA	NA
Toad, Wyoming			<i>Bufo hemiophrys baxteri</i>	U.S.A. (WY)	do	E	138	NA	NA
FISHES									
Ala Baik (trout)			<i>Salmo platycephalus</i>	Turkey	do	E	3	NA	NA
Ayudoxi (loach)			<i>Hymenophysa (= Botia) curta</i>	Japan	do	E	3	NA	NA
Blindcat, Mexican (catfish)			<i>Prietella phreatophila</i>	Mexico	do	E	3	NA	NA
Bonytongue, Asian			<i>Scleropages formosus</i>	Thailand, Indonesia, Malaysia	do	E	15	NA	NA
Catfish (no common name)			<i>Pangasius sanitwongsei</i>	Thailand	do	E	3	NA	NA
Catfish, giant			<i>Pangasianodon gigas</i>	do	do	E	3	NA	NA
Catfish, Yaqui			<i>Ictalurus pricei</i>	U.S.A. (AZ), Mexico	do	T	157	17.95(e)	17.44(g)
Cavelish, Alabama			<i>Speoplatyrhinus poulseni</i>	U.S.A. (AL)	do	E	28, 328	17.95(e)	NA
Cavelish, Ozark			<i>Amblyopsis rosae</i>	U.S.A. (AR, MO, OK)	do	T	164	NA	NA
Chub, bonytail			<i>Gila elegans</i>	U.S.A. (AZ, CA, CO, NV, UT, WY)	do	E	92	NA	NA
Chub, Borax Lake			<i>Gila boraxobius</i>	U.S.A. (OR)	do	E	124	17.95(e)	NA
Chub, Chihuahua			<i>Gila nigrescens</i>	U.S.A. (NM), Mexico (Chihuahua)	do	T	132	NA	17.44(g)
Chub, humpback			<i>Gila cypha</i>	U.S.A. (AZ, CO, UT, WY)	do	E	1	NA	NA
Chub, Hutton tui			<i>Gila bicolor</i> spp.	U.S.A. (CA)	do	T	174	NA	17.44(i)
Chub, Mohave tui			<i>Gila bicolor mohavensis</i>	do	do	E	2	NA	NA
Chub, Owens tui			<i>Gila robusta snyderi</i>	U.S.A. (NV)	do	E	195	17.95(e)	NA
Chub, Pahrnagat roundtail (= bonytail)			<i>Gila robusta jordani</i>	U.S.A. (TN, VA)	do	E	2	NA	NA
Chub, slender			<i>Hybopsis cahnii</i>	do	do	T	28	17.95(e)	17.44(c)

Species		Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name					
Chub, Sonora	<i>Gila dilaenia</i>	USA (AZ, Mexico)	T	227	17.95(e)	17.44(o)
Chub, spottin	<i>Hybopsis monacha</i>	USA (AL, GA, NC, TN, VA)	T	28	17.95(e)	17.44(c)
Chub, Yaqui	<i>Gila purpurea</i>	USA (AZ), Mexico	E	157	17.95(e)	NA
Cicok (minnow)	<i>Acanthorullus handlirshi</i>	Turkey	E	3	NA	NA
Cui-til	<i>Chasmistes cujus</i>	USA (NV)	E	1	NA	NA
Dace, Ash Meadows speckled	<i>Rhinichthys osculus nevadensis</i>	do	E	117E, 127E, 130	17.95(e)	NA
Dace, blackside	<i>Phoxinus cumberlandensis</i>	USA (TN, KY)	T	273	NA	NA
Dace, desert	<i>Eremichthys acros</i>	USA (NV)	T	210	17.95(e)	17.44(m)
Dace, Fosselt speckled	<i>Rhinichthys osculus ssp</i>	USA (OR)	T	174	NA	17.44(o)
Dace, Kendall Warm Springs	<i>Rhinichthys osculus thermalis</i>	USA (WY)	E	2	NA	NA
Dace, Moapa	<i>Moapa coriacea</i>	USA (NV)	E	1	NA	NA
Darter, amber	<i>Percina antesella</i>	USA (GA, TN)	E	196	17.95(e)	NA
Darter, bayou	<i>Etheostoma rubrum</i>	USA (MS)	T	10	NA	17.44(b)
Darter, boulder (= Elk River)	<i>Etheostoma (Notholus) sp</i>	USA (AL, TN)	E	322	NA	NA
Darter, fountain	<i>Etheostoma fonticola</i>	USA (TX)	E	2	17.95(e)	NA
Darter, leopard	<i>Percina pantherina</i>	USA (AR, OK)	T	31	17.95(e)	17.44(d)
Darter, Maryland	<i>Etheostoma sellare</i>	USA (MD)	E	1	NA	NA
Darter, Niangua	<i>Etheostoma nianguae</i>	USA (MO)	T	185	17.95(e)	17.44(k)
Darter, Okaloosa	<i>Etheostoma okaloosae</i>	USA (FL)	E	6	NA	NA
Darter, slackwater	<i>Etheostoma boschungii</i>	USA (AL, TN)	T	28	17.95(e)	17.44(c)
Darter, snail	<i>Percina tanasi</i>	USA (AL, GA, TN)	T	12, 150	NA	NA
Darter, watercress	<i>Etheostoma nuchale</i>	USA (AL)	E	2	NA	NA
Gambusia, Big Bend	<i>Gambusia gagei</i>	USA (TX)	E	1	NA	NA
Gambusia, Clear Creek	<i>Gambusia holbrooki</i>	do	E	1	NA	NA
Gambusia, Pecos	<i>Gambusia nobilis</i>	USA (NM, TX)	E	2	NA	NA
Gambusia, San Marcos	<i>Gambusia georgei</i>	USA (TX)	E	98	17.95(e)	NA
Killifish, Patrum	<i>Empetrichthys latos</i>	USA (NV)	E	1	NA	NA
Logperch, Conasauga	<i>Percina jenkinsi</i>	USA (GA, TN)	E	196	17.95(e)	NA
Madtom, Scioto	<i>Noturus trautmani</i>	USA (OH)	E	10	NA	NA
Madtom, Smoky	<i>Noturus baileyi</i>	USA (TN)	E	163	17.95(e)	NA
Madtom, yellowfin	<i>Noturus flavipinnis</i>	USA (GA, TN, VA)	T	28, 317	17.95(e)	17.44(c)
Do	do	Entire, except where listed as an experimental population below.				
		North Fork Holston River, VA, TN; South Fork Holston River upstream to F. Patrick Henry Dam, TN; Holston River downstream to John Sevier Detention Lake Dam, TN; and all tributaries thereto.	XN	317	NA	17.84(e)
Minnow, loach	<i>Tiaroga cobitis</i>	USA (AZ, NM), Mexico	T	247	NA	17.44(q)

Common name	Species	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Nekoggi (catfish)		<i>Coreobagrus ichikawai</i>	Japan	do.	E	3	NA	NA
Pupfish, Ash Meadows Amargosa		<i>Cyprinodon nevadensis mionectes</i>	U.S.A. (NV)	do.	E	117E, 127E, 130	17.95(e)	NA
Pupfish, Comanche Springs		<i>Cyprinodon eregans</i>	U.S.A. (TX)	do.	E	1	NA	NA
Pupfish, desert		<i>Cyprinodon macularius</i>	U.S.A. (AZ, CA), Mexico	do.	E	222	17.95(e)	NA
Pupfish, Devils Hole		<i>Cyprinodon diabolis</i>	U.S.A. (NV)	do.	E	1	NA	NA
Pupfish, Leon Springs		<i>Cyprinodon bovinus</i>	U.S.A. (TX)	do.	E	102	17.95(e)	NA
Pupfish, Owens		<i>Cyprinodon radius</i>	U.S.A. (CA)	do.	E	1	NA	NA
Pupfish, Warm Springs		<i>Cyprinodon nevadensis pectoralis</i>	U.S.A. (NV)	do.	E	2	NA	NA
Shiner, beautiful		<i>Notropis formosus</i>	U.S.A. (AZ, NM), Mexico	do.	T	157	17.95(e)	17.44(g)
Shiner, Cape Fear		<i>Notropis mekistocholas</i>	U.S.A. (NC)	do.	E	290	17.95(e)	NA
Shiner, Pecos bluntnose		<i>Notropis sirius pecosensis</i>	U.S.A. (NM)	do.	T	258	17.95(e)	17.44(r)
Silverside, Waccamaw		<i>Menidia extensa</i>	U.S.A. (NC)	do.	T	265	17.95(e)	17.44(s)
Spinedace		<i>Meda fulgida</i>	do.	do.	T	236	NA	17.44(p)
Spinedace, Big Spring		<i>Lepidomeda mollisprins pratensis</i>	U.S.A. (NV)	do.	T	173	17.95(e)	17.44(i)
Spinedace, Little Colorado		<i>Lepidomeda vittata</i>	U.S.A. (AZ)	do.	T	287	17.95(e)	17.44(i)
Spinedace, White River		<i>Lepidomeda alballis</i>	U.S.A. (NV)	do.	E	203	17.95(e)	NA
Springfish, Hiko White River		<i>Crenichthys baileyi grandis</i>	do.	do.	E	206	17.95(e)	NA
Springfish, Railroad Valley		<i>Crenichthys nevadae</i>	do.	do.	T	224	17.95(e)	17.44(n)
Springfish, White River		<i>Crenichthys baileyi baileyi</i>	do.	do.	E	206	17.95(e)	NA
Squawfish, Colorado		<i>Pychocheilus lucius</i>	U.S.A. (AZ, CA, CO, NM, NV, UT, WY), Mexico	Entire, except Salt and Verde R. drainages, AZ.	E	1, 193	NA	NA
Do		do.	do.	Salt and Verde R. drainages, AZ.	XN	193	NA	17.84(b)
Stickleback, unarmored threespine		<i>Gasterosteus aculeatus williamsoni</i>	U.S.A. (CA)	Entire	E	2	NA	NA
Sturgeon, shortnose		<i>Acipenser brevirostrum</i>	U.S.A. and Canada (Atlantic Coast)	do.	E	1	NA	NA
Sucker, June		<i>Chasmistes liorus</i>	U.S.A. (UT)	do.	E	223	17.95(e)	NA
Sucker, Lost River		<i>Delistes luxatus</i>	U.S.A. (OR, CA)	do.	E	313	NA	NA
Sucker, Modoc		<i>Catostomus microps</i>	U.S.A. (CA)	do.	E	184	17.95(e)	NA
Sucker, shortnose		<i>Chasmistes brevirostris</i>	U.S.A. (OR, CA)	do.	E	313	NA	NA
Sucker, Warner		<i>Catostomus warnerensis</i>	U.S.A. (OR)	do.	T	205	17.95(e)	17.44(l)
Tango, Miyako (Tokyo bitterling)		<i>Tanaka tanago</i>	Japan	do.	E	3	NA	NA
Temolek, Ikan (runnow)		<i>Probarbus jullieni</i>	Thailand, Cambodia, Vietnam, Malaysia, Laos	do.	E	15	NA	NA
Topminnow, Gila (incl. Yaqui)		<i>Poeciliopsis occidnialis</i>	U.S.A. (AZ, NM), Mexico	U.S.A. only	E	1	NA	NA
Totoaba (seatrout or weakfish)		<i>Cynoscion macdonaldi</i>	Mexico (Gulf of California)	Entire	E	45	NA	NA
Trout, Apache (= Arizona)		<i>Salmo apache</i>	U.S.A. (AZ)	do.	T	1, 8	NA	17.44(a)
Trout, Gila		<i>Salmo gila</i>	U.S.A. (AZ, NM)	do.	E	1	NA	NA
Trout, greenback cutthroat		<i>Salmo clarki stomias</i>	U.S.A. (CO)	do.	T	1, 38	NA	17.44(f)
Trout, Lahontan cutthroat		<i>Salmo clarki henshawi</i>	U.S.A. (CA, NV)	do.	T	2, 8	NA	17.44(a)
Trout, Little Kern gold-n		<i>Salmo aguabonita whitei</i>	U.S.A. (CA)	do.	T	37	17.95(e)	17.44(a)
Trout, Paiute cutthroat		<i>Salmo clarki selenis</i>	do.	do.	T	1, 8	NA	17.44(a)
Woundfin		<i>Plagopterus argentissimus</i>	U.S.A. (AZ, NV, UT)	Entire, except Gila R. drainage, AZ, NM.	E	2, 193	NA	NA
Do		do.	do.	Gila R. drainage AZ, NM.	XN	193	NA	17.84(b)

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Sta-tus	When listed	Critical habitat	Special rules
Common name								
SNAILS								
Snail, Chittenango ovate amber	<i>Succinea chittenangoensis</i>	U.S.A. (NY)	NA	NA	T	41	NA	NA
Snail, flat-spined three-toothed	<i>Tridopsis platysayoides</i>	U.S.A. (WV)	NA	NA	T	41	NA	NA
Snail, Iowa Pleistocene	<i>Discus mactinoflocci</i>	U.S.A. (IA)	NA	NA	E	41	NA	NA
Snail, Manus Island tree	<i>Papustyla pulcherrima</i>	Pacific Ocean: Admiralty Is. (Manus Is.)	NA	NA	E	3	NA	NA
Snail, noonday	<i>Mesodon clarki nantahala</i>	U.S.A. (NC)	NA	NA	T	41	NA	NA
Snail, Oahu tree	<i>Achatinella</i> spp. (all species)	U.S.A. (HI)	NA	NA	E	108, 112	NA	NA
Snail, painted snake coiled forest	<i>Anguispira picta</i>	U.S.A. (TN)	NA	NA	T	41	NA	NA
Snail, Stock Island	<i>Orthalicus reses</i> (not incl. <i>nesodryas</i>)	U.S.A. (FL)	NA	NA	T	41	NA	NA
Snail, Virginia fringed mountain	<i>Polygyriscus virginianus</i>	U.S.A. (VA)	NA	NA	E	41	NA	NA
CLAMS								
Mussel, Curtis	<i>Pleurobema curtum</i>	U.S.A. (AL, MS)	NA	NA	E	262	NA	NA
Mussel, Judge Tait's	<i>Pleurobema taiianum</i>	do	NA	NA	E	262	NA	NA
Mussel, Marshall's	<i>Pleurobema marshalli</i>	do	NA	NA	E	262	NA	NA
Mussel, penitent	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>penita</i>	do	NA	NA	E	262	NA	NA
Pearishell, Louisiana	<i>Margaritifera hembeli</i>	U.S.A. (LA)	NA	NA	E	304	NA	NA
Pearly mussel, Alabama lamp	<i>Lampsilis virens</i>	U.S.A. (AL, TN)	NA	NA	E	15	NA	NA
Pearly mussel, Appalachian monkeyface	<i>Quadrula sparsa</i>	U.S.A. (TN, VA)	NA	NA	E	15	NA	NA
Pearly mussel, birdwing	<i>Conradilla caelata</i>	do	NA	NA	E	15	NA	NA
Pearly mussel, Cumberland bean	<i>Villosa</i> (= <i>Micromya</i>) <i>trabalis</i>	U.S.A. (KY, TN)	NA	NA	E	15	NA	NA
Pearly mussel, Cumberland monkeyface	<i>Quadrula intermedia</i>	U.S.A. (AL, TN, VA)	NA	NA	E	15	NA	NA
Pearly mussel, Curtis	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>florentina curtsi</i>	U.S.A. (MO)	NA	NA	E	15	NA	NA
Pearly mussel, dromedary	<i>Dromus dromas</i>	U.S.A. (TN, VA)	NA	NA	E	15	NA	NA
Pearly mussel, green-blossom	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>torulosa gu-bernaculum</i>	do	NA	NA	E	15	NA	NA
Pearly mussel, Higgins' eye	<i>Lampsilis higginsii</i>	U.S.A. (IL, IA, MN, MO, NE, WI)	NA	NA	E	15	NA	NA
Pearly mussel, little-wing	<i>Pegias fabula</i>	U.S.A. (KY, TN, VA)	NA	NA	E	342	NA	NA
Pearly mussel, Nicklin's	<i>Megaloniais nicklineana</i>	Mexico	NA	NA	E	15	NA	NA
Pearly mussel (= pimple back), orange-footed	<i>Plethobasus cooperianus</i>	U.S.A. (AL, IN, IA, KY, OH, PA, TN)	NA	NA	E	15	NA	NA
Pearly mussel, pale liliput	<i>Toxolasma</i> (= <i>Carunculina</i>) <i>cylindrellus</i>	U.S.A. (AL, TN)	NA	NA	E	15	NA	NA
Pearly mussel, pink mucket	<i>Lampsilis orbiculata</i>	U.S.A. (AL, IL, IN, KY, MO, OH, PA, TN, WV)	NA	NA	E	15	NA	NA
Pearly mussel, Tampico	<i>Cyrtoniais tampicoensis lecomatensis</i>	Mexico	NA	NA	E	15	NA	NA
Pearly mussel, tubercled-blossom	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>torulosa torulosa</i>	U.S.A. (IL, IN, KY, TN, WV)	NA	NA	E	15	NA	NA
Pearly mussel, turgid-blossom	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>turgidula</i>	U.S.A. (AL, TN)	NA	NA	E	15	NA	NA
Pearly mussel, white cat's paw	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>sulcata delicata</i>	U.S.A. (IN, MI, OH)	NA	NA	E	15	NA	NA
Pearly mussel, white wartback	<i>Plethobasus cicatricosus</i>	U.S.A. (AL, IN, TN)	NA	NA	E	15	NA	NA
Pearly mussel, yellow-blossom	<i>Epioblasma</i> (= <i>Dysnomia</i>) <i>florentina florentina</i>	U.S.A. (AL, TN)	NA	NA	E	15	NA	NA
Pigtoe, line-rayed	<i>Fusconia cuneolus</i>	U.S.A. (AL, TN, VA)	NA	NA	E	15	NA	NA
Pigtoe, rough	<i>Pleurobema plenum</i>	U.S.A. (IN, KY, TN, VA)	NA	NA	E	15	NA	NA
Pigtoe, shiny	<i>Fusconia edgariana</i>	U.S.A. (AL, TN, VA)	NA	NA	E	15	NA	NA
Pocketbook, fat	<i>Potamius</i> (= <i>Proptera</i>) <i>capax</i>	U.S.A. (AR, IN, MO, OH)	NA	NA	E	15	NA	NA
Riffle shell, tan	<i>Epioblasma walker</i>	U.S.A. (KY, TN, VA)	NA	NA	E	27	NA	NA
Spiny mussel, James River (= Virginia)	<i>Pleurobema</i> (= <i>Fusconia</i> , = <i>Elliptio</i> , = <i>Canthya</i>) <i>collina</i>	U.S.A. (VA, WV)	NA	NA	E	316	NA	NA
Spiny mussel, Tar River	<i>Elliptio</i> (<i>Canthya</i>) <i>steiriansana</i>	U.S.A. (NC)	NA	NA	E	188	NA	NA
Stirrup shell	<i>Quadrula stapes</i>	U.S.A. (AL, MS)	NA	NA	E	262	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Sta- tus	When listed	Critical habitat	Special rules
Common name								
CRUSTACEANS								
Amphipod, Hay's Spring	<i>Stygobromus hayi</i>	U.S.A. (DC)	NA	E	115	NA	NA	NA
Crayfish (no common name)	<i>Cambarus zophonastes</i>	U.S.A. (AR)	NA	E	263	NA	NA	NA
Crayfish, Nashville	<i>Orconectes shoupi</i>	U.S.A. (TN)	NA	E	242	NA	NA	NA
Crayfish, Shasta (=placid)	<i>Pacifastacus fortis</i>	U.S.A. (CA)	NA	E	337	NA	NA	NA
Isopod, Madison Cave	<i>Antrolana lira</i>	U.S.A. (VA)	NA	T	123	NA	NA	17.46(a)
Isopod, Socorro	<i>Thermosphaeroma</i> (= <i>Exosphaeroma</i>) <i>thermophilus</i>	U.S.A. (NM)	NA	E	36	NA	NA	NA
Shrimp, Alabama cave	<i>Palaemonias alabamiae</i>	U.S.A. (AL)	NA	E	323	NA	NA	NA
Shrimp, California freshwater	<i>Syncaris pacifica</i>	U.S.A. (CA)	NA	E	340	NA	NA	NA
Shrimp, Kentucky cave	<i>Palaemonias ganteri</i>	U.S.A. (KY)	NA	E	135	17.95(h)	NA	NA
INSECTS								
Beetle, delta green ground	<i>Elaphrus viridis</i>	U.S.A. (CA)	NA	T	100	17.95(i)	NA	NA
Beetle, Kretschmar Cave mold	<i>Texamaurops reddelli</i>	U.S.A. (TX)	NA	E	327	NA	NA	NA
Beetle, Tooth Cave ground	<i>Rhadine persephone</i>	do	NA	E	327	NA	NA	NA
Beetle, valley elderberry longhorn	<i>Desmocerus californicus dimorphus</i>	U.S.A. (CA)	NA	T	99	17.95(i)	NA	NA
Butterfly, bay checkerspot	<i>Euphydryas editha bayensis</i>	do	NA	T	288	NA	NA	NA
Butterfly, El Segundo blue	<i>Euphilotes</i> (= <i>Shijimiaecoides</i>) <i>battoides allyni</i>	do	NA	E	14	NA	NA	NA
Butterfly, Lange's metalmark	<i>Apodemia mormo langei</i>	do	NA	E	14	NA	NA	NA
Butterfly, lois blue	<i>Lycæides argyrogonomon lois</i>	do	NA	E	14	NA	NA	NA
Butterfly, mission blue	<i>Icaricia icarioides missionensis</i>	do	NA	E	14	NA	NA	NA
Butterfly, Oregon silverspot	<i>Speyeria zereke hippolyta</i>	U.S.A. (OR, WA)	NA	T	95	17.95(i)	NA	NA
Butterfly, Palos Verdes blue	<i>Glaucopsyche lygdamus palosverdesensis</i>	U.S.A. (CA)	NA	E	96	17.95(i)	NA	NA
Butterfly, San Bruno elfin	<i>Callophrys mossii bayensis</i>	do	NA	E	14	NA	NA	NA
Butterfly, Schaus swallowtail	<i>Heracles</i> (= <i>Papilio</i>) <i>aristodemus ponceanus</i>	U.S.A. (FL)	NA	E	13, 159	NA	NA	NA
Butterfly, Smith's blue	<i>Euphilotes</i> (= <i>Shijimiaecoides</i>) <i>enoples smithi</i>	U.S.A. (CA)	NA	E	14	NA	NA	NA
Moth, Kern primrose sphinx	<i>Euprosepinus euterpe</i>	do	NA	T	91	NA	NA	NA
Naucorid, Ash Meadows	<i>Ambrysus amargosus</i>	U.S.A. (NV)	NA	T	181	17.95(i)	NA	NA
Skipper, Pawnee montane	<i>Hesperia leonardus</i> (= <i>pawnee</i>) <i>montana</i>	U.S.A. (CO)	NA	T	289	NA	NA	NA
ARACHNIDS								
Harvestman, Bee Creek Cave	<i>Texella reddelli</i>	U.S.A. (TX)	NA	E	327	NA	NA	NA
Pseudoscorpion, Tooth Cave	<i>Microcreagris texana</i>	do	NA	E	327	NA	NA	NA
Spider, Tooth Cave	<i>Leptoneta myopica</i>	do	NA	E	327	NA	NA	NA

Symbols used in the "when listed" column:
D—Indicates FR where species was Delisted; relisting of the species is indicated by subsequent number(s).
E—Indicates Emergency rule publication (see FR document for effective dates); subsequent number(s) indicate FR final rule, if applicable, under "When listed".
EDITORIAL NOTE: See the following list for the "when listed" citations.

1—32 FR 4001: March 11, 1967.
2—35 FR 16047: October 13, 1970.
3—35 FR 8495: June 2, 1970.
4—35 FR 18320: December 2, 1970.
5—37 FR 6476: March 30, 1972.
6—38 FR 14678: June 4, 1973.
7—39 FR 41991: December 30, 1974.
8—40 FR 29864: July 16, 1975.
9—40 FR 31736: July 28, 1975.
10—40 FR 44151: September 25, 1975.
11—40 FR 44418: September 26, 1975.
12—40 FR 47506: October 9, 1975.
13—41 FR 17740: April 28, 1976.
14—41 FR 22044: June 1, 1976.
15—41 FR 24064: June 14, 1976.
15A—41 FR 26019: June 24, 1976.
16—41 FR 45993: October 19, 1976.
17—41 FR 51021: November 19, 1976.
18—41 FR 51612: November 23, 1976.
19—41 FR 53034: December 3, 1976.
20—42 FR 2076: January 10, 1977.
21—42 FR 2968: January 14, 1977.
22—42 FR 15971: March 24, 1977.
23—42 FR 28137: June 2, 1977.
24—42 FR 28545: June 3, 1977.
25—42 FR 37373: July 21, 1977.
26—42 FR 40685: August 11, 1977.
27—42 FR 42353: August 23, 1977.
28—42 FR 45528: September 9, 1977.
29—42 FR 58755: November 11, 1977.
30—42 FR 60745: November 29, 1977.
31—43 FR 3715: January 27, 1978.
32—43 FR 4028: January 31, 1978.
33—43 FR 4621: February 3, 1978.
34—43 FR 6233: February 14, 1978.
35—43 FR 9612: March 9, 1978.
36—43 FR 12691: March 27, 1978.
37—43 FR 15429: April 13, 1978.
38—43 FR 16345: April 18, 1978.
40—43 FR 20504: May 12, 1978.
41—43 FR 28932: July 3, 1978.
42—43 FR 32808: July 28, 1978.
43—43 FR 34479: August 4, 1978.
45—44 FR 21289: April 10, 1979.
46—44 FR 23064: April 17, 1979.
48—44 FR 29480: May 21, 1979.
50—44 FR 37126: June 25, 1979.
51—44 FR 37132: June 25, 1979.
52—44 FR 42911: July 20, 1979.
54—44 FR 49220: August 21, 1979.
55—44 FR 54007: September 17, 1979.
60—44 FR 59084: October 12, 1979.
85—44 FR 69208: November 30, 1979.
86—44 FR 70677: December 7, 1979.
87—44 FR 75076: December 18, 1979.
88—45 FR 18010: March 20, 1980.
90—45 FR 21833: April 2, 1980.
91—45 FR 24090: April 8, 1980.
92—45 FR 27713: April 23, 1980.
93—45 FR 28722: April 30, 1980.
94—45 FR 35821: May 28, 1980.
95—45 FR 44935: July 2, 1980.
96—45 FR 44939: July 2, 1980.
97—45 FR 47352: July 14, 1980.
98—45 FR 47355: July 14, 1980.
99—45 FR 52803: August 8, 1980.
100—45 FR 52807: August 8, 1980.
102—45 FR 54678: August 15, 1980.
103—45 FR 55654: August 20, 1980.
105—45 FR 63812: September 25, 1980.
106—45 FR 65132: October 1, 1980.
108—46 FR 3178: January 13, 1981.
111—46 FR 11665: February 10, 1981.
112—46 FR 40025: August 6, 1981.
113—46 FR 40664: August 10, 1981.
114—47 FR 4204: January 28, 1982.

115—47 FR 5425: February 5, 1982.
117—47 FR 19995: May 10, 1982.
119—47 FR 31670: July 21, 1982.
123—47 FR 43701: October 4, 1982.
124—47 FR 43962: October 5, 1982.
125—47 FR 46093: October 15, 1982.
127—48 FR 612: January 5, 1983.
128—48 FR 1726: January 14, 1983.
129—48 FR 28464: June 22, 1983.
130—48 FR 40184: September 2, 1983.
131—48 FR 43043: September 21, 1983.
132—48 FR 46057: October 11, 1983.
134—48 FR 46336: October 12, 1983.
135—48 FR 46341: October 12, 1983.
136—48 FR 49249: October 25, 1983.
137—49 FR 1058: January 9, 1984.
138—49 FR 1994: January 17, 1984.
139—49 FR 2783: January 23, 1984.
142—49 FR 7335: February 28, 1984.
143—49 FR 7394: February 29, 1984.
144—49 FR 7398: February 29, 1984.
145—49 FR 10526: March 20, 1984.
146—49 FR 14356: April 11, 1984.
149—49 FR 22334: May 29, 1984.
150—49 FR 27514: July 5, 1984.
156—49 FR 33885: August 27, 1984.
157—49 FR 34494: August 31, 1984.
159—49 FR 34504: August 31, 1984.
160—49 FR 34510: August 31, 1984.
161—49 FR 35954: September 13, 1984.
163—49 FR 43069: October 26, 1984.
164—49 FR 43969: November 1, 1984.
166—49 FR 45163: November 15, 1984.
168—49 FR 49639: December 21, 1984.
169—50 FR 1056: January 9, 1985.
170—50 FR 4226: January 30, 1985.
171—50 FR 4945: February 4, 1985.
173—50 FR 12302: March 28, 1985.
174—50 FR 12305: March 28, 1985.
181—50 FR 20785: May 20, 1985.
182—50 FR 21792: May 28, 1985.
183—50 FR 23884: June 6, 1985.
184—50 FR 24530: June 11, 1985.
185—50 FR 24653: June 12, 1985.
186—50 FR 25678: June 20, 1985.
188—50 FR 26575: June 27, 1985.
189—50 FR 27002: July 1, 1985.
193—50 FR 30194: July 24, 1985.
195—50 FR 31596: August 5, 1985.
196—50 FR 31603: August 5, 1985.
203—50 FR 37198: September 12, 1985.
205—50 FR 39117: September 27, 1985.
206—50 FR 39123: September 27, 1985.
210—50 FR 50308: December 10, 1985.
211—50 FR 50733: December 11, 1985.
212—50 FR 51252: December 16, 1985.
216—51 FR 6690: February 25, 1986.
222—51 FR 10850: March 31, 1986.
223—51 FR 10857: March 31, 1986.
224—51 FR 10864: March 31, 1986.
227—51 FR 16047: April 30, 1986.
228—51 FR 16482: May 2, 1986.
233—51 FR 17980: May 16, 1986.
236—51 FR 23781: July 1, 1986.
239—51 FR 27495: July 31, 1986.
241—51 FR 31422: September 3, 1986.
242—51 FR 34412: September 26, 1986.
246—51 FR 34425: September 26, 1986.
247—51 FR 39478: October 28, 1986.
248—51 FR 41796: November 19, 1986.
250—51 FR 45910: December 23, 1986.
251—52 FR 288: January 5, 1987.
258—52 FR 5302: February 20, 1987.
261—52 FR 10892: April 6, 1987.
262—52 FR 11169: April 7, 1987.
263—52 FR 11172: April 7, 1987.

265—52 FR 11286: April 8, 1987.
267—52 FR 20719: June 3, 1987.
268—52 FR 20999: June 3, 1987.
269—52 FR 21063: June 4, 1987.
272—52 FR 22430: June 11, 1987.
273—52 FR 22585: June 12, 1987.
278—52 FR 22943: June 16, 1987.
279—52 FR 23151: June 17, 1987.
280—52 FR 25232: July 6, 1987.
281—52 FR 25380: July 7, 1987.
282—52 FR 28785: August 3, 1987.
283—52 FR 28831: August 4, 1987.
284—52 FR 29780: August 11, 1987.
287—52 FR 35040: September 16, 1987.
288—52 FR 35378: September 18, 1987.
289—52 FR 36180: September 25, 1987.
290—52 FR 36038: September 25, 1987.
292—52 FR 36779: October 1, 1987.
294—52 FR 37423: October 6, 1987.
296—52 FR 42068: November 2, 1987.
299—52 FR 42662: November 6, 1987.
304—53 FR 3570: February 5, 1988.
312—53 FR 25611: July 8, 1988.
313—53 FR 27134: July 18, 1988.
316—53 FR 27693: July 22, 1988.
317—53 FR 29337: August 4, 1988.
320—53 FR 33992: September 1, 1988.
322—53 FR 33998: September 1, 1988.
323—53 FR 34698: September 7, 1988.
327—53 FR 36033: September 16, 1988.
328—53 FR 37970: September 28, 1988.
334—53 FR 38453: September 30, 1988.
336—53 FR 38460: September 30, 1988.
337—53 FR 38465: September 30, 1988.
338—53 FR 38469: September 30, 1988.
340—53 FR 43889: October 31, 1988.
342—53 FR 45865: November 14, 1988.

[48 FR 34182, July 27, 1983]

Editorial Note: For Federal Register citations affecting the table in § 17.11(h), see the listing above.

§ 17.12 Endangered and threatened plants.

(a) The list in this section contains the names of all species of plants which have been determined by the Services to be Endangered or Threatened. It also contains the names of species of plants treated as Endangered or Threatened because they are sufficiently similar in appearance to Endangered or Threatened species (see § 17.50 *et seq.*).

(b) The columns entitled "Scientific name" and "Common name" define the species of plant within the meaning of the Act. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The Services shall use the most recently accepted scientific name. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The Services shall rely to the extent practicable on the *International Code of Botanical Nomenclature*.

(c) In the "Status" column the following symbols are used: "E" for Endangered, "T" for Threatened, and "E"

(or T) (S/A)" for similarity of appearance species.

(d) The other data in the list are nonregulatory in nature and are provided for the information of the reader. In the annual revision and compilation of this title, the following information may be amended without public notice: the spelling of species' names, historical range, footnotes, references to certain other applicable portions of this title, synonyms, and more current names. In any of these revised entries, neither the species, as defined in paragraph (b) of this section, nor its status may be changed without following the procedures of Part 424 of this title.

(e) The "Historic range" indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. This column does not imply any limitation on the application of the prohibitions in the Act

or implementing rules. Such prohibitions apply to all individuals of the plant species, wherever found.

(f)(1) A footnote to the **Federal Register** publication(s) listing or reclassifying a species is indicated under the column "When listed." Footnote numbers to §§ 17.11 and 17.12 are in the same numerical sequence, since plants and animals may be listed in the same **Federal Register** document. That document, at least since 1973, includes a statement indicating the basis for the listing, as well as the effective date(s) of said listing.

(2) The "Special rules" and "Critical habitat" columns provide a cross reference to other sections in Parts 17, 222, 226, or 227. The "Special rules" column will also be used to cite the special rules which describe experimental populations and determine if they are essential or nonessential. Separate listings will be made for experimental populations, and the status column will include the following

symbols: "XE" for an essential experimental population and "XN" for a nonessential experimental population. The term "NA" (not applicable) appearing in either of these two columns indicates that there are no special rules and/or critical habitat for that particular species. However, all other appropriate rules in Parts 17, 217 through 227, and 402 still apply to that species. In addition, there may be other rules in this title that relate to such plants, e.g., port-of-entry requirements. It is not intended that the references in the "Special rules" column list all the regulations of the two Services which might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxon includes all lower taxonomic units (see § 17.11(g) for examples).

(h) The "List of Endangered and Threatened Plants" is provided below:

Species		Common name	Historic range	Sta- tus	When listed	Critical habitat	Special rules
Agaveaceae—Agave family: <i>Agave arizonica</i>		Arizona agave	U.S.A. (AZ)	E	147	NA	NA
Alismataceae—Water-plantain family: <i>Sagittaria fasciculata</i>		Bunched arrowhead	U.S.A. (NC, SC)	E	53	NA	NA
Amaranthaceae—Amaranth family: <i>Achyranthes rotundata</i>		None	U.S.A. (HI)	E	220	NA	NA
Annonaceae—Custard-apple family: <i>Asimina tetramera</i>		Four-petal pawpaw	U.S.A. (FL)	E	244	NA	NA
<i>Deeringothamnus pulchellus</i>		Beautiful pawpaw	do	E	244	NA	NA
<i>Deeringothamnus rugelii</i>		Rugel's pawpaw	do	E	244	NA	NA
Apiaceae—Parsley family: <i>Eryngium constancei</i>		Loch Lomond coyote-thistle	U.S.A. (CA)	E	194E, 249	NA	NA
<i>Eryngium cuneifolium</i>		Snakeroot	U.S.A. (FL)	E	256	NA	NA
<i>Lomatium bradshawii</i>		Bradshaw's lomatium	U.S.A. (OR)	E	333	NA	NA
<i>Oxyptis lanbyi</i>		Canby's dropwort	U.S.A. (DE, GA, MD, NC, SC)	E	217	NA	NA
<i>Ptilimnium nodosum</i> (= <i>P. fluviatile</i>)		Harperella	U.S.A. (AL, GA, MD, NC, SC, WV)	E	332	NA	NA
Apocynaceae—Dogbane family: <i>Cycladenia humilis</i> var. <i>jonesii</i>		Jones cycladenia	U.S.A. (AZ, UT)	T	229	NA	NA
Aquifoliaceae—Holly family: <i>Ilex cookii</i>		Cook's holly	U.S.A. (PR)	E	277	NA	NA
Asclepiadaceae—Milkweed family: <i>Asclepias meadii</i>		Mead's milkweed	U.S.A. (IL, IN, IA, KS, MO, WI)	T	321	NA	NA
<i>Asclepias welshii</i>		Welsh's milkweed	U.S.A. (UT)	T	295	17.96(a)	NA
Asteraceae—Aster family: <i>Argyroxiphium sandwicense</i> ssp. <i>sandwicense</i>		'Ahinahina (= Mauna Kea silversword)	U.S.A. (HI)	E	219	NA	NA
<i>Bidens cuneata</i>		Cuneate bidens	do	E	141	NA	NA
<i>Boottia decurrens</i>		Decurrent false aster	U.S.A. (IL, MO)	E	341	NA	NA
<i>Chrysopsis floridana</i> (= <i>Heterotheca floridana</i>)		Florida golden aster	U.S.A. (FL)	T	232	NA	NA
<i>Cirsium pitcheri</i>		Pitcher's thistle	U.S.A. (IL, IN, MI, WI), Canada (ON)	T	315	NA	NA
<i>Cirsium vinaceum</i>		Sacramento Mountains thistle	U.S.A. (NM)	T	276	NA	NA
<i>Echinacea tennesseensis</i>		Tennessee purple coneflower	U.S.A. (TN)	E	49	NA	NA
<i>Encelopsis nudaucalis</i> var. <i>corrugata</i>		Ash Meadows sunray	U.S.A. (NV)	T	181	17.96(a)	NA
<i>Engelmannia maguirei</i> var. <i>maguirei</i>		Maguire daisy	U.S.A. (UT)	E	202	NA	NA
<i>Engelmannia rhizomatus</i>		Zuni (= rhizome) fleabane	U.S.A. (NM)	T	177	NA	NA
<i>Grindelia traxinopratensis</i>		Ash Meadows gumplant	U.S.A. (CA, NV)	T	181	17.96(a)	NA
<i>Hymenoxys acaulis</i> var. <i>glabra</i>		Lakeside daisy	U.S.A. (OH, IL), Canada (ON)	T	310	NA	NA
<i>Hymenoxys texana</i>		Texas bitterweed	U.S.A. (TX)	E	218	NA	NA
<i>Liatris helleri</i>		Heller's blazing star	U.S.A. (NC)	T	300	NA	NA
<i>Lipochaeta venosa</i>		None	U.S.A. (HI)	E	73	NA	NA
<i>Marshallia mohrii</i>		Mohr's Barbara's button	U.S.A. (AL, GA)	T	324	NA	NA
<i>Phytopsis ruthii</i> (= <i>Heterotheca ruthii</i> , = <i>Chrysopsis ruthii</i>)		Ruth's golden aster	U.S.A. (TN)	E	191	NA	NA
<i>Senecio franciscanus</i>		San Francisco Peaks groundsel	U.S.A. (AZ)	T	137	17.96(a)	NA
<i>Solidago alboblosa</i>		White-haired goldenrod	U.S.A. (KY)	T	308	NA	NA

Species		Common name	Historic range	Sta- tus	When listed	Critical habitat	Special rules
Solidago	<i>houghtonii</i>	Houghton's goldenrod	U.S.A. (MI), Canada (ON)	T	314	NA	NA
	<i>shortii</i>	Short's goldenrod	do	E	201	NA	NA
	<i>spithameae</i>	Blue Ridge goldenrod	U.S.A. (NC, TN)	T	175	NA	NA
	<i>stephanomena malheurensis</i>	Malheur wire-lettuce	U.S.A. (OR)	E	126	17.96(a)	NA
	<i>thymophylla lephroleuca</i> (= <i>Dyssodia lephroleuca</i>)	Ashy dogweed	U.S.A. (TX)	E	152	NA	NA
Townsendia	<i>aprica</i>	Last Chance townsendia	U.S.A. (UT)	T	200	NA	NA
Berberidaceae—Barberry family:							
Mahonia	<i>sonnei</i> (= <i>Berberis s.</i>)	Truckee barberry	U.S.A. (CA)	E	76	NA	NA
Betulaceae—Birch family:							
Betula	<i>uber</i>	Virginia round-leaf birch	U.S.A. (VA)	E	39	NA	NA
Bignoniaceae—Bignonia family:							
Crescentia	<i>portoricensis</i>	Higuero de Sierra	U.S.A. (PR)	E	301	NA	NA
Boraginaceae—Borage family:							
Amsinckia	<i>grandiflora</i>	Large-flowered fiddleneck	U.S.A. (CA)	E	179	17.96(a)	NA
Brassicaceae—Mustard family:							
Arabis	<i>mcdonaldiana</i>	McDonald's rock-cress	do	E	44	NA	NA
	<i>erysimum capitatum</i> var. <i>angustatum</i>	Contra Costa wallflower	do	E	39	17.96(a)	NA
Glaucocharis	<i>suffrutescens</i>	Toad-flax cress	U.S.A. (UT)	E	293	NA	NA
	<i>lesquerella filiformis</i>	Missouri bladder-pod	U.S.A. (MO)	E	253	NA	NA
Lesquerella	<i>pallida</i>	White bladderpod	U.S.A. (TX)	E	260	NA	NA
	<i>thelypodium stenoclitaleum</i>	Slender-petaled mustard	U.S.A. (CA)	E	158	NA	NA
Warea	<i>amplexifolia</i>	Wide-leaf warea	U.S.A. (FL)	E	266	NA	NA
	<i>carteri</i>	Carter's mustard	do	E	256	NA	NA
Buxaceae—Boxwood family:							
Buxus	<i>vahlil</i>	Vahl's boxwood	U.S.A. (PR)	E	197	NA	NA
Cactaceae—Cactus family:							
Ancistrocactus	<i>tobuschii</i> (= <i>Echinocactus l.</i> , <i>Mammillaria l.</i>)	Tobusch fishhook cactus	U.S.A. (TX)	E	80	NA	NA
	<i>careus enophorus</i> var. <i>fragrans</i>	Fragrant prickly-apple	U.S.A. (FL)	E	208	NA	NA
Cereus	<i>robinii</i>	Key tree-cactus	U.S.A. (FL), Cuba	E	153	NA	NA
	<i>coryphantha minima</i> (= <i>C. nelli</i> , <i>Escobaria n.</i> , <i>Mammillaria n.</i>)	Nelle cory cactus	U.S.A. (TX)	E	81	NA	NA
Coryphantha	<i>ramillosa</i>	Bunched cory cactus	U.S.A. (TX), Mexico (Coahuila)	T	77	NA	NA
	<i>robbinsorum</i> (= <i>Cochisea l.</i> , <i>Escobaria l.</i>)	Cochise pincushion cactus	U.S.A. (AZ), Mexico (Sonora)	T	214	NA	NA
Coryphantha	<i>sneedii</i> var. <i>leei</i> (= <i>Escobaria l.</i> , <i>Mammillaria l.</i>)	Lee pincushion cactus	U.S.A. (NM)	T	61	NA	NA
	<i>sneedii</i> var. <i>sneedii</i> (= <i>Escobaria s.</i> , <i>Mammillaria s.</i>)	Sneed pincushion cactus	U.S.A. (TX, NM)	E	82	NA	NA
Echinocereus	<i>horizontalis</i> var. <i>nicholii</i>	Nichol's Turk's head cactus	U.S.A. (AZ)	E	71	NA	NA
	<i>chisosensis</i> var. <i>chisosensis</i> (= <i>Echinocereus chisosensis</i> , = <i>E. reichenbachii</i> var. <i>chisosensis</i>)	Chisos Mountain hedgehog cactus	U.S.A. (TX)	T	335	NA	NA
Echinocereus	<i>engelmannii</i> var. <i>purpureus</i>	Purple-spined hedgehog cactus	U.S.A. (UT)	E	58	NA	NA
	<i>tenderii</i> var. <i>kuenzleri</i> (= <i>E. kuenzleri</i> , <i>E. hemphilli</i> of authors, not Fobes)	Kuenzler hedgehog cactus	U.S.A. (NM)	E	70	NA	NA
Echinocereus	<i>lloydii</i> (= <i>E. roetteri</i> var. <i>l.</i>)	Lloyd's hedgehog cactus	U.S.A. (TX)	E	67	NA	NA
	<i>reichenbachii</i> var. <i>albertii</i> (= <i>E. melanocentrus</i>)	Black lace cactus	do	E	68	NA	NA
Echinocereus	<i>ingelchidiatus</i> var. <i>arizonicus</i> (= <i>E. arizonicus</i>)	Arizona hedgehog cactus	U.S.A. (AZ)	E	62	NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
<i>Echinocereus triglochidiatus</i> var. <i>inermis</i> (= <i>E. coccineus</i> var. <i>i.</i> , <i>E. phoeniceus</i> var. <i>i.</i>)	Spineless hedgehog cactus	U.S.A. (CO, UT)	E	83	NA	NA
<i>Echinocereus viridiflorus</i> var. <i>davisii</i> (= <i>E. davisii</i>)	Davis' green pilaya	U.S.A. (TX)	E	81	NA	NA
<i>Neolloydia marposensis</i> (= <i>Echinocactus m.</i> , <i>Echinomastus m.</i>)	Lloyd's Mariposa cactus	U.S.A. (TX), Mexico (Coahuila)	T	77	NA	NA
<i>Pediocactus bradyi</i> (= <i>Toumeyia b.</i>)	Brady pincushion cactus	U.S.A. (AZ)	E	63	NA	NA
<i>Pediocactus despanii</i>	San Rafael cactus	U.S.A. (UT)	E	286	NA	NA
<i>Pediocactus knowltonii</i> (= <i>P. bradyi</i> var. <i>k.</i> , <i>Toumeyia k.</i>)	Knowlton cactus	U.S.A. (UT)	E	72	NA	NA
<i>Pediocactus peeblesianus</i> var. <i>peeblesianus</i> (= <i>Echinocactus p.</i> , <i>Navajoa p.</i> , <i>Toumeyia p.</i> , <i>Utahia p.</i>)	Peebles Navajo cactus	U.S.A. (NM, CO)	E	69	NA	NA
<i>Pediocactus sileri</i> (= <i>Echinocactus s.</i> , <i>Utahia s.</i>)	Siler pincushion cactus	U.S.A. (AZ, UT)	E	64	NA	NA
<i>Sclerocactus glaucus</i> (= <i>Echinocactus g.</i> , <i>E. subglaucus</i> , <i>E. whipplei</i> var. <i>g.</i> , <i>Pediocactus g.</i> , <i>S. franklinii</i> , <i>S. whipplei</i> var. <i>g.</i>)	Uinta Basin hookless cactus	U.S.A. (CO, UT)	T	59	NA	NA
<i>Sclerocactus mesae-verdae</i> (= <i>Coloradoa m.</i> , <i>Echinocactus m.</i> , <i>Pediocactus m.</i>)	Mesa Verde cactus	U.S.A. (CO, NM)	T	75	NA	NA
<i>Sclerocactus wrighthiae</i> (= <i>Pediocactus w.</i>)	Wright fishhook cactus	U.S.A. (UT)	E	58	NA	NA
Caryophyllaceae—Pink family:						
<i>Arenaria cumberlandensis</i>	Cumberland sandwort	U.S.A. (KY, TN)	E	311	NA	NA
<i>Geocarpon minimum</i>	None	U.S.A. (AR, MO)	T	275	NA	NA
<i>Paronychia chartacea</i> (= <i>Nyachia pulvinata</i>)	Papery whitlow-wort	U.S.A. (FL)	T	256	NA	NA
<i>Schiedea adamantis</i>	Diamond Head schiedea	U.S.A. (HI)	E	141	NA	NA
Chenopodiaceae—Goosefoot family:						
<i>Nitrophila molavensis</i>	Amargosa niterwort	U.S.A. (CA)	E	181	17.96(a)	NA
Cistaceae—Rockrose family:						
<i>Hudsonia montana</i>	Mountain golden heather	U.S.A. (NC)	T	107	17.96(a)	NA
Convulvulaceae—Morning glory family:						
<i>Bonamia grandiflora</i>	Florida bonamia	U.S.A. (FL)	T	297	NA	NA
Crassulaceae—Stonecrop family:						
<i>Dudleya iraskiae</i>	Santa Barbara Island liveforever	U.S.A. (CA)	E	39	NA	NA
Cucurbitaceae—Gourd family:						
<i>Tumamoca maddougalli</i>	Tumamoc globe-berry	U.S.A. (AZ), Mexico (Sonora)	E	226	NA	NA
Cupressaceae—Cypress family:						
<i>Cupressus abramsiana</i>	Santa Cruz Cypress	U.S.A. (CA)	E	252	NA	NA
<i>Fitzroya cupressoides</i>	Chilean false larch (= alerce)	Chile, Argentina	T	79	NA	NA
Cyatheaceae—Tree-fern family:						
<i>Cyathea dryopteroides</i>	Elfin tree fern	U.S.A. (PR)	E	277	NA	NA
Cyperaceae—Sedge family:						
<i>Carex specuicola</i>	Navajo sedge	U.S.A. (AZ)	T	178	17.96(a)	NA
Ericaceae—Heath family:						
<i>Arctostaphylos pungens</i> var. <i>ravenii</i> (= <i>A. hookeri</i> ssp. <i>ravenii</i>)	Presidio (= Raven's) manzanita	U.S.A. (CA)	E	65	NA	NA
<i>Rhododendron chapmanii</i>	Chapman rhododendron	U.S.A. (FL)	E	47	NA	NA
Euphorbiaceae—Spurge family:						
<i>Euphorbia</i> (= <i>Chamaesyce</i>) <i>deltoides</i> ssp. <i>deltoides</i>	Spurge	do	E	192	NA	NA
<i>Euphorbia</i> (= <i>Chamaesyce</i>) <i>garberi</i>	None	do	T	192	NA	NA

Species		Common name	Historic range	Status	When listed	Critical habitat	Special rules
<i>Euphorbia skottsbergii</i> var. <i>kalaeloana</i> <i>Jatropha costaricensis</i>	Fabaceae—Pea family: <i>Amorpha crenulata</i> <i>Astragalus humilimus</i> <i>Astragalus montii</i> (= <i>A. limnocharis</i> var. <i>montii</i>) <i>Astragalus perianus</i> <i>Astragalus phoenix</i> <i>Astragalus robbinsii</i> var. <i>jesupi</i> <i>Baptisia arachnifera</i> <i>Galactia smallii</i> <i>Hoffmannseggia tenella</i> <i>Lespedeza leptostachya</i>	Ewa Plains 'akoko Costa Rican jatropha	U.S.A. (HI) Costa Rica	E E	120 154	NA NA	NA NA
		Crenulate lead-plant Mancos milk-vetch Heliotrope milk-vetch Rydberg milk-vetch Ash Meadows milk-vetch Jesup's milk-vetch Hairy rattletweed Small's milkpea Slender rush-pea Prairie bush-clover	U.S.A. (FL) U.S.A. (CO, NM) U.S.A. (UT) do U.S.A. (NV) U.S.A. (NH, VT) U.S.A. (GA) U.S.A. (FL) U.S.A. (TX) U.S.A. (IA, IL, MN, WI)	E E T T T E E E E T	192 187 298 39 181 271 39 192 209 254	NA NA NA NA 17.96(a) NA NA NA NA NA	NA NA NA NA NA NA NA NA NA NA
<i>Lotus dendroideus</i> ssp. <i>traskiae</i> (= <i>L. scoparius</i> ssp. <i>t.</i>) <i>Lupinus anodrum</i> <i>Mezoneuron kavaiense</i> <i>Oxytropis campestris</i> var. <i>chartacea</i> <i>Serianthes nelsonii</i>	Trifolium stoloniferum <i>Vicia menziesii</i> <i>Quercus hinckleyi</i>	San Clemente island broom scrub lupine Uhiuhi Fassett's locoweed Hayun lagu (Guam), Tronkon guafi (Rota)	U.S.A. (CA) U.S.A. (FL) U.S.A. (HI) U.S.A. (WI) Western Pacific Ocean: U.S.A. (Guam, Rota), U.S.A. (IL, IN, KS, KY, MO, OH, WV), U.S.A. (HI) U.S.A. (TX)	E E E T E	26 264 238 329 257, 259	NA NA NA NA NA	NA NA NA NA NA
		Running buffalo clover Hawaiian vetch Hinckley oak	U.S.A. (IL, IN, KS, KY, MO, OH, WV), U.S.A. (HI) U.S.A. (TX)	E E T	270 39 318	NA NA NA	NA NA NA
Flacourtiaceae—Flacourtiaceae family: <i>Banara vanderbilii</i>	Frankeniaceae—Frankenia family: <i>Frankenia johnstonii</i>	Palo de Ramon Johnston's frankenia	U.S.A. (PR) U.S.A. (TX), Mexico (Nuevo Leon)	E E	255 155	NA NA	NA NA
		Spring-loving centaury	U.S.A. (CA, NV)	T	181	17.96(a)	NA
Gentianaceae—Gentian family: <i>Centaureum namophilum</i>	Goodeniaceae—Goodenia family: <i>Scaevola confusa</i>	Dwarf naupaka	U.S.A. (HI)	E	231	NA	NA
		Clay phacelia North Park phacelia	U.S.A. (UT) U.S.A. (CO)	E E	44 121	NA NA	NA NA
Hydrophyllaceae—Waterleaf family: <i>Phacelia argillacea</i> <i>Phacelia formosula</i>	Hypericaceae—St. John's-Wort family: <i>Hypericum cumulicola</i> <i>Ins lacustris</i>	Highlands scrub hypericum Dwarf lake iris	U.S.A. (FL) U.S.A. (MI, WI), Canada (ON)	E T	256 330	NA NA	NA NA
		Black-spored quillwort Mat-forming quillwort	U.S.A. (GA, SC) U.S.A. (GA)	E E	302 302	NA NA	NA NA
Isoetaceae—Quillwort family: <i>Isoetes melanospora</i> <i>Isoetes tegetiformans</i>	Lamiaceae—Mint family: <i>Acanthomintha obovata</i> ssp. <i>duttonii</i> <i>Dicerandra cornutissima</i> <i>Dicerandra frutescens</i>	San Mateo thornmint Longspurred mint Sage mint	U.S.A. (CA) U.S.A. (FL) do	E E E	204 207 207	NA NA NA	NA NA NA

Species		Historic range	Sta- tus	When listed	Critical habitat	Special rules
Scientific name	Common name					
<i>Dicerandra immaculata</i> <i>Haplostachys napaostachya</i> var. <i>angustifolia</i> <i>Hedeoma apiculatum</i> <i>Hedeoma todsenii</i> <i>Pogogyne abramsii</i> <i>Scutellaria montana</i> <i>Stenogyne angustifolia</i> var. <i>angustifolia</i>	Lakela's mint None McKittick pennyroyal Todsens pennyroyal San Diego mesa mint Large-flowered skullcap None	do U.S.A. (HI) U.S.A. (TX, NM) U.S.A. (NM) U.S.A. (CA) U.S.A. (GA, TN) U.S.A. (HI)	E E T E E E E	180 73 118 110, 112 44 234 73	NA NA 17.96(a) 17.96(a) NA NA NA	NA NA NA NA NA NA NA
Lauraceae—Laurel family: <i>Lindera melissifolia</i>	Pondberry	U.S.A. (AL, AR, FL, GA, LA, MO, MS, NC, SC)	E	240	NA	NA
Liliaceae—Lily family: <i>Erythronium propullans</i> <i>Harporcallis flava</i> <i>Helonias bullata</i>	Minnesota trout lily Harper's beauty Swamp pink	U.S.A. (MN) U.S.A. (FL) U.S.A. (DE, GA, MD, NC, NJ, NY, SC, VA)	E E T	221 57 326	NA NA NA	NA NA NA
<i>Trillium persiciens</i> <i>Trillium reliquum</i>	Persistent trillium Relict trillium	U.S.A. (GA, SC) U.S.A. (AL, GA, SC)	E E	39 306	NA NA	NA NA
Loasaceae—Loasa family: <i>Mentzelia leucophylla</i>	Ash Meadows blazing star	U.S.A. (NV)	T	181	17.96(a)	NA
Malvaceae—Mallow family: <i>Abutilon menziesii</i> <i>Callirhoe scabriuscula</i> <i>Hibiscadelphus distans</i> <i>Iliamna corei</i> <i>Kokia cookei</i> <i>Kokia dryanoides</i> <i>Malacothamnus clementinus</i> <i>Sidalcea pedata</i>	Ko'olua Texas poppy-mallow Kauai hau kuahwi Peter's Mountain mallow Cooke's kokio Koki'o (= hau-hale'ua or Hawaii tree cotton) San Clemente Island bush-mallow Pedate checker-mallow	U.S.A. (HI) U.S.A. (TX) U.S.A. (HI) U.S.A. (VA) U.S.A. (HI) do U.S.A. (CA) do	E E E E E E E	243 109, 112 225 230 74 167 26 158	NA NA NA NA NA 17.96(a) NA NA	NA NA NA NA NA NA NA NA
Meliaceae—Mahogany family: <i>Trichilia tricantha</i>	Bariaco	U.S.A. (PR)	E	303	NA	NA
Nyctaginaceae—Four-o'clock family: <i>Abronia macrocarpa</i> <i>Mirabilis macfarlanei</i>	Large-fruited sand-verbena MacFarlane's four-o'clock	U.S.A. (TX) U.S.A. (ID, OR)	E E	331 66	NA NA	NA NA
Oleaceae—Olive family: <i>Chionanthus pygmaeus</i>	Pygmy fringe tree	U.S.A. (FL)	E	256	NA	NA
Onagraceae—Evening-primrose family: <i>Carissoria benitensis</i> <i>Oenothera avita</i> ssp. <i>eurekaensis</i> <i>Oenothera deltoidea</i> ssp. <i>howellii</i>	San Benito evening-primrose Eureka Valley evening-primrose Antioch Dunes evening-primrose	U.S.A. (CA) do do	T E E	172 39 39	NA NA 17.96(a)	NA NA NA
Orchidaceae—Orchid family: <i>Isotria medeoloides</i>	Small whorled pogonia	U.S.A. (CT, IL, MA, MD, ME, MI, MO, NC, NH, NJ, NY, PA, RI, SC, VA, VT), Canada (Ont.)	E	122	NA	NA
<i>Spiranthes parksii</i>	Navasota ladies'-tresses	U.S.A. (TX)	E	116	NA	NA

Species		Common name	Historic range	Sta- tus	When listed	Critical habitat	Special rules
Papaveraceae—Poppy family: <i>Arctomecon humilis</i>		Dwarf bear-poppy	U.S.A. (UT)	E	78	NA	NA
Pinaceae—Pine family: <i>Abies guatemalensis</i>		Guatemalan fir (= pinabete)	Mexico, Guatemala, Honduras, El Salvador.	T	84	NA	NA
Piperaceae—Pepper family: <i>Peperomia wheeleri</i>		Wheeler's peperomia	U.S.A. (PR)	E	255	NA	NA
Poaceae—Grass family: <i>Tuctoria mucronata</i> (= <i>Orcuttia m.</i>)		Solano grass	U.S.A. (CA)	E	44	NA	NA
<i>Panicum carteri</i>		Carter's panicgrass.....	U.S.A. (HI)	E	133	17.96(a)	NA
<i>Swallenia alexandrae</i>		Eureka Dune grass.....	U.S.A. (CA)	E	39	NA	NA
<i>Zizania texana</i>		Texas wild-rice	U.S.A. (TX)	E	39	17.96(a)	NA
Polemoniaceae—Phlox family: <i>Enastrum densifolium</i> ssp. <i>sanctorum</i>		Santa Ana River woolly-star	U.S.A. (CA)	E	291	NA	NA
Polygalaceae—Milkwort family: <i>Polygala smalii</i>		Tiny polygala	U.S.A. (FL)	E	192	NA	NA
Polygonaceae—Buckwheat family: <i>Centrostegia leptoceras</i>		Slender-horned spineflower.....	U.S.A. (CA)	E	291	NA	NA
<i>Engonum cypripedium</i>		Gypsum wild-buckwheat	U.S.A. (NM)	T	110, 112	17.96(a)	NA
<i>Engonum ovalifolium</i> var. <i>williamsiae</i>		Steamboat buckwheat	U.S.A. (NV)	E	237	NA	NA
<i>Engonum pelinophyllum</i>		Clay-loving wild-buckwheat.....	U.S.A. (CO)	E	151	17.96(a)	NA
<i>Polygonella basirama</i> (= <i>Polygonella ciliata</i> var. <i>basirama</i>)		Wireweed.....	U.S.A. (FL)	E	256	NA	NA
Polypodiaceae—Fern family: <i>Polystichum aleuticum</i>		Aleutian shield-fern.....	U.S.A. (AK)	E	305	NA	NA
Primulaceae—Primrose family: <i>Lysimachia asperulaefolia</i>		Rough-leaved loosestrife	U.S.A. (NC, SC)	E	274	NA	NA
<i>Primula maguirei</i>		Maguire primrose	U.S.A. (UT)	T	199	NA	NA
Ranunculaceae—Buttercup family: <i>Aconitum noveboracense</i>		Northern wild monkshood.....	U.S.A. (IA, NY, OH, WI)	T	39	NA	NA
<i>Clematis socialis</i>		Alabama leather flower	U.S.A. (AL)	E	245	NA	NA
<i>Delphinium kinkense</i>		San Clemente island larkspur	U.S.A. (CA)	E	26	NA	NA
Rhamnaceae—Buckthorn family: <i>Gouania hillebrandii</i>		None	U.S.A. (HI)	E	165	17.96(a)	NA
Rosaceae—Rose family: <i>Cowania subintegra</i>		Arizona cliffrose	U.S.A. (AZ)	E	148	NA	NA
<i>Ivesia eremica</i>		Ash Meadows ivesia.....	U.S.A. (NV)	T	181	17.96(a)	NA
<i>Potentilla robbinsiana</i>		Robbins' cinquefoil	U.S.A. (NH, VT)	E	104	17.96(a)	NA
<i>Prunus geniculata</i>		Scrub plum	U.S.A. (FL)	E	256	NA	NA
Rubiaceae—Coffee family: <i>Gardenia brighamii</i>		Na'u (Hawaiian gardenia).....	U.S.A. (HI)	E	198	NA	NA
Rutaceae—Citrus family: <i>Zanthoxylum thomsonianum</i>		St. Thomas prickly-ash.....	U.S.A. (PR, VI)	E	213	NA	NA

Species		Historic range	Sta- tus	When listed	Critical habitat	Special rules
Scientific name	Common name					
Santalaceae—Sandalwood family: <i>Santalum freycinetianum</i> var. <i>lanaiense</i>	Lanai sandalwood or 'ilahi	U.S.A. (HI)	E	215	NA	NA
Sarraceniacae—Pitcher plant family: <i>Sarracenia oreophila</i> <i>Sarracenia rubra</i> ssp. <i>jonesii</i> (= <i>Sarracenia jonesii</i>)	Green pitcher plant Mountain sweet pitcher plant	U.S.A. (AL, GA, TN) U.S.A. (NC, SC)	E E	56, 89 339	NA NA	NA NA
Saxifragaceae—Saxifrage family: <i>Ribes echinellum</i>	Miccosukee gooseberry	U.S.A. (FL, SC)	T	190	NA	NA
Scrophulariaceae—Snapdragon family: <i>Agalinis acuta</i>	Sandplain gerardia	U.S.A. (CT, MA, MD, NY, RI)	E	325	NA	NA
<i>Amphianthus pusillus</i> <i>Castilleja grisea</i> <i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Little amphianthus San Clemente Island Indian paintbrush Salt marsh bird's-beak	U.S.A. (AL, GA, SC) U.S.A. (CA) U.S.A. (CA), Mexico (Baja California)	T E E	302 26 44	NA NA NA	NA NA NA
<i>Cordylanthus palmatus</i> <i>Pedicularis furbishiae</i> <i>Penstemon haydenii</i>	Palmate-bracted bird's-beak Furbish lousewort Blowout penstemon	U.S.A. (CA) U.S.A. (ME), Canada (New Brunswick) U.S.A. (NE)	E E E	235 39 285	NA NA NA	NA NA NA
Solanaceae—Nightshade family: <i>Goetzea elegans</i> <i>Solanum dymophilum</i>	Beautiful goetzea, matabuey Erubia	U.S.A. (PR) ...do	E E	176 319	NA NA	NA NA
Styracaceae—Styrax family: <i>Styrax texana</i>	Texas snowbells	U.S.A. (TX)	E	162	NA	NA
Taxaceae—Yew family: <i>Torreya taxifolia</i>	Florida torreya	U.S.A. (FL, GA)	E	140	NA	NA
Thymelaeaceae—Mezereum family: <i>Daphnopsis hellerana</i>	None	U.S.A. (PR)	E	309	NA	NA
Verbenaceae—Verbena family: <i>Cornutia obovata</i>	Palo de Nigua	U.S.A. (PR)	E	307	NA	NA

Symbol used in the "when listed" column:
E—Indicates Emergency rule publication (see FR document for effective dates); subsequent number(s) indicate FR final rule, if applicable, under "When listed".
EDITORIAL NOTE: See the following list for the "when listed" citations.

26—42 FR 40685; August 11, 1977.
39—43 FR 17916; April 26, 1978.
44—43 FR 44812; September 28, 1978.
47—44 FR 24250; April 24, 1979.
49—44 FR 32605; June 6, 1979.
53—44 FR 43701; July 25, 1979.
56—44 FR 54923; September 21, 1979.
57—44 FR 58863; October 2, 1979.
58—44 FR 58868; October 11, 1979.
59—44 FR 58870; October 11, 1979.
61—44 FR 61556; October 25, 1979.
62—44 FR 61558; October 25, 1979.
63—44 FR 61786; October 26, 1979.
64—44 FR 61788; October 26, 1979.
65—44 FR 61911; October 26, 1979.
66—44 FR 61913; October 26, 1979.
67—44 FR 61916; October 26, 1979.
68—44 FR 61920; October 26, 1979.
69—44 FR 61924; October 26, 1979.
70—44 FR 61927; October 26, 1979.
71—44 FR 61929; October 26, 1979.
72—44 FR 62246; October 26, 1979.
73—44 FR 62469; October 30, 1979.
74—44 FR 62471; October 30, 1979.
75—44 FR 62474; October 30, 1979.
76—44 FR 64247; November 6, 1979.
77—44 FR 64250; November 6, 1979.
78—44 FR 64252; November 6, 1979.
79—44 FR 64733; November 7, 1979.
80—44 FR 64738; November 7, 1979.
81—44 FR 64740; November 7, 1979.
82—44 FR 64743; November 7, 1979.
83—44 FR 64746; November 7, 1979.
84—44 FR 65005; November 8, 1979.
89—45 FR 18929; March 24, 1980.
104—45 FR 61944; September 17, 1980.
107—45 FR 69360; October 20, 1980.
109—46 FR 3184; January 13, 1981.
110—46 FR 5730; January 19, 1981.
112—46 FR 40025; August 6, 1981.
116—47 FR 19539; May 6, 1982.
118—47 FR 30440; July 13, 1982.
120—47 FR 36846; August 24, 1982.
121—47 FR 38540; September 1, 1982.
122—47 FR 38927; September 10, 1982.
126—47 FR 50885; November 10, 1982.
133—48 FR 46331; October 12, 1983.
137—48 FR 52747; November 22, 1983.
140—49 FR 2786; January 23, 1984.
141—49 FR 6102; February 17, 1984.
147—49 FR 21058; May 18, 1984.
148—49 FR 22329; May 29, 1984.
151—49 FR 28565; July 13, 1984.
152—49 FR 29234; July 19, 1984.
153—49 FR 29237; July 19, 1984.
154—49 FR 30201; July 27, 1984.
155—49 FR 31421; Aug. 7, 1984.
158—49 FR 34500; Aug. 31, 1984.
162—49 FR 40038; October 12, 1984.
165—49 FR 44756; November 9, 1984.
167—49 FR 47400; December 4, 1984.
168—49 FR 49639; December 21, 1984.
172—50 FR 5758; February 12, 1985.
175—50 FR 12309; March 28, 1985.
176—50 FR 15567; April 19, 1985.
177—50 FR 16682; April 26, 1985.
178—50 FR 19373; May 8, 1985.
179—50 FR 19377; May 8, 1985.
180—50 FR 20214; May 15, 1985.
181—50 FR 20786; May 20, 1985.
187—50 FR 26572; June 27, 1985.
190—50 FR 29341; July 18, 1985.
191—50 FR 29344; July 18, 1985.
192—50 FR 29349; July 18, 1985.
197—50 FR 32575; August 13, 1985.
198—50 FR 33731; August 21, 1985.
199—50 FR 33734; August 21, 1985.
200—50 FR 33737; August 21, 1985.
201—50 FR 36089; September 5, 1985.
202—50 FR 36091; September 5, 1985.
204—50 FR 37863; September 18, 1985.
207—50 FR 45618; November 1, 1985.
208—50 FR 45621; November 1, 1985.
209—50 FR 45624; November 1, 1985.
213—50 FR 51870; December 21, 1985.
214—51 FR 956; January 9, 1986.
215—51 FR 3185; January 24, 1986.
217—51 FR 6693; February 25, 1986.
218—51 FR 8683; March 13, 1986.
219—51 FR 9820; March 21, 1986.
220—51 FR 10521; March 26, 1986.
221—51 FR 10523; March 26, 1986.
225—51 FR 15906; April 29, 1986.
226—51 FR 15911; April 29, 1986.
229—51 FR 16530; May 5, 1986.
230—51 FR 17346; May 12, 1986.
231—51 FR 17974; May 16, 1986.
232—51 FR 17977; May 16, 1986.
234—51 FR 22524; June 20, 1986.
235—51 FR 23769; July 1, 1986.
237—51 FR 24672; July 8, 1986.
238—51 FR 24675; July 8, 1986.
240—51 FR 27500; July 31, 1986.
243—51 FR 34415; September 26, 1986.
244—51 FR 34419; September 26, 1986.
245—51 FR 34422; September 26, 1986.
249—51 FR 45907; December 23, 1986.
252—52 FR 679; January 8, 1987.
253—52 FR 682; January 8, 1987.
254—52 FR 784; January 9, 1987.
255—52 FR 1462; January 14, 1987.
256—52 FR 2234; January 21, 1987.
257—52 FR 4910; February 18, 1987.
259—52 FR 6651; March 4, 1987.
260—52 FR 7426; March 11, 1987.
264—52 FR 11175; April 7, 1987.
266—52 FR 15505; April 29, 1987.
270—52 FR 21480; June 5, 1987.
271—52 FR 21484; June 5, 1987.
274—52 FR 22589; June 12, 1987.
275—52 FR 22933; June 16, 1987.
276—52 FR 22936; June 16, 1987.
277—52 FR 22939; June 16, 1987.
285—52 FR 32929; September 1, 1987.
286—52 FR 34917; September 16, 1987.
291—52 FR 36270; September 28, 1987.
293—52 FR 37420; October 6, 1987.
295—52 FR 41440; October 28, 1987.
297—52 FR 42071; November 2, 1987.
298—52 FR 42657; November 6, 1987.
300—52 FR 44401; November 19, 1987.
301—52 FR 46087; December 4, 1987.
302—53 FR 3565; February 5, 1988.
303—53 FR 3567; February 5, 1988.
305—53 FR 4629; February 17, 1988.
306—53 FR 10884; April 4, 1988.
307—53 FR 11612; April 7, 1988.
308—53 FR 11615; April 7, 1988.
309—53 FR 23742; June 23, 1988.
310—53 FR 23745; June 23, 1988.
311—53 FR 23748; June 23, 1988.
314—53 FR 27137; July 18, 1988.
315—53 FR 27141; July 18, 1988.
318—53 FR 32827; August 26, 1988.
319—53 FR 32830; August 26, 1988.
321—53 FR 33996; September 1, 1988.
324—53 FR 34701; September 7, 1988.
325—53 FR 34705; September 7, 1988.
326—53 FR 35080; September 9, 1988.
329—53 FR 37972; September 26, 1988.
330—53 FR 37975; September 28, 1988.
331—53 FR 37978; September 28, 1988.

332—53 FR 37982; September 28, 1988.
333—53 FR 38451; September 30, 1988.
335—53 FR 38456; September 30, 1988.
339—53 FR 38474; September 30, 1988.
341—53 FR 45861; November 14, 1988.

[48 FR 34182, July 27, 1983]

Editorial Note: For *Federal Register* citations affecting the table in § 17.12(h), see the listing above.

SPECIES REMOVED FROM THE ENDANGERED AND THREATENED LISTS

The following list of wildlife removed from the list at § 17.11 is provided for informational purposes only and is not codified in the Code of Federal Regulations. Only species completely removed from the list are included below. In cases where only a portion of the vertebrate species is delisted, the entry remains in § 17.11 in the modified form with the citation to the *Federal Register* indicated under "When listed."

The Service's listing regulations at 50 CFR 424.11(c) and (d) are as follows:

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

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

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

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

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

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction.* Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

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(2) *Recovery*. The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Services is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on

the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error*. Subsequent investigations may

show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Species		Historic range	Former vertebrate population where endangered or threatened	Former status	Delisted	
Common name	Scientific name				Citation	Reason
Duck, Mexican.....	<i>Anas "diazi"</i>	U.S.A. (AZ, NM, TX) to central Mexico.	U.S. only.....	E	43 FR 32258-61; July 25, 1978.	Original data in error.
Pupfish, Tecopa.....	<i>Cyprinodon nevadensis calidae</i>	U.S.A. (CA).....	Entire.....	E	47 FR 2317-19; January 15, 1982.	Extinct.
Cisco, longjaw.....	<i>Coregonus alpenae</i>	U.S.A. and Canada (Lakes Michigan, Huron, Erie).	do.....	E	48 FR 39941-43; September 2, 1983.	Do.
Pike, blue.....	<i>Stizostedion vitreum glaucum</i>	U.S.A. and Canada (Lakes Erie, Ontario).	do.....	E	do.....	Do.
Sparrow, Santa Barbara song.....	<i>Melospiza melodia grammiae</i>	U.S.A. (CA).....	do.....	E	48 FR 46336-37; October 12, 1983.	Do.
Treefrog, Pine Barrens.....	<i>Hyla andersonii</i>	U.S.A. (FL, AL, NC, SC, NJ)	Florida.....	E	48 FR 52740-43; November 22, 1983.	Original data in error.
Pearly mussel, Sampson's.....	<i>Epioblasma (=Dysnomia) sampsoni</i>	U.S.A. (IL, IN).....	NA.....	E	49 FR 1057-58; January 9, 1984.	Extinct.
Turtle, Indian flap-shelled.....	<i>Lissemys punctata punctata</i>	India, Pakistan, Bangladesh.....	Entire.....	E	49 FR 7394-98; February 29, 1984.	Original data in error.
Butterfly, Bahama swallow-tail.....	<i>Heracles (=Papilio) andraemon bonhoti</i>	U.S.A. (FL), Bahamas.....	NA.....	T	49 FR 34501-04; August 31, 1984.	Do.
Dove, Palau.....	<i>Gallicolumba canifrons</i>	W. Pacific: U.S.A. (Palau Islands).	Entire.....	E	50 FR 37192-94; September 12, 1985.	Recovered
Fantail, Palau (Old World flycatcher).....	<i>Rhipidura lepida</i>	do.....	do.....	E	do.....	Do.
Owl, Palau.....	<i>Pyroglaux (=Otus) podargus</i>	do.....	do.....	E	do.....	Do.
Gambusia, Amistad.....	<i>Gambusia amistadensis</i>	U.S.A. (TX).....	do.....	E	52 FR 86083-85; December 4, 1987.	Extinct

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Subpart C—Endangered Wildlife

§ 17.21 Prohibitions.

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

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

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

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

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the Na-

tional Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

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

(ii) Dispose of a dead specimen; or

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

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

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

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take those endangered species which are covered by an approved cooperative agreement for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in:

(i) The death or permanent disabling of the specimen;

(ii) The removal of the specimen from the State where the taking occurred;

(iii) The introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or

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(iv) The holding of the specimen in captivity for a period of more than 45 consecutive days.

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

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

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

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

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

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

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; import or export; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided the following conditions are met:

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(1) The wildlife is a species having a natural geographic distribution not including any part of the United States, or the wildlife is a species that the Director has determined to be eligible in accordance with paragraph (g)(5) of this section;

(ii) The purpose of such activity is to enhance the propagation or survival of the affected species;

(iii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iv) Each specimen of wildlife to be imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export from the United States, and

(v) Any person subject to the jurisdiction of the United States who engages in any of the activities authorized by this paragraph does so in accordance with paragraphs (g) (2), (3) and (4) of this section.

(2) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by this paragraph must first register with the Service (Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240). Requests for registration must be submitted on an official application form (Form 3-200) provided by the Service, and must include the following information:

(i) The types of wildlife sought to be covered by the registration, identified by common and scientific name to the taxonomic level of family, genus or species;

(ii) A description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, or in conducting research directly related to maintaining and propagating such wildlife;

(iii) A description, if appropriate, of the means by which the applicant intends to educate the public about the ecological role and conservation needs of the affected species;

(iv) Photograph(s) or other evidence clearly depicting the facilities where such wildlife will be maintained; and

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(v) A copy of the applicant's license or registration, if any, under the animal welfare regulations of the U.S. Department of Agriculture (9 CFR Part 2).

(3) Upon receiving a complete application, the Director will decide whether or not the registration will be approved. In making his decision, the Director will consider, in addition to the general criteria in § 13.2(b) of this subchapter, whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Each person so registered must maintain accurate written records of activities conducted under the registration and must submit to the Director a written annual report of such activities.

(4) Any person subject to the jurisdiction of the United States seeking to export or conduct foreign commerce in captive-bred endangered wildlife which will not remain under the care of that person must first obtain approval by providing written evidence to satisfy the Director that the proposed recipient of the wildlife has expertise, facilities or other resources adequate to enhance the propagation or survival of such wildlife and that the proposed recipient will use such wildlife for purposes of enhancing the propagation or survival of the affected species.

(5)(i) The Director shall use the following criteria to determine if wildlife of any species having a natural geographic distribution that includes any part of the United States is eligible for the provisions of this paragraph:

(A) Whether there is a low demand for taking of the species from wild populations, either because of the success of captive breeding or because of other reasons, and

(B) Whether the wild populations of the species are effectively protected from unauthorized taking as a result of the inaccessibility of their habitat to man or as a result of the effectiveness of law enforcement.

(ii) The Director shall follow the procedures set forth in section 4(b) and section 4(f)(2)(A) of the Act and in the regulations promulgated thereunder with respect to petitions and no-

tification of the public and governors of affected States when determining the eligibility of species for purposes of this paragraph.

(iii) In accordance with the criteria in paragraph (g)(5)(i) of this section, the Director has determined the following species to be eligible for the provisions of this paragraph:

Laysan teal (*Anas laysanensis*).

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 44 FR 31580, May 31, 1979; 44 FR 54007, Sept. 17, 1979]

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.) 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. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **FEDERAL REGISTER** within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the

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activity prohibited by § 17.21. 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:

(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 the 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 person 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;

(ix) The information collection requirements contained in this paragraph have been approved by the

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Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(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;

(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 condi-

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tion 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.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.21(c). 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:

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

(ii) 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;

(iii) A conservation plan that specifies:

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

(B) 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;

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

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

(iv) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal

wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* 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 criteria in § 13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his 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, in-

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cluding 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.

(c) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the **FEDERAL REGISTER**, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request shall be made for each permit application. Such a request shall specify the Service's permit application number and state the reasons why that party believes the applicant does not meet the issuance criteria contained in §§ 13.21 and 17.22 of this subchapter or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (c)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (c)(2) of this section, it will include its

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reasons therefore in such written notice.

[50 FR 39687, Sept. 30, 1985]

§ 17.23 Economic hardship permits.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section in order to prevent undue economic hardship. 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. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **FEDERAL REGISTER** within 10 days following issuance of the permit.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by § 17.21. Each application must be submitted on an official application form (Form 3-200) provided by the Service, and must include, as an attachment, all of the information required in § 17.22 plus the following additional information:

(1) The possible legal, economic or subsistence alternatives to the activity sought to be authorized by the permit;

(2) A full statement, accompanied by copies of all relevant contracts and correspondence, showing the applicant's involvement with the wildlife sought to be covered by the permit (as well as his involvement with similar wildlife), including, where applicable, that portion of applicant's income derived from the taking of such wildlife, or the subsistence use of such wildlife, during the calendar year immediately preceding either the notice in the **FEDERAL REGISTER** of review of the status of the species or of the proposal to list

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such wildlife as endangered, whichever is earliest;

(3) Where applicable, proof of a contract or other binding legal obligation which:

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

(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; and

(iii) Will cause monetary loss of a given dollar amount if the permit 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 § 17.31(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 Subpart A of this part, or in a permit issued under this subpart, all of the provi-

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sions in § 17.21 shall apply to threatened wildlife, except § 17.21(c)(5).

(b) In addition to any other provisions of this Part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating 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 agency for such purposes, may, when acting in the course of his official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

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

[43 FR 18181, Apr. 28, 1978, as amended at 44 FR 31580, May 31, 1979]

§ 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 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.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish

and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3-200) provided by the Service, and must include, as an attachment, as much of the following information which relates to the purpose for which the applicant is requesting a permit:

(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

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willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(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;

(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 successful-

ly 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) Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, VA 22201, by the person wishing to engage in the activity prohibited by § 17.31.

(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

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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.

(iv) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* 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 criteria in § 13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under paragraph (b)(1)(iii)(D) will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his 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

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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.

[50 FR 39689, Sept. 30, 1985]

§ 17.40 Special rules—mammals.

(a) Kangaroo, Eastern Gray (*Macropus giganteus*), Red (*Megalia rufa*), and Western Gray (*Macropus fuliginosus*)—(1) *Prohibitions.* The following prohibitions apply to the Eastern Gray, Red and Western Gray kangaroos:

(i) *Import.* (A) Except as allowed in paragraph (a)(1)(i)(B) of this section, it shall be unlawful to import any such wildlife for commercial purposes.

(B) Eastern Gray, Red, and Western Gray kangaroos—including parts and products of such wildlife—which have been tagged or otherwise identified as removed from the wild in accordance with the management plans of Australian states may be imported into the United States without permits for individual shipments otherwise required by 50 CFR Part 17. Importation into the United States must comply with the requirements of 50 CFR Part 14. Service Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife, filed with the U.S. Customs Service upon import shall satisfy the

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reporting requirements of 50 CFR Part 14, Subpart C.

(ii) *Unlawfully imported kangaroos.* It shall be unlawful, in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife imported unlawfully.

(iii) *Commercial transactions.* It shall be unlawful to sell or offer for sale in interstate or foreign commerce any such wildlife imported unlawfully.

(b) Grizzly bear (*Ursus arctos*)—(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, within 5 days of occurrence, to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236-7540 or FTS 776-7540), if occurring in Montana or Wyoming, or to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1490, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/231-6125 or FTS 429-6125), if occurring in Idaho or Washington, and to appropriate State and Indian Reservation Tribal authorities. Grizzly bears or their parts taken in self-defense or in defense of others 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 Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, 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 Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) *Northwestern Montana.* If it is not contrary to the laws and regulations of the State of Montana, a person may hunt grizzly bears, except a young grizzly bear or a grizzly bear accompanied by young, in the area bounded on the north by the United States-Canada border, on the east by Interstate Highway 15, on the south by State Highway 200, on the west by a line extending from the U.S.-Canada border south along U.S. Highway 93 to its intersection with Montana State Highway 82, and then east and south along State Highways 82 and 83, except that this area shall not include Glacier National Park and the Blackfeet Indian Reservation, as defined as follows: Beginning at the intersection of the U.S.-Canada border and the western boundary of Glacier National Park, thence south and east along said boundary to its intersection with the border of the Blackfeet Indian Reservation, thence southeast in a straight line to Heart Butte, thence south along a straight line to the North Fork of Birch Creek, thence east to Swift Dam and along Birch Creek to Cut Bank Creek, thence north along Cut Bank Creek through and approximately 2½ miles north of the town of Cut Bank, thence north along a straight

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line to the United States-Canada border, thence west along said border to the point of beginning: *Provided*, That if in any calendar year in question, in that part of Montana, exclusive of Glacier National Park, which is bounded on the north by the United States-Canada Border, on the east by Interstate Highway 15, on the south by State Highway 200, and on the west by U.S. Highway 93, the known number of female grizzly bears already killed or removed, for whatever reason, reaches 6, or if the known total number of grizzly bears already killed or removed, for whatever reason, reaches 21 minus a figure representing the annual unknown, unreported human-induced mortality in that same part of Montana, as estimated on the basis of scientific information by the State of Montana, in agreement with the U.S. Fish and Wildlife Service, then the Director of the Montana Department of Fish, Wildlife and Parks shall post and publish a notice prohibiting such hunting, and any such hunting for the remainder of that year shall be unlawful: *Provided further*, That the estimate of annual unknown, unreported human-induced mortality shall be 7 grizzly bears until new scientific data show, to the satisfaction of the U.S. Fish and Wildlife Service, in close consultation with the State of Montana, that this estimate should be revised: *Provided further*, That, in close cooperation with the Montana Department of Fish, Wildlife and Parks, the Service will annually review all grizzly bear mortality data from the area delineated above to assess the impact of such mortality in this area: *Provided further*, That any legal taking of a grizzly bear in the above-described portion of Montana shall be reported within 48 hours of occurrence to the Montana Department of Fish, Wildlife and Parks, Helena, Montana 59601 (406/444-2535), and within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate Tribal authorities.

(F) *National Parks*. The regulations of the National Park Service shall

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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 Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, 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.

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

"Grizzly bear" means any member of the species *Ursus arctos* 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.

leucopus; Black howler monkey, *Alouatta pigra*; Stumptail macaque, *Macaca arctoides*; Gelada, *Theropithecus gelada*; Formosan rock macaque, *Macaca cyclopis*; Japanese macaque, *Macaca fuscata*; Toque macaque, *Macaca sinica*; Long-tailed langur, *Presbytis potenzani*; Purple-faced langur, *Presbytis senex*; Tonkin snub-nosed monkey, *Rhinopithecus avunculus*; Pigmy chimpanzee, *Pan paniscus*; and Chimpanzee, *Pan troglodytes*.

(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 ac-

(c) *Primates.* (1) Except as noted in paragraph (c)(2) of this section, all provisions of § 17.31 shall apply to the Lesser slow loris, *Nycticebus pygmaeus*; Philippine tarsier, *Tarsius syrichta*; White-footed tamarin, *Saguinus*

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ceptable only if the notarization is dated within 15 days of the date of birth of the animal.

(d) Gray wolf (*Canis lupus*) in Minnesota—(1) *Zones*. For purposes of these regulations, the State of Minnesota is divided into the following five zones.

ZONE 1—4,488 SQUARE MILES

Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27 and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis counties line to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE¼, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Section 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermillion River; thence southerly along the Vermillion River to Vermillion Lake; thence along the Superior National Forest boundary in a southeasterly direction through Vermillion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence west-

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erly along the Canadian Border to the point of beginning in Rainy Lake.

ZONE 2—1,856 SQUARE MILES

Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwesterly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwesterly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwesterly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence in a westerly direction along Forest Road 122 to the junction with the Duluth, Missable and Iron Range Railroad; thence in a southwesterly direction along the said railroad tracks to the junction with County Route 14; thence in a northwesterly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction

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with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

ZONE 3—3,501 SQUARE MILES

Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95; thence westerly along SFR 95 and continuing west through the southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89, thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63; thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158

North, Range 30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

ZONE 4—20,883 SQUARE MILES

Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the state; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I-35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Trunk Highway 310 to the Canadian border.

ZONE 5—54,603 SQUARE MILES

All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

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(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

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

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(4) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: *Provided*, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: *And provided further*, that any young of the year taken on or before August 1 of that year must be released.

(C) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export,

or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

(e) African elephant (*Loxodonta africana*)—(1) *Scope.* The regulations of this paragraph (e) only apply to import and export of raw and worked ivory, however, the import and export of African elephants, including live and dead animals, offspring, and all parts and derivatives are also subject to Parts 14 and 23 of this subchapter.

(2) *Definitions.* For purposes of this paragraph (e):

“Lip mark area” means that area of a whole African elephant tusk where the tusk emerges from the elephant’s skull and which is usually denoted by a prominent ring of staining on the tusk in its natural state.

“Raw ivory” means any whole African elephant tusk, polished or unpolished, and in any form whatsoever, and all pieces thereof howsoever changed from its original form, except for worked ivory.

“Worked ivory” means any item made from raw ivory including whole tusks where all or substantially all of the surface has been carved, provided such item is clearly recognizable as jewelry, adornment, art, utility or a musical instrument, and is in a form requiring no further substantial carving, crafting or manufacture to effect its purpose.

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(3) *Prohibitions against import; exceptions.* Except as provided below, it is unlawful to import any raw or worked ivory of an African elephant (see paragraph (e)(4) for prohibitions and exceptions on export).

(i) *Import of raw ivory; exception.* The prohibition against import of raw ivory shall not apply to raw ivory that:

(A) Has as its country of origin a country that is at the time of import a Party to the Convention; and

(B) Is imported from a country that is at the time of import a Party to the Convention, under documentation, as required by Part 23 of this subchapter, which clearly shows the country of origin of raw ivory: *Except, That:* raw ivory that transited or was transhipped through a country while remaining under Customs control shall not be considered to be imported from that country; and

(C) Is, where its size and density make it feasible, legibly marked:

(1) Under a marking and registration system established by the country of origin, by means of punch-dies, and including the following information: country of origin represented by the two-letters as indicated in the two-letter code established by the International Organization for Standardization (see Appendix A to Chapter I) followed by the registration number assigned to the raw ivory by the country of origin, the last two digits of the year of registration and the weight of the raw ivory to the nearest kilogram (example, KE 127/8214 represents Kenya, registration number 127, year of registration 1982 and weight 14 kilograms); or

(2) Under a marking and registration system established by a country of re-export, showing the same information as in paragraph (c)(3)(i)(C)(1) of this section, except that the mark shall show the country requiring the marking instead of the country of origin; and

(3) In the case of whole tusks, any mark should be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark.

(D) Any mark which substantially supplies the information required in

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paragraph (e)(3)(i)(C) of this section shall be acceptable.

(E) For a period of 18 months from the effective date of this rule, paragraph (e)(3)(i)(C) of this section shall not apply to raw ivory imported without such a mark if the Service is satisfied by documentary information provided by the importer or by other appropriate means that:

(1) The ivory was legally exported from the country of origin; and that

(2) The ivory is imported from a country which has certified that it does not require the raw ivory in question to be marked in a manner that would satisfy the marking requirements of paragraph (e)(3)(i)(C) of this section.

(ii) *Imports of worked ivory; exception.* The prohibition against import of worked ivory shall not apply to worked ivory imported from a country that is at the time of import a Party to the Convention: *Except, That:* worked ivory that passed through a country in accordance with Article VII, Paragraph 1 of the Convention (the so-called transit exemption, see 50 CFR 23.13(b)) shall not be considered to be imported from that country.

(4) *Prohibitions against export; exceptions.* Except as provided below, it is unlawful to export any raw ivory of an African elephant (see paragraph (e)(3) of this section for prohibitions and exceptions on import).

(i) *Export of raw ivory; exception for marked ivory.* The prohibition against export of raw ivory shall not apply to raw ivory which was imported bearing a mark meeting the requirements in paragraph (e)(3)(i)(C) of this section and which retains that mark. The export of any pieces of such ivory which fall within the definition of raw ivory may only be exported under a permit issued under paragraph (e)(4)(iii) of this section.

(ii) *Export of raw ivory; exception where marking infeasible.* The prohibition against export of raw ivory shall not apply if the size or density of such ivory makes marking infeasible.

(iii) *Export of raw ivory; permit.* The prohibition against export of raw ivory shall not apply if the ivory is marked pursuant to a permit issued by the Service under the following provisions:

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(A) The Director may, upon receipt of an application submitted in accordance with the provisions of this section and §§ 13.11 and 13.12 of this subchapter, issue a permit authorizing the marking and export of raw ivory.

NOTE: This application may be combined with an application to export or re-export the raw ivory as provided for in Part 23 of this subchapter. Applications shall be submitted to the Director by the person who wishes to mark and export the raw ivory. Each application shall be submitted on an official application form (Form 3-200) provided by the Service. Each application shall contain the general information required by section 13.12(a) of this subchapter, plus the following additional information:

(1) Documents or other information showing legal export from the country of origin of the raw ivory;

(2) A description of the raw ivory to be marked including the weight to the nearest kilogram and any distinguishing marks or other features on or associated with such ivory; if the raw ivory is in the form of pieces of tusks, weight and description of each piece must be supplied; and

(3) Documents or other information showing legal importation of the raw ivory under this subchapter.

(B) Upon receiving a complete application, the Director will decide whether or not a permit shall be issued. In making this decision, the Director shall consider, in addition to the criteria in § 13.21(b) of this subchapter, whether there is sufficient information to: Determine that the country of origin was a Party to CITES at the time of importation into the U.S. and that the ivory was legally exported from that country; describe the raw ivory for purposes of identification; and to establish that the raw ivory was not imported in violation of the regulations of this subchapter.

(C) Each whole tusk or piece or raw ivory must be marked prior to export using the following formula: the two-letter code for the United States (US) followed by a number assigned by the Service and the weight of the raw ivory to the nearest kilogram; and in the case of whole tusks, the mark shall be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark.

(iv) *Export of raw ivory; exception for remarked pieces.* The prohibition against export of raw ivory shall not

apply to pieces of raw ivory which were cut from raw ivory imported bearing a mark meeting the requirements in paragraph (e)(3)(i)(C) of this section, provided that each such piece is marked with a repetition of the original mark showing the weight of the piece being exported.

(f) *Leopard.* (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 paragraph (g)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the Utah prairie dog.

(2) A Utah prairie dog may be taken under a permit issued by the Utah Division of Wildlife Resources, in accordance with the laws of the State of Utah, in the following areas of Cedar Valley and Parowan Valley, Iron County, Utah (Salt Lake Meridian): T33S R8W, T33S R9W, T34S R8W, T34S R9W, T34S R10W, T34S R11W, T35S R10W, T35S R11W, T36S R11W, T36S R12W, T37S R12W, T38S R12W: Provided, that such taking does not exceed 5,000 animals annually, and that such taking is confined to the period of from June 1 to December 31. The following information must be reported by the State every 90 days to the U.S. Fish and Wildlife Service's Regional Office, Region 6, Denver Federal Center, Denver, Colorado 80225, or to any other address design-

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nated by the Service: Name and address of each person holding an active permit; reason for issuance of each permit; number, location, and method of take for all Utah prairie dogs taken during the reporting period; and any other information requested by the Service.

(3) If the Service receives substantive evidence that takings pursuant to paragraph (g)(2) of this section are having an effect that is inconsistent with the conservation of the Utah prairie dog population in the area designated by paragraph (g)(2) of this section, the Service may immediately prohibit or restrict such taking as is appropriate for the conservation of the population.

(4) The information collection requirement contained in paragraph (g)(2) of this section does not require Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

(The information collection requirements in paragraph (e)(4)(iii) are approved by Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. The obligation to respond is required to obtain or retain a permit.)

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 41 FR 45994, Oct. 19, 1976; 43 FR 9612, Mar. 9, 1978; 43 FR 20504, May 12, 1978; 47 FR 4211, Jan. 28, 1982; 47 FR 30787, July 15, 1982; 47 FR 31387, July 20, 1982; 48 FR 34761, Aug. 1, 1983; 48 FR 36265, Aug. 10, 1983; 49 FR 22334, May 29, 1984; 50 FR 50793, Dec. 12, 1985; 51 FR 33759, Sept. 23, 1986]

§ 17.41 Special rules—birds.

(a) Bald eagles (*Haliaeetus leucocephalus*) found in Washington, Oregon, Minnesota, Wisconsin, and Michigan.

(1) *Applicable provisions.* The provisions of §§ 17.31 and 17.32 shall apply to bald eagles specified in paragraph (a) of this section to the extent such provisions are consistent with the Bald and Golden Eagles Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-711), and the regulations issued thereunder.

[43 FR 6233, Feb. 14, 1978]

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§ 17.42 Special rules—reptiles.

(a) American alligator (*Alligator mississippiensis*)—(1) *Definitions.* For purpose of this paragraph (a): "American alligator" shall mean any member of the species *Alligator mississippiensis*, whether alive or dead, and any part, product, egg, or offspring thereof found in captivity or the wild.

(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:

(A) Any hide of such alligator may be sold or otherwise transferred only in compliance with paragraph (a)(2)(ii)(C) of this section;

(B) Any hide, meat or other part may be sold or otherwise transferred only in accordance with the laws and regulations of the State in which the taking occurs and the State in which the sale or transfer occurs;

(C) The State of taking requires hides to be tagged by State officials, or under State supervision, with a Service approved tag, a sample of which must be on file in the Federal Wildlife Permit Office (FWPO), that:

(1) Is made of permanent material,

(2) Shows State of origin, year of take, species, and is serially unique, and

(3) Cannot be opened and reused once attached to the hide.

(iii) *Import/Export.* Any person may import or export hides, manufactured products, meat or other parts in accordance with Part 23 of this chapter.

(iv) *Recordkeeping*

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(A) Any person not holding an import/export license issued by the Service under § 14.91 and who imports, exports, or obtains permits under Part 23 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 § 14.93(d). Such records shall be maintained as in the normal course of business, reproducible in the English language, and retained available for Service inspection for 5 years from the date of each transaction.

(B) Subject to applicable limitations of law, duly authorized Service officers at all reasonable time shall, upon notice, be afforded access to examine such records required to be kept under paragraph (a)(2)(iv)(A)(1) 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.* (1) 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) Nile crocodile (*Crocodylus niloticus*)-(1) *Prohibitions.* The following prohibitions apply to the Nile crocodile:

(i) *Import.* (A) Except as allowed in paragraph (a)(1)(i)(B) of this section, it shall be unlawful to import any such wildlife for commercial purposes.

(B) Ranched Nile crocodiles in Zimbabwe, consisting only of live animals and whole skins, which are tagged or otherwise identified as removed from ranches in accordance with the laws of Zimbabwe and in compliance with requirements of CITES for Appendix II species (50 CFR Part 23) may be imported into the United States directly from Zimbabwe without permits for individual shipments otherwise required by 50 CFR Part 17. Importation into the United States must comply with the requirements of 50 CFR Part 14 and 23.

(ii) Unlawfully imported Nile crocodiles. It shall be unlawful, in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife imported unlawfully.

(iii) Commercial transactions. It shall be unlawful to sell or offer for sale in interstate or foreign commerce any such wildlife imported unlawfully.

[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 23151, June 17, 1987]

(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.

Added
November 6, 1987
52 FR 42662

Added
November 6, 1987
52 FR 42662

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(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.

§ 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.

[40 FR 44415, Sept. 26, 1975, as amended at 45 FR 47363, July 14, 1980]

§ 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 cahni*), spotfin chub (*Hybopsis monacha*), 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.

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(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) and Foskett speckled dace (*Rhinichthys osculus* subspecies). (1) No person shall take these 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.

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(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of these 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, 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 (l) (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,

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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) Spikedace, *Meda fulgida*. (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 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.

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(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 (p) (1) through (3) of this section.

(q) Loach minnow, *Tiaroga cobitis*. (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 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 (q) (1) through (3) of this paragraph.

(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.

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(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.

[40 FR 44415, Sept. 26, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations to § 17.44, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 52 FR 35040, Sept. 16, 1987, § 17.44 was amended by adding paragraph (t), effective October 16, 1987.

§ 17.45 Special rules—snails and clams.
[Reserved]

§ 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.

[47 FR 43701, Oct. 4, 1982]

§ 17.47 [Reserved]

§ 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

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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.

Example 1. The ABC sparrow is Endangered wildlife. The ABD sparrow is a subspecies that is so similar to the ABC sparrow that when found outside their normal habitat, the two cannot readily be distinguished by law enforcement personnel. The ABD sparrow is listed in § 17.11, after following the proper procedures as follows:

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Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
ABC sparrow	ABCus	NA	North America	Entire	E	7	NA
ABD sparrow	ABDus	NA	do	NA	E(S/A)	7	NA

Example 2. Suppose the ABC sparrow is listed as Endangered in only a portion of its range. Within the meaning of the Act, the ABC sparrow as defined by geographic boundaries is a species. The ABC sparrow which occurs beyond those boundaries is a different species, even though it is identical, except in location, to the listed species. If the criteria of this section were met, the two species would be listed as follows:

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Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
ABC sparrow	ABCus	Idaho	Idaho	Entire	E	7	NA
Do	do	NA	United States	NA	E(S/A)	7	NA

Example 3. The XY cactus has been determined to be an Endangered species. The XZ cactus so closely resembles the XY cactus that enforcement personnel cannot distinguish between the two. The Endangered XY cactus could be illegally sold as the non-endangered XZ species, thus posing an additional threat to the Endangered species. After following the proper procedures, the XZ cactus would be placed on the list and treated as though it was an Endangered species. This entry would appear as follows:

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Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
XYum	XY cactus	Arizona	Entire		E	7	NA
XZum	do	Arizona and Mexico	NA		E(S/A)	8	NA

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§ 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 special rule, the Director may issue permits for any activity otherwise prohibited with a species designated as Endangered or Threatened due to its similarity of appearance. Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specified period of time.

(a) *Application requirements.* An application for a permit under this section must be submitted to the Director by the person who wishes to engage in the prohibited activity. The permit for activities involving interstate commerce of plants must be obtained by the seller; in the case of wildlife, the permit must be obtained by the buyer. The application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. It must include, as an attachment, all of the following information: Documentary evidence, sworn affidavits, or other information to show species identification and the origin of the wildlife or plant in question. This information may be in the form of hunting licenses, hide seals, official stamps, export documents, bills of sales, certification, expert opinion, or other appropriate information.

(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. In making his decision, the Director shall consider, in addition to the general criteria, in § 13.21(b) of this subchapter, the following factors:

(1) Whether the information submitted by the applicant appears reliable;

(2) Whether the information submitted by the applicant adequately identifies the wildlife or plant in question so as to distinguish it from any Endangered or Threatened wildlife or plant.

(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) If indicated in the permit, a special mark, to be specified in the permit, must be applied to the wildlife or plant, and remain for the time designated in the permit;

(2) A copy of the permit or an identification label, which includes the scientific name and the permit number, must accompany the wildlife or plant or its container during the course of any activity subject to these regulations.

(d) *Duration of permits.* The duration of a permit issued under this section shall be designated on the face of the permit.

Subpart F—Endangered Plants

§ 17.61 Prohibitions.

(a) Except as provided in a permit issued pursuant to § 17.62 or § 17.63, 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 to cause to be committed, any of the acts described in paragraphs (b) through (e) of this section in regard to any Endangered plant.

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

(c) *Remove and reduce to possession.*
(1) It is unlawful to remove and reduce to possession any endangered plant from an area under Federal jurisdiction.

(2) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Feder-

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al land management agency, or a State conservation agency, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession endangered plants from areas under Federal jurisdiction without a permit if such action is necessary to:

(i) Care for a damaged or diseased specimen;

(ii) Dispose of a dead specimen; or

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

(3) Any removal and reduction to possession pursuant to paragraph (c)(2) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with written directions from the Service.

(4) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State conservation agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those endangered plants which are covered by an approved cooperative agreement for conservation programs in accordance with the Cooperative Agreement, provided that such removal is not reasonably anticipated to result in:

(i) The death or permanent damage of the specimens;

(ii) The removal of the specimen from the State where the removal occurred; or

(iii) The introduction of the specimen so removed, or of any propagules derived from such a specimen, into an area beyond the historical range of the species.

(d) *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, an endangered plant.

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

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interstate or foreign commerce any endangered plant.

(2) An advertisement for the sale of any endangered plant which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the Service, shall not be considered an offer for sale within the meaning of this paragraph.

[44 FR 54060, Sept. 18, 1979, as amended at 50 FR 39690, Sept. 30, 1985]

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

Upon receipt of a complete application the Director may issue a permit authorizing any activity otherwise prohibited by § 17.61, in accordance with the issuance criteria of this section, for scientific purposes or for enhancing the propagation or survival of endangered plants. (See § 17.72 for permits for threatened plants.) Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specified period of time.

(a) *Application requirements.* An application for a permit under this section must be submitted to the Director by the person who wishes to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the information required below and any other information that is requested by the Director.

(1) For activities involving plants obtained from the wild (excluding seeds), provide the following information:

(i) The scientific names of the plants sought to be covered by the permit;

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(ii) The estimated number of specimens sought to be covered by the permit;

(iii) The year, country, and approximate place where taking occurred or will occur;

(iv) If the activities would involve removal and reduction to possession of a plant from an area under Federal jurisdiction, the year, State, county, or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area, and the name, title, address, and phone number of the person in charge of the area.

(v) The name and address of the institution or other facility where the plant sought to be covered by the permit will be used or maintained;

(vi) A brief description of the applicant's expertise and facilities as related to the proposed activity;

(vii) A statement of the applicant's willingness to participate in a cooperative propagation program, and to maintain or contribute data relating to such efforts; and

(viii) A statement of the reasons why the applicant is justified in obtaining the permit, including:

(A) The activities sought to be authorized by the permit and the relationship of such activities to scientific purposes or enhancing the propagation or survival of the species; and

(B) The planned disposition of such plant upon termination of the activities sought to be authorized.

(2) For activities involving seeds and cultivated plants, provide the following information:

(i) The scientific names of the plants sought to be covered by the permit;

(ii) A statement of the applicant's willingness to participate in a cooperative propagation program, and to maintain or contribute data relating to the success of such efforts;

(iii) A justification of the activities sought to be authorized by the permit and the relationship of such activities to scientific purposes or enhancing the propagation or survival of the species; and

(iv) If the activities would involve seeds obtained from the wild, additional information to evaluate the effects of such taking upon the reproductive potential of the species where the taking will occur.

(v) If the activities would involve removal and reduction to possession of seeds from an area under Federal jurisdiction, the year, State, county or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(3) For importation or exportation involving the non-commercial loan, exchange, or donation of herbarium or other preserved, dried, or embedded museum specimens of any endangered species between scientists or scientific institutions, provide the following information:

(i) The name and address of the institution or other facility where the plants sought to be covered by the permit will be used or maintained; and

(ii) A justification of the activities sought to be authorized by the permit and the relationship of such activities to scientific purposes or enhancing the propagation or survival of the species.

(iii) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(4) If the activity sought to be authorized is with a species also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, additional requirements as indicated in § 23.15(c) of this subchapter must be met. For the con-

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venience of the applicant, § 23.15(c) is repeated here:

Applications for permits or certificates under this section must be submitted to the Director by any person subject to the jurisdiction of the United States who wishes to engage in the activity. Each application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter, and must include, as an attachment, as much of the following information as relates to the purpose for which the applicant is requesting a permit or certificate.

(1) The scientific and common names of the species (or taxa to the rank listed in Appendix I, II, or III) sought to be covered by the permit, the number of wildlife or plants, and the activity sought to be authorized (such as importing, exporting, re-exporting, etc.);

(2) A statement as to whether the wildlife or plant, at the time of application, (i) is living in the wild, (ii) is living but is not in the wild, or (iii) is dead;

(3) A description of the wildlife or plant, including (i) size, (ii) sex (if known), and (iii) type of goods, if it is a part or derivative;

(4) In the case of living wildlife or plants, (i) a description of the type, size and construction of any container the wildlife or plant will be placed in during transportation; and (ii) the arrangements for watering and otherwise caring for the wildlife or plant during transportation;

(5) The name and address of the person in a foreign country to whom the wildlife or plant is to be exported from the United States, or from whom the wildlife or plant is to be imported into the United States;

(6) The country and place where the wildlife or plant was or is to be taken from the wild;

(7) In the case of wildlife or plants listed in Appendix I to be imported into the United States, (i) a statement of the purposes and details of the activities for which the wildlife or plant is to be imported; (ii) a brief resume of the technical expertise of the applicant or other persons who will care for the wildlife or plant; (iii) the name, address and a description, including diagrams or photographs, of the facility where the wildlife or plant will be maintained; and (iv) a description of all mortalities, in the two years preceding the date of this application, involving any wildlife species covered in the application (or any species of the same genus or family) held by the applicant, including the causes and steps taken to avoid such mortalities; and

(8) Copies of documents, sworn affidavits or other evidence showing that either (i) the wildlife or plant was acquired prior to

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the date the Convention applied to it, or (ii) the wildlife or plant was bred in captivity or artificially propagated, or was part of or derived therefrom, or (iii) the wildlife or plant is a herbarium specimen, other preserved, dried or embedded museum specimen, or live plant material to be imported, exported or re-exported as a non-commercial loan, donation or exchange between scientists or scientific institutions.

(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. In making his decision, 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 requested will enhance the survival of the species in the wild;

(2) Whether the purpose for which the permit is requested will enhance the propagation of the species;

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

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

(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) If requested, the permittee shall submit to the Director a written report of the activities authorized by the permit. Such report must be postmarked by the date specified in the permit or otherwise requested by the Director.

(2) A copy of the permit or an identification label, which includes the scientific name, the permit number, and a statement that the plant is of "wild origin" or "cultivated origin" must accompany the plant or its container during the course of any activity subject to these regulations, unless the specimens meet the special conditions referred to in paragraph (c)(3) of this section.

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(3) In the case of plants that are herbarium specimens, or other preserved, dried or embedded museum specimens to be imported or exported as a noncommercial loan, exchange or donation between scientists or scientific institutions, the names and addresses of the consignor and consignee must be on each package or container. A description such as "herbarium specimens" and the code letters assigned by the Service to the scientists or scientific institution must be entered on the Customs declaration form affixed to each package or container. If the specimens are of taxa also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the letters "CITES" (acronym for the Convention) also must be entered on the Customs declaration form, as indicated in § 23.15(e)(3) of this subchapter.

(d) *Duration of permit.* The duration of a permit issued under this section shall be designated on the face of the permit.

[44 FR 54060, Sept. 18, 1979, as amended at 50 FR 39690, Sept. 30, 1985]

§ 17.63 Economic hardship permits.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.61, in accordance with Section 10(b) of the Act and the issuance criteria of this section, in order to prevent undue economic hardship. No such exemption may be granted for the importation or exportation of a species also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, if the specimen would be used in a commercial activity.

(a) *Application requirements.* An application for a permit under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited. The application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. It must include, as an attachment, all of the information re-

quired in § 17.62 plus the following additional information.

(1) The possible legal or economic alternatives to the activity sought to be authorized by the permit.

(2) A full statement, accompanied by copies of all relevant correspondence, showing the applicant's involvement with the plant sought to be covered by the permit (as well as his involvement with similar plants). The applicant should include information on that portion of his income derived from activities involving such plants in relation to the balance of his income during the calendar year immediately preceding either the FEDERAL REGISTER notice of review of the status of the species or proposed rulemaking to list the species as Endangered, whichever is earlier.

(3) Where applicable, proof of a contract or other binding legal obligation which:

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

(ii) Became binding prior to the date of the FEDERAL REGISTER notice of review of the status of the species or proposed rulemaking to list the species as endangered, whichever is earlier; and

(iii) Will cause monetary loss of a given dollar amount if the permit 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 for economic hardship, as defined in section 10(b) of the Act. In making his decision, 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 requested will significantly affect the survival of the species in the wild;

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

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

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

(ii) Became binding prior to the date of the FEDERAL REGISTER notice of review of the status of the species or proposed rulemaking to list the species as endangered, whichever is earlier;

(4) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b)(3) of this section would cause if the permit were denied;

(5) 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.

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

(1) If requested, the permittee shall submit to the Director a written report of the activities authorized by the permit. Such report must be postmarked by the date specified in the permit or otherwise requested by the Director.

(2) If requested, the permittee shall report to the Service's office designated in the permit the death, destruction or loss of all living plants covered by the permit. Such report must be postmarked by the date specified in the permit or otherwise requested by the Director.

(d) *Duration of permit.* The duration of a permit issued under this section shall be designated on the face of the permit. No permit issued under this section shall be valid for more than one year from the date of a FEDERAL REGISTER notice of review of the status of the species or proposed rulemaking to list the species as endangered, whichever is earlier.

[44 FR 54060, Sept. 18, 1979]

Subpart G—Threatened Plants

§ 17.71 Prohibitions.

(a) Except as provided in Subpart A of this part, or in a permit issued under this subpart, all of the provisions in § 17.61 shall apply to Threat-

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ened plants, with the following exception. Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of § 17.61, provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container during the course of any activity otherwise subject to these regulations.

(b) In addition to any provisions of this Part 17, any employee or agent of the Service or of a State Conservation Agency which 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, remove and reduce to possession from areas under Federal jurisdiction those threatened species of plants which are covered by an approved Cooperative Agreement to carry out conservation programs.

(c) Whenever a special rule in §§ 17.73 to 17.78 applies to a threatened species, none of the provisions of paragraph (a) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions. If indicated by special rule, the exception for seeds in paragraph (a) of this section shall not apply to the threatened species.

[42 FR 32380, June 24, 1977, as amended at 50 FR 39691, Sept. 30, 1985]

§ 17.72 Permits—general.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened plants. The permit shall be governed by the provisions of this section unless a special rule applicable to the plant is provided in §§ 17.73 to 17.78. A permit issued under this section must be for one of the following: scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act. Such a permit may authorize a single transaction, a series of transac-

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tions, or a number of activities over a specified period of time.

(a) *Application requirements.* An application for a permit under this section must be submitted to the Director by the person who wishes to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3-200) provided by the Service or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds obtained from the wild and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the information required below and any other information that is requested by the Director.

(1) For activities involving plants obtained from the wild (excluding seeds), provide the following information:

(i) The scientific names of the plants sought to be covered by the permit;

(ii) The estimated number of specimens sought to be covered by the permit;

(iii) The year, country, and approximate place where taking occurred or will occur;

(iv) If the activities would involve removal and reduction to possession of a plant from an area under Federal jurisdiction, the year, State, county or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(v) A brief description of the applicant's expertise and facilities as related to the proposed activity;

(vi) A justification of the activities sought to be authorized by the permit and the relationship of such activities to scientific purposes, enhancing the propagation or survival of the species,

or other objectives consistent with the purposes and policy of the Act; and

(vii) A statement of the applicant's willingness to participate in a cooperative propagation program, and to maintain or contribute data relating to such efforts.

(2) For activities involving seeds obtained from the wild and cultivated plants, provide the following information:

(i) The scientific names of the plants sought to be covered by the permit;

(ii) A statement of the applicant's willingness to participate in a cooperative propagation program, and to maintain or contribute data relating to the success of such efforts; and

(iii) A justification of the activities sought to be authorized by the permit and the relationship of such activities to scientific purposes, enhancing the propagation or survival of the species, or other objectives consistent with the purposes and policy of the Act.

(iv) If the activities would involve removal and reduction to possession of seeds from an area under Federal jurisdiction, the year, State, county, or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(3) For importation or exportation involving the non-commercial loan, exchange or donation of herbarium or other preserved, dried or embedded museum specimens of all threatened species between scientists or scientific institutions, provide the following information:

(i) The name and address of the institution or other facility where the plants sought to be covered by the permit will be used or maintained; and

(ii) A justification of the activities sought to be authorized by the permit and the relationship of such activities to scientific purposes, enhancing the propagation or survival of the species, or other objectives consistent with the purposes and policy of the Act.

(iii) The information collection requirements contained in this section

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have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(4) If the activity sought to be authorized is with a species also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, additional requirements as indicated in § 23.15(c) of this subchapter must be met. For the convenience of the applicant, § 23.15(c) is repeated here:

Applications for permits or certificates under this section must be submitted to the Director by any person subject to the jurisdiction of the United States who wishes to engage in the Activity. Each application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter, and must include, as an attachment, as much of the following information as relates to the purpose for which the applicant is requesting a permit or certificate.

(1) The scientific and common names of the species (or taxa to the rank listed in Appendix I, II or III) sought to be covered by the permit, the number of wildlife or plants, and the activity sought to be authorized (such as importing, exporting, re-exporting, etc.);

(2) A statement as to whether the wildlife or plant, at the time of application, (i) is living in the wild, (ii) is living but is not in the wild, or (iii) is dead;

(3) A description of the wildlife or plant, including (i) size, (ii) sex (if known), and (iii) type of goods, if it is a part or derivative;

(4) In the case of living wildlife or plants, (i) a description of the type, size and construction of any container the wildlife or plant will be placed in during transportation; and (ii) the arrangements for watering and otherwise caring for the wildlife or plant during transportation;

(5) The name and address of the person in a foreign country to whom the wildlife or plant is to be exported from the United States, or from whom the wildlife or plant is to be imported into the United States;

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(6) The country and place where the wildlife or plant was or is to be taken from the wild;

(7) In the case of wildlife or plants listed in Appendix I to be imported into the United States, (i) a statement of the purposes and details of the activities for which the wildlife or plant is to be imported; (ii) a brief resume of the technical expertise of the applicant or other persons who will care for the wildlife or plant; (iii) the name, address and a description, including diagrams or photographs, of the facility where the wildlife or plant will be maintained; and (iv) a description of all mortalities, in the two years preceding the date of this application, involving any wildlife species covered in the application (or any species of the same genus or family) held by the applicant, including the causes and steps taken to avoid such mortalities; and

(8) Copies of documents, sworn affidavits, or other evidence showing that either (i) the wildlife or plant was acquired prior to the date the Convention applied to it, or (ii) the wildlife or plant was bred in captivity, or artificially propagated, or was part of or derived therefrom, or (iii) the wildlife or plant is an herbarium specimen, other preserved, dried, or embedded museum specimen, or live plant material to be imported, exported, or re-exported as a noncommercial loan, donation, or exchange between scientists or scientific institutions.

(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. In making his decision, 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 requested will enhance the survival of the species in the wild;

(2) Whether the purpose for which the permit is requested will enhance the propagation of the species;

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

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

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every

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permit issued under this section shall be subject to the following special conditions:

(1) If requested, the permittee shall submit to the Director a written report of the activities authorized by the permit. Such report must be postmarked by the date specified in the permit or otherwise requested by the Director.

(2) A copy of the permit or an identification label, which includes the scientific name, the permit number, and a statement that the plant is of "wild origin" or "cultivated origin" must accompany the plant or its container during the course of any activity subject to these regulations, unless the specimens meet the special conditions referred to in paragraph (c)(3) of this section.

(3) In the case of plants that are herbarium specimens, or other preserved, dried, or embedded museum specimens to be imported or exported as a noncommercial loan exchange or donation between scientists or scientific institutions, the names and addresses of the consignor and consignee must be on each package or container. A description such as "herbarium specimens" and the code letters assigned by the Service to the scientist or scientific institution must be entered on the Customs declaration form affixed to each package or container. If the specimens are of taxa also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the letters "CITES" (acronym for the convention) also must be entered on the Customs declaration form as indicated in § 23.15(e)(3) of this subchapter.

(d) *Duration of permit.* The duration of a permit issued under this section shall be designated on the face of the permit.

(42 FR 32380, June 24, 1977, as amended at 50 FR 39691, Sept. 30, 1985)

§ 17.73—17.78 [Reserved]

Subpart H—Experimental Populations

SOURCE: 49 FR 33893, Aug. 27, 1984, unless otherwise noted.

§ 17.80 Definitions.

(a) The term "experimental population" means an introduced and/or designated population (including any offspring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart but only when, and at such times as the population is wholly separate geographically from nonexperimental populations of the same species. Where part of an experimental population overlaps with natural populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; e.g., fixed migration patterns, natural or man-made barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.

(b) The term "essential experimental population" means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as "nonessential."

§ 17.81 Listing.

(a) The Secretary may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historic range, absent a finding by the Director in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed), subject to the further conditions specified in this section; *provided*, that all designations of experimental populations must proceed by regulation adopted in accordance with 5 U.S.C. 553 and the requirements of this subpart.

(b) Before authorizing the release as an experimental population of any

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population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Secretary must find by regulation that such release will further the conservation of the species. In making such a finding the Secretary shall utilize the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future;

(3) The relative effects that establishment of an experimental population will have on the recovery of the species; and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

The Secretary may issue a permit under section 10(a)(1)(A) of the Act, if appropriate under the standards set out in subsections 10(d) and (j) of the Act, to allow acts necessary for the establishment and maintenance of an experimental population.

(c) Any regulation promulgated under paragraph (a) of this section shall provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s);

(2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild;

(3) Management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited

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to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations; and

(4) A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

(d) The Fish and Wildlife Service shall consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. When appropriate, a public meeting will be conducted with interested members of the public. Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the Fish and Wildlife Service, the affected State and Federal agencies and persons holding any interest in land which may be affected by the establishment of an experimental population.

(e) Any population of an endangered species or a threatened species determined by the Secretary to be an experimental population in accordance with this subpart shall be identified by special rule in §§ 17.84—17.86 as appropriate and separately listed in § 17.11(h) (wildlife) or § 17.12(h) (plants) as appropriate.

(f) The Secretary may designate critical habitat as defined in section (3)(5)(A) of the Act for an essential experimental population as determined pursuant to paragraph (c)(2) of this section. Any designation of critical habitat for an essential experimental population will be made in accordance with section 4 of the Act. No designation of critical habitat will be made for nonessential populations. In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat shall be designated for the area of overlap unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself.

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§ 17.82 Prohibitions.

Any population determined by the Secretary to be an experimental population shall be treated as if it were listed as a threatened species for purposes of establishing protective regulations under section 4(d) of the Act with respect to such population. The Special rules (protective regulations) adopted for an experimental population under § 17.81 will contain applicable prohibitions, as appropriate, and exceptions for that population.

§ 17.83 Interagency cooperation.

(a) Any experimental population designated for a listed species (1) determined pursuant to § 17.81(c)(2) of this subpart not to be essential to the survival of that species and (2) not occurring within the National Park System or the National Wildlife Refuge System, shall be treated for purposes of section 7 (other than subsection (a)(1) thereof) as a species proposed to be listed under the Act as a threatened species.

(b) Any experimental population designated for a listed species that either (1) has been determined pursuant to § 17.81(c)(2) of this subpart to be essential to the survival of that species, or (2) occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted, shall be treated for purposes of section 7 of the Act as a threatened species. Notwithstanding the foregoing, any biological opinion prepared pursuant to section 7(b) of the Act and any agency determination made pursuant to section 7(a) of the Act shall consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections.

§ 17.84 Special rules—vertebrates.

(a) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*)—(1) The Delmarva Peninsula fox squirrel population identified in paragraph (a)(6) of this section is a nonessential experimental population.

(2) No person shall take this species, except:

(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 and in accordance with applicable State fish and wildlife conservation laws and regulations; or

(ii) Incidental to recreational activities.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species (other than incidental taking as described in paragraph (a)(2)(ii) of this section) will also be a violation of the Endangered Species Act.

(4) 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 or the Endangered Species Act.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (a)(2) or (4) of this section.

(6) The site for reintroduction of Delmarva Peninsula fox squirrel is totally isolated from existing populations of this species. The nearest extant population is in the Chincoteague National Wildlife Refuge approximately 50 miles from the reintroduction site. The reintroduction site is within the historic range of this species and is located at the Assawoman Wildlife Area, Sussex County, Delaware. Observation of previous releases have shown that fox squirrels have not traveled more than 2 or 3 miles from release sites, therefore, the possibility of this population contacting extant wild populations is unlikely.

(7) The reintroduced population will be checked periodically to determine its condition and the success of the reintroduction. Of special concern will be the establishment of breeding pairs and the reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

(b) Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagopterus argentissimus*). (1) The Colorado

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squawfish and woundfin populations identified in paragraph (b)(6) below are experimental, nonessential populations.

(2) No person shall take the species, except in accordance with applicable State or Tribal 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 otherwise lawful activities, provided that the individual fish taken, if still alive, is immediately returned to its habitat.

(3) Any violation of applicable State or Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species (other than incidental taking as described in paragraph (b)(2)(ii) of this section) will also be a violation of the Endangered Species Act.

(4) 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 or Tribal fish and wildlife laws or 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 (b) (2) through (4) of this section.

(6) All of the sites for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado Rivers, an upstream distance of at least 800 miles including 6 mainstream dams, and 200 miles of dry riverbed. Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams). All reintroduction sites are within the probable historic range of these species and are as follows:

Colorado Squawfish

(i) *Arizona: Gila County.* Salt River from Roosevelt Dam upstream to U.S Highway 60 bridge.

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(ii) *Arizona: Gila and Yavapai Counties.* Verde River from Horseshoe Dam upstream to Perkinsville.

The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabited by Colorado squawfish. Downstream movement of squawfish in these areas will be restricted by dams and upstream movement is limited by lack of suitable habitat.

Woundfin

(i) *Arizona: Gila and Yavapai Counties.* Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

(ii) *Arizona: Graham and Greenlee Counties.* Gila River from backwaters of San Carlos Reservoir upstream to Arizona/New Mexico State line.

(iii) *Arizona: Greenlee County.* San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

(iv) *Arizona: Gila County.* Tonto Creek, from Punkin Center upstream to Gilsela.

(v) *Arizona: Yavapai County.* Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

(7) The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproduction success, and general health condition of the fish.

(c) Red wolf (*Canis rufus*). (1) The red wolf population identified in paragraph (c)(9) of this section is a nonessential experimental population.

(2) No person may take this species, except as provided in paragraphs (c)(3) through (5) and (10) of this section.

(3) Any person with a valid permit issued by the Service under § 17.32 may take red wolves for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations;

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(4) Any person may take red wolves in defense of that person's own life or the lives of others, *Provided* that such taking shall be immediately reported to the refuge manager, as noted in paragraph (c)(6) of this section.

(5) Any employee or agent of the Service or State conservation agency who is designated for such purposes, when acting in the course of official duties, may take a red wolf if such action is necessary to:

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

(ii) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study;

(iii) Take an animal which constitutes a demonstrable but nonimmediate threat to human safety, or which is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *Provided* that such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge.

(6) Any taking pursuant to paragraphs (c)(3) through (5) must be immediately reported to the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473-1131, who will determine disposition of any live or dead specimens.

(7) 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 or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (c) (2) through (7) of this section.

(9) The site for reintroduction of red wolves is within the historic range of the species in the State of North Carolina, on the Alligator River National Wildlife Refuge, Dare County; the adjacent Tyrrell, Hyde, and Washington

Counties are also included in the experimental population designation. The red wolf is otherwise extirpated from the wild, so there are no other extant populations with which this experimental population could come into contact.

(10) The reintroduced population will be continually monitored closely during the life of the project, including the use of radio telemetry as appropriate. All animals will be vaccinated against diseases prevalent in canids prior to release. Any animal which is sick, injured, or otherwise in need of special care, or which moves off Federal lands, will be immediately recaptured by the Service and given appropriate care. Such an animal will be released back to the wild on the refuge as soon as possible, unless physical or behavioral problems make it necessary to return the animal to a captive breeding facility.

(11) The status of the population will be reevaluated within 5 years of the effective date of this regulation to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and the overall health of the population.

(d) Southern sea otter (*Enhydra lutris nereis*). (1) *Definitions*. The definitions set out in § 17.3 apply to this paragraph (d). For purposes of this paragraph—

(i) The term "defense-related agency action" means an agency action proposed to be carried out directly by a military department, which does not have as its intended purpose the taking of southern sea otters. For purposes of this definition, the United States Coast Guard is not a military department.

(ii) The term "management zone" means that area delineated in paragraph (d)(5)(i) of this section which surrounds the translocation zone and separates the translocation zone from the existing range of the parent population and adjacent range where expansion of the parent population is necessary for the recovery of southern sea otters.

(iii) The term "member of the experimental population of southern sea

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otters" includes any southern sea otter, alive or dead, found within the translocation zone or the management zone, and any part or product of any such southern sea otter.

(iv) The term "parent population" means the population of southern sea otters existing along the central California coast north of the management zone.

(v) The term "translocation zone" means the area delineated in paragraph (d)(4)(i) of this section within which an experimental population of southern sea otters is released and contained.

(vi) The term "established experimental population of southern sea otters" means a translocated population that meets the following criteria: An estimated combined minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment to the experimental population in the translocation zone of 20 sea otters for at least 3 years of the latest 5-year period, or replacement yield sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or carrying capacity phase of the experimental population.

(vii) The term "stabilized population" is a population of sea otters within the translocation zone at the conclusion of the movement of animals from the parent population, except for purposes of genetic enhancement, which (A) is equal to or greater than the number of otters that were released from the holding pens alive and healthy, or 70 otters, whichever is less, and (B) is exhibiting growth. A stabilized population would represent the point at which the experimental population shifts from the transplant stage to the initial growth and reestablishment stage.

(viii) The term "carrying capacity" means the ecological state in which the numbers of sea otters within the translocation zone remain relatively constant and in balance with the available food supply.

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(2) *Description of experimental population.* The experimental population of southern sea otters shall include all southern sea otters found within the translocation zone or the management zone. The Service will translocate no more than 70 southern sea otters during the first year, supplemented as

necessary with up to 70 otters per year in subsequent years from the parent population to the translocation zone. Although a maximum of 250 southern sea otters may be moved from the parent population in order to establish the experimental population in the translocation zone, it is not likely that supplemental translocation after the initial 70 will involve more than small numbers of southern sea otters, although under this plan a maximum of 70 could be moved if needed in each year up to a total of 250. The majority of animals translocated each year will be weaned, immature sea otters with a sex ratio of about 4 to 1, females to males. Of the adult sea otters selected for translocation, approximately 3 out of every 4 animals will be female.

(3) *Translocation process—(i) Capture.* Capture locations will be selected primarily from the southern third of the range of the parent population. Sea otters will be captured using diver-held devices, dip nets, surface entangling nets, or other methods which may be proven to be safe and effective in the future. All captured otters will be tagged and examined by a veterinarian experienced in treating marine mammals.

(ii) *Transport.* All animals to be translocated will be transported directly to the translocation zone or held in specially constructed holding facilities prior to their movement to the translocation zone. Access to and care of animals will be restricted to Federal and State personnel and designated agents directly involved with the translocation. Each captured animal will be placed in a carrying cage and transported by truck to the local airport, from which point they will be flown to the translocation zone. From there they will be trucked to the release site.

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(iii) **Release.** The animals will be released directly into the wild from their transport cages, or held for up to 5 days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and adult males will be

held separately. When held in floating pens the animals will be released passively by opening the floating pens and allowing animals to leave at will.

(iv) **Monitoring.** Monitoring will be conducted on both the parent population and the experimental population by State and Federal biologists and their designated agents. Monitoring the parent population will be done to determine the effects of removal of otters on the growth and range expansion or recession of the parent population. Monitoring of the parent population will continue at least through the translocation period and into the foreseeable future. Monitoring of the experimental population will begin with the first release of translocated otters and will continue at least until either the new population reaches the carrying capacity of the habitat and establishes an equilibrium density or the translocation is determined to have failed. Monitoring will include intensive studies of changes in key components of the nearshore ecosystem of the translocation zone including benthic organisms, kelp and finfish. Monitoring, using ground and aerial observations, will also include intensive observation and documentation of the movements, distribution, foraging and reproductive behavior, dispersal

tendencies, growth and reproductive rates, prey selection, and social interactions of sea otters in the experimental population. Results of monitoring the experimental population and the parent population will also be compared and evaluated.

(v) **Protection.** At least two law enforcement officers will be specifically assigned, at least for the initial three- to five-year period after the actual translocation of animals, to conduct patrols and prevent illegal taking of southern sea otters in the translocation zone. Cooperative enforcement arrangements will be developed with other agencies having law enforcement activities in the area such as the U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population.

(4) **Translocation zone.** (i) There is established a translocation zone for southern sea otters comprised of San Nicolas Island, Begg Rock, and the surrounding waters within the following coordinates:

N. LATITUDE/W. LONGITUDE

33°27.8'/119°34.3'
33°20.5'/119°15.5'
33°13.5'/119°11.8'
33°06.5'/119°15.3'
33°02.8'/119°26.8'
33°08.8'/119°46.3'
33°17.2'/119°56.9'
33°30.9'/119°54.2'

(ii) A map depicting the translocation zone is set forth below:

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<p>Translocation Zone Coordinates: (North Latitude/West Longitude)</p> <p>33°27.8'/119°34.3', 33°20.5'/119°15.5' 33°13.5'/119°11.8', 33°06.5'/119°15.3' 33°02.8'/119°26.8', 33°08.8'/119°46.3' 33°17.2'/119°56.9', 33°30.9'/119°54.2'</p>	<p>Management Zone:</p> <p>All U.S. areas south of Point Conception (34°26.9' N. Latitude) except the translocation zone.</p>
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(iii) *Prohibitions.* Except as provided in paragraph (d)(4)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the translocation zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(4)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any

southern sea otter under the provisions of this paragraph;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of a defense-related agency action as defined in paragraph (d)(1)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(5) *Management zone.* (i) There is established a management zone for southern sea otters comprised of all waters, islands, islets, and land areas seaward of mean high tide subject to

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the jurisdiction of the United States located south of Point Conception, California (34°28.9' N. Latitude), except for any area within the translocation zone delineated in paragraph (d)(4)(i) of this section.

(ii) A map depicting the management zone is set forth in paragraph (d)(4)(ii) of this section.

(iii) *Prohibitions.* Except as provided in paragraph (d)(5)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the management zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(5)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this paragraph;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the management zone delineated in paragraph (d)(5)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(6) *Containment.* The following containment measures, listed in order of preference, will be employed to prevent significant emigration of southern sea otters from San Nicolas Island and occupation of habitat within the management zone:

(i) Capture of animals within the management zone for return to the experimental population or to the range of the parent population using non-lethal means. If verified sightings of one or more sea otters are made at any location within the management zone, field crews will be mobilized as soon as weather and sea conditions permit, to capture and remove the otter(s) from the zone. Capture will be done by experienced State and/or Federal personnel or other designated agents, using one or more of the same techniques used in the translocation effort, such as diver-held devices; surface entangling nets; dip nets; or other effective

methods which may be developed for capturing sea otters in the future. Animals either will be flown or moved by air-conditioned van to the release site.

(ii) Artificial reduction of fecundity for some sea otters within the experimental population. [Reserved]

(iii) Selective or random, non-lethal removal of members of the experimental population within the translocation zone. [Reserved]

Containment measures will be administered by the Fish and Wildlife Service's Office of Sea Otter Management and Coordination (OSOMC), in consultation and cooperation with the California Department of Fish and Game. The OSOMC will work closely with State biologists to remove otters from the management zone. Federal funding received through the normal appropriations process will be used for research, protection, and containment of the experimental population. Grants to the State of California under 16 U.S.C. 1535, may be employed to facilitate the measures outlined above. Public donations for management and containment of the experimental population will be accepted with assistance from the National Fish and Wildlife Foundation.

(7) *Effects of translocation on recovery and interagency cooperation—(i) Background.* The Recovery Plan specifically describes the importance of translocation to the delisting of the southern sea otter under the Endangered Species Act. The Plan states:

Sea otter translocation, if properly designed and implemented, should provide the necessary foundation for ultimately obtaining the Recovery Plan's objective and restoring the southern sea otter to a non-threatened status and maintaining OSP by: (i) Establishing a second colony (or colonies) sufficiently distant from the present population such that a smaller portion of southern sea otters will be jeopardized in the event of a large-scale oil spill, and (ii) establishing a data base for identifying the optimal sustainable population level for the sea otter.

Thus the translocation, and establishment of a population of sea otters has been identified by the Recovery Plan as a critical action necessary for the recovery and delisting of the species.

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With regard to the relationship of a successful translocation to the initiation of a delisting action under the Endangered Species Act. The Plan states:

Delisting should be considered when the southern sea otter population is stable or increasing at sustainable rates in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe. To reach this point: 1) At least one additional population of sea otters must be established outside the current population range, 2) the existing population of sea otters and its habitat must be protected, and 3) the threat from oil spills or other major environmental changes must be minimized.

The successful establishment of the experimental population to be carried out pursuant to this rule should fully satisfy the first criterion specified above from the Recovery Plan, provided that the parent population is showing sustained growth and expanding its range from its present size and distribution. However, if such growth and expansion is not occurring, the establishment of a single new population may not be sufficient to satisfy the broader criterion that the population must be increasing at a sustainable rate in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe.

(ii) *Effect on recovery.* The translocation will not influence the legal status of the species until such time as the Service determines that the experimental population is established. Once established, other factors such as the status of the parent population and completion of other recovery tasks will be considered. If the experimental population becomes established and the other recovery tasks identified in the recovery plan for the southern sea otter are attained, the southern sea otter will be eligible for consideration for delisting in accordance with the requirements of 50 CFR 424.11(d). If a catastrophic event were to significantly diminish the parent population, the size of the experimental population would be a factor in determining whether or not the southern sea otter should remain listed as

"threatened" or reclassified as "endangered," or if relisting should be considered if a delisting action had been completed.

(iii) *Effect on interagency cooperation.* In determining the likelihood of jeopardy or non-jeopardy opinions for proposed Federal actions that "may affect" southern sea otters, the probability of jeopardy determinations will decrease proportionally for comparable projects with comparable types of impacts as the experimental population grows from the point of being established toward the maximum number that its habitat can support, i.e., carrying capacity. Thus, there is an inverse relationship between the size of the experimental population (after being determined to be established) and the probability of jeopardy determinations associated with section 7 consultations under the Endangered Species Act for projects affecting either the parent or the experimental population. However, the status of the experimental population is not the only factor to be considered in section 7 evaluations. The status of the parent population, as well as the cumulative impacts, baseline level of threats, and effects of the action on either population, will also be taken into account. In addition to considering the size of the experimental population, the contribution that such population could make toward helping restore a damaged parent population will also be a factor that will be considered during section 7 evaluations. For section 7 purposes, once the translocated otters become stabilized and enter into the initial growth and reestablishment stage, but before meeting the criteria for an established population, the experimental population will have an existence value that will be taken into consideration both quantitatively and qualitatively. Its numbers will be added to those of the parent population for purposes of analyzing the impacts of a Federal action on the southern sea otter population. Moreover, during the initial growth and reestablishment stage, as part of the analysis of the impacts on the population as a whole, the impacts of proposed Federal actions will be analyzed to clearly determine the relative risk to each of

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the two populations (parent population and the experimental population).

(8) *Determination of a failed translocation.* The translocation would generally be considered to have failed if one or more of the following conditions exists:

(i) If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone and the reasons for emigration or mortality cannot be identified and/or remedied;

(ii) If, within three years from the initial transplant, fewer than 25 otters remain in the translocation zone and the reason for emigration or mortality cannot be identified and/or remedied;

(iii) If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed if reproduction is occurring and the degree of dispersal into the management zone is small enough that the efforts to continue to remove otters from the management zone are acceptable to the Service and California Department of Fish and Game;

(iv) If the Service determines, in consultation with the affected State and Marine Mammal Commission, that otters are dispersing from the translocation zone and becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time, otters are relocating from the translocation zone to the management zone in such numbers that: (A) An independent breeding colony is likely to become established within the management zone, or (B) they could cause economic damage to fishery resources within the manage-

ment zone. It is expected that the Service could make this determination within a year provided sufficient information is available;

(v) If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security was proposed that would threaten to devastate the colony and removal of the otters was determined to be the only viable way of preventing the loss of the individuals.

(vi) If, based on any one of these criteria, the Service concludes, after consultation with the affected State and Marine Mammal Commission, that the translocation has failed to produce a viable, contained experimental population, this rulemaking will be amended to terminate the experimental population, and all otters remaining within the translocation zone will be captured and all healthy otters will be placed back into the range of the parent population. Efforts to maintain the management zone free of otters will be curtailed after all reasonable efforts have been made to remove all otters that are still within the management zone at the time of the decision to terminate the translocated population. A joint State-Service consultation will determine when all reasonable efforts have been made and additional efforts would be futile.

(vii) Prior to declaring the translocation a failure, a full evaluation will be conducted into the probable causes of the failure. If the causes could be determined, and legal and reasonable remedial measures identified and implemented, consideration will be given to continuing to maintain the translocated population. If such reasonable measures cannot be identified and implemented, the results of the evaluation will be published in the *FEDERAL REGISTER* with a proposed rulemaking to terminate the experimental population.

[49 FR 35964, Sept. 13, 1984, and 50 FR 30194, July 24, 1985, as amended at 51 FR 41797, Nov. 19, 1986; 52 FR 29780, Aug. 11, 1987]

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(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) The yellowfin madtom population identified in paragraph (4) of this subsection is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to the population identified in paragraph (e)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) Any violation of State law regulating the take of this species from the population identified in paragraph (e)(4) of this section will also be a violation of the Endangered Species Act.

(4) This experimental population of the yellowfin madtom is found in the North Fork Holston River watershed, Washington, Smyth and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. The reintroduction site is within the historic range of this species but it is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs, and it is unlikely that they could move 100 river miles through these large reservoirs, the possibility of this population contacting extant wild populations is unlikely.

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§ 17.85 Special rules—vertebrates. [Reserved]

§ 17.86 Special rules—plants. [Reserved]

Subpart I—Interagency Cooperation

§ 17.94 Critical habitats.

(a) The areas listed in § 17.95 (fish and wildlife) and § 17.96 (plants) and referred to in the lists at §§ 17.11 and 17.12 have been determined by the Director to be Critical Habitat. All Federal agencies must insure that any action authorized, funded, or carried out by them is not likely to result in the destruction or adverse modification of the constituent elements essential to the conservation of the listed species within these defined Critical Habitats. (See Part 402 for rules concerning this prohibition; see also Part 424 for rules concerning the determination of Critical Habitat).

(b) The map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.

(c) Critical Habitat management focuses only on the biological or physical constituent elements within the defined area of Critical Habitat that are essential to the conservation of the species. Those major constituent elements that are known to require special management considerations or protection will be listed with the description of the Critical Habitat.

(d) The sequence of species within each list of Critical Habitats in §§ 17.95 and 17.96 will follow the se-

quences in the lists of Endangered and Threatened wildlife (§ 17.11) and plants (§ 17.12). Multiple entries for each species will be alphabetic by State.

[45 FR 13021, Feb. 27, 1980]

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

INDIANA BAT (*Myotis sodalis*)

Illinois. The Blackball Mine, La Salle County.

Indiana. Big Wyandotte Cave, Crawford County; Ray's Cave, Greene County.

Kentucky. Bat Cave, Carter County; Coach Cave, Edmonson County.

Missouri. Cave 021, Crawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 029, Washington County (numbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 6).

Tennessee. White Oak Blowhole Cave, Blount county.

West Virginia. Hellhole Cave, Pendleton County.

NOTE: No map.

VIRGINIA BIG-EARED BAT (*Plecotus townsendii virginianus*)

West Virginia. Cave Mountain Cave, Hellhole Cave, Hoffman School Cave, and Sinnit Cave, each in Pendleton County; Cave Hollow Cave, Tucker County.

NOTE: Map follows:

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FLORIDA MANATEE (*Trichechus manatus*)

Florida. Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasota and Charlotte Counties; the Peace River downstream from the Florida State Highway 780 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee County line, Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge, Lee County; all U.S. territorial waters adjoining the coast and islands of Lee County; all U.S. territorial waters adjoining the coast and islands and all connected bays, estuaries, and rivers from Gordon's Pass, near Naples, Collier County, southward to and including Whitewater Bay, Monroe County; all waters of Card, Barnes, Blackwater, Little Blackwater, Manatee, and Buttonwood Sounds between Key Largo, Monroe County, and the mainland of Dade County; Biscayne Bay, and all adjoining and connected lakes, rivers, canals, and waterways from the southern tip of Key Biscayne northward to and including Maule Lake,

Dade County; all of Lake Worth, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway A1A southward to its southernmost point immediately north of the town of Boynton Beach, Palm Beach County; the Loxahatchee River and its headwaters, Martin and West Palm Beach Counties; that section of the intracoastal waterway from the town of Seawalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3, Volusia County, southward to its southernmost point near the town of Seawalls Point, Martin County, and the entire inland section of water known as the Banana River and all waterways between Indian and Banana Rivers, Brevard County; the St. Johns River including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the Intracoastal Waterway from its confluences with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City, Nassau and Duval Counties.

NOTE: No map.

ALABAMA BEACH MOUSE (*Peromyscus polionotus ammobates*)

Alabama. Areas of land, water, and air space in Baldwin County with the following components (St. Stephens Meridian): (1) That portion of the Fort Morgan Peninsula south of State Road 180 and west of 87°59'35" W, except for that part each of Fort Morgan State Park and more than 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (2) those portions of T9S R3E Sec. 30 and T9S R2E Sec. 25-28 and E15/16 Sec. 29 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (3) that portion of the Gulf Shores unit of the Gulf State Park south of State Road 182 in T9S R4E Sec. 14-15 and Sec. 21-23.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

NOTE: Maps follow:

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**CHOCTAWHATCHEE BEACH MOUSE
(*Peromyscus polionotus allophrys*)**

Florida. Areas of land, water, and airspace in Walton and Bay Counties with the following components (Tallahassee Meridian): (1) Those portions of T2S R21W E½ Sec. 35, Sec. 36, T2S R20W S½ Sec. 31, and T3S R20W W½ Sec. 4, N½ Sec. 5, and NE¼ Sec. 6 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (2) those portions of T3S R19W W½ Sec. 15 and Sec. 16 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (3) those portions of the mainland part of the St. Andrews State Recreation Area in T4S

R15W Sec. 21 and Sec. 22 extending 152.5 meters (500 feet) inland from the mean high tide line of the Gulf of Mexico; (4) those portions of Shell Island in T4S R15W Sec. 25-27 and Sec. 36, T4S R14W Sec. 31, and T5S R14W Sec. 4-6 extending 152.5 meters (500 feet) inland from the mean high tide line of Gulf of Mexico.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

NOTE: Maps follow:

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PERDIDO KEY BEACH MOUSE (*Peromyscus polionotus trissyllepsis*)

Alabama. An area of land, water, and airspace in Baldwin County with the following component (Tallahassee Meridian): That portion of the Perdido Key unit of the Gulf State Park south of State Road 182 in T9S R33W Sec. 2-3.

Florida. Areas of land, water, and airspace in Escambia County with the following components (Tallahassee Meridian): (1) That portion of the Perdido Key State Preserve south of State Road 292 in T3S R32W Sec. 32-33 and T4S R32W Sec. 5; (2) those por-

tions of Perdido Key in T3S R31W Sec. 25-26 and Sec. 28-34, and in T3S R32W E½ Sec. 36, and W½ Sec. 36 south of the entrance road, parking lot, and Johnson Beach recreational facilities at the Gulf Islands National Seashore.

Within these areas the major constituent elements that are known to require special management considerations or protection are dunes and interdunal areas, and associated grasses and shrubs that provide food and cover.

Note: Maps follow:

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FRESNO KANGAROO RAT (*Dipodomys nitratoides exilis*)

California. An area of land, water, and airspace in Fresno County, with the following components (Mt. Diablo Base Meridian): T14S R15E, E½ NW¼ and NE¼ Sec. 11, that part of W¼ Sec. 12 north of the Southern Pacific Railroad, E¼ Sec. 12; T14S R16E, that part of Sec. 7 south of the Southern Pacific Railroad.

Within this area, the major constituent elements that are known to require special management considerations or protection are the hummocks and substrate that provide sites for burrow construction, and the natural alkali sink-open grassland vegetation that provides food and escape cover.

NOTE: Map follows.

MORRO BAY KANGAROO RAT (*Dipodomys heermanni morroensis*)

California. An area of land, water, and airspace in San Luis Obispo County, with the following components (Mt. Diablo Meridian): T30S R10E S¼ Sec. 14, those portions of Sec. 23-24 west of Pecho Valley Road.

NOTE: Map follows:

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AMARGOSA VOLE (*Microtus californicus scirpensis*)

California. Marshes and associated land and water in the following areas of Inyo County (San Bernardino Meridian): T20N R7E Sec. 4, 5, N½ and SE¼ Sec. 9, NW¼ Sec. 10, SW¼SW¼ Sec. 15, E½ Sec. 16, NW¼ Sec. 22; T21N R7E S½ Sec. 28, S¼ and NW¼ Sec. 29, Sec. 32, 33.

Within these areas, the major constituent elements that are known to require special management considerations or protection are marsh vegetation (primarily bulrushes of the genus *Scirpus*), springs, and some open water along the Amargosa River, which provide escape cover and an adequate food supply.

NOTE: Map follows:

GRAY WOLF (*Canis lupus*)

Michigan. Isle Royale National Park.

Minnesota. Areas of land, water, and airspace in Beltrami, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Roseau, and St. Louis Counties, with boundaries (4th and 5th Principal meridians) identical to those of zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1)

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NOTE: See map in § 17.40(d)(1).

(b) *Birds.*

YELLOW-SHOULDERED BLACKBIRD (*Agelaius xanthomus*)

Puerto Rico. Areas of land, water, and airspace with the following components: (1) All of Mona Island; (2) that portion of the main island of Puerto Rico within the following boundary: Beginning at a point where the Quebrada Boqueron joins the Bahía de Boqueron, thence proceeding southwesterly along coast to Cabo Rojo, thence eastward along the coast, including offshore cays, to the point where Highway 332 meets the Bahía de Guanica, thence northward on Highway 332 to its junction with Highway 116, thence westward on Highway 116 to its junction with Highway 305, thence westward on Highway 305 to its junction with Highway 303, thence northward on Highway 303 to its junction with Highway 101, thence westward on Highway 101 to the point where it crosses Quebrada Boqueron, thence along the Quebrada Boqueron to the point where it joins the Bahía de Boqueron; (3) a circular portion of the main island of Puerto Rico with a one mile radius, the center being the junction of Highways 360 and 102 in the town of San German; (4) Roosevelt Roads Naval Station, southeast of Ceiba.

NOTE: No map.

CALIFORNIA CONDOR (*Gymnogyps californianus*)

California. Sespe-Piru Condor Area: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Los Angeles Counties, with the following components (San Bernardino Meridian): Sespe Condor Sanctuary, as delineated by Public Land Order 695 (January 1951); T4N R20W Sec. 2, 5-10, N¼ Sec. 11; T4N R21W Sec. 1-3, 10-12, N¼ Sec. 13, N¼ Sec. 14, N¼ Sec. 15; T5N R18W Sec. 4-9, 18, 19, 30, 31, N¼ Sec. 3, N¼ Sec. 17; T5N R21W Sec. 1-4, 9-16, 21-28, 33-36; T6N R18W Sec. 7-11, 14-23, 28-35; T6N R19W Sec. 7-36; T6N R20W Sec. 8-36; T6N R21W Sec. 13-36; T6N R22W Sec. 3-26, 35, 36; T6N R23W Sec. 1-3, 10-14, 24, N¼ Sec. 23; T7N R22W Sec. 31; T7N R23W Sec. 34-36.

Matilija Condor Area: An area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Santa Barbara Counties, with the following components (San Bernardino Meridian): T5N R24W W¼ Sec. 3, Sec. 4-11, 14, 15, N¼ Sec. 16, N¼ Sec. 17; T5N R25W E¼ Sec. 1, NE¼ Sec. 12; T5¼N R24W Sec. 31-34; T6N R24W S¼ Sec. 32, S¼ Sec. 33, S¼ Sec. 34.

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Sisquoc-San Rafael Condor Area: An area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, Santa Barbara County, with the following components (San Bernardino Meridian): T6N R26W Sec. 5, 6; T6N R27W Sec. 1, 2; T7N R26W Sec. 5-8, 17-20, 29-32; T7N R27W Sec. 1-14, 23-26, 35, 36; T7N R28W Sec. 1, 2, 11, 12; T8N R26W Sec. 19-22, 27-34; T8N R27W Sec. 19-36.

Hi Mountain-Beartrap Condor Areas: Areas of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain in San Luis Obispo County, with the following components (Mt. Diablo Meridian): T30S R16E Sec. 13, 14, 23-26, SE¼ Sec. 11, S¼ Sec. 12; T30S R17E Sec. 17-20, 29, 30; T31S R14E Sec. 1, 2, 11, 12, E¼ Sec. 3, E¼ Sec. 10, N¼ Sec. 14, N¼ Sec. 13; T31S R15E W¼ Sec. 6, W¼ Sec. 7, NW¼ Sec. 18.

Mt. Pinos Condor Area: An area of land, water, and airspace in Ventura and Kern Counties, with the following components (San Bernardino Meridian): T8N R21W W¼ Sec. 5, Sec. 6 N¼ Sec. 7, NW¼ Sec. 8; T8N R22W Sec. 1, 2, E¼ Sec. 3, NE¼ Sec. 10, N¼ Sec. 11, N¼ Sec. 12; T9N R21W Sec. 31, 32, W¼ Sec. 33; T9N R22W E¼ Sec. 35, Sec. 36.

Blue Ridge Condor Area: An area of land, water, and airspace in Tulare County, with the following components (Mt. Diablo Meridian): T19S R29E Sec. 5-9, 15-22, 27-30.

Tejon Ranch: An area of land, water, and airspace in Kern County, with the following components (San Bernardino Meridian): R16W, T10N, R17W T10N, R17W T11N, R18W T9N, R18W T10N, R19W T10N.

Kern County rangelands: An area of land, water, and airspace in Kern County between California State Highway 65 and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R29E T25S, R29E T26S, R30E T25S, R30E T26S.

Tulare County rangelands: An area of land, water, and airspace in Tulare County between California State Highway 65, State Highway 198, and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R28E T18S (all sections); R28E T19S (all sections); R28E T20S (all sections); R28E T21S Sec. 1-18; R29E T20S (all sections); R29E T21S Sec. 1-18.

NOTE: No map.

MISSISSIPPI SANDHILL CRANE (*Grus canadensis pulla*)

Mississippi. Areas of land, water, and airspace in Jackson County, with the following components (St. Stephens Base Meridian): T6S R6W Sec. 31; T6S R7W E¼ of E¼ Sec. 34, Sec. 35-36, S¼ Sec. 38; T6S R8W Sec. 27, those portions of Sec. 28-31 south of Seaman Road, Sec. 32-34; T7S

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R8W N½ of N½ Sec. 3, Sec. 6; T7S R7W Sec. 2-11, Sec. 13-16, Sec. 20-22, W½ Sec. 23, W½ of E½ Sec. 23, NE¼ of NE¼ Sec. 23, N¼ of N½ Sec. 24, that portion of the SW¼ of SW¼ Sec. 30 south of the Louisville and Nashville Railroad, W½ of W½ Sec. 31, W½ Sec. 37, that portion of the E½ Sec. 37 north of U.S. Interstate Highway 10; T7S R8W Sec. 1-3, that portion of Sec. 4 north of U.S. Interstate Highway 10, Sec. 5-6, those portions of Sec. 7-8 north of U.S. Interstate Highway 10, Sec. 10-12, W½ of W½ Sec. 14, Sec. 15, that portion of Sec. 25 south of the Louisville and Nashville Railroad, that portion of the SE¼ of Sec. 26 south of the Louisville and Nashville Railroad and southeast of Davis Bayou, N¼ of NE¼ Sec. 35, Sec. 36.

NOTE: No map.

WHOOPING CRANE (*Grus americana*)

Colorado. Areas of land, water, and airspace with the following components: (1) Monte Vista National Wildlife Refuge in Alamosa and Rio Grande Counties; and (2) Alamosa National Wildlife Refuge in Alamosa and Conejos Counties.

NOTE: Map follows.

Idaho. An area of land, water, and airspace in Bonneville and Caribou Counties with the following components: Grays Lake National Wildlife Refuge, and all contiguous land and water within 1 mile of the boundaries of this refuge.

NOTE: Map follows.

Kansas. Areas of land, water, and airspace with the following components: (1) Quivira National Wildlife Refuge in Stafford, Reno, and Rice Counties; and (2) Cheyenne Bottoms State Waterfowl Management Area in Barton County.

NOTE: Map follows.

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Nebraska. An area of land, water, and airspace in Dawson, Buffalo, Hall, Phelps, Kearny, and Adams Counties with the following boundaries: *Platte River bottoms*—a strip of river bottom with a north-south width 3 miles, a south boundary paralleling Interstate 80, beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington, and extending eastward along Interstate 80 to the interchange for Shelton and Dehman, Nebr. near the Buffalo-Hall County line.

NOTE: Map follows.

New Mexico. An area of land, water, and airspace in Socorro County with the following component: All areas at or below 4,600

feet in elevation within Bosque del Apache National Wildlife Refuge.

NOTE: Map follows.

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Oklahoma. An area of land, water, and air-space in Alfalfa County with the following component: Salt Plains National Wildlife Refuge.

NOTE: Map follows.

Texas. An area of land, water, and air-space in Aransas, Calhoun, and Refugio Counties with the following boundaries: Beginning at the point where the north boundary of the Aransas National Wildlife Refuge intersects the shore of San Antonio Bay at

Webb Point; thence, from this point along a straight line across San Antonio Bay through the westernmost tip of Mosquito Point and inland to a point of intersection with metal surfaced road; thence eastward along a straight line across Espiritu Santo Bay to the intersection of the bay shore and a road at the east end of Pringle Lake on Matagorda Island; thence south along this road to the intersection with the main Matagorda Island road; southwestward along this main road to Cedar Bayou at latitude 28°04'10" N.; thence due west across Cedar Bayou, Vinson Slough, and Isla San Jose to Gulf Intracoastal Waterway platform channel marker No. 25; thence north to the southwest corner of the proclamation boundary, just south of Blackjack Point; thence north along the proclamation boundary into St. Charles Bay to a line drawn as an eastward extension of Twelfth Street on Lamar Peninsula; thence westward along this line to intersection with Palmetto Avenue; thence northward along a straight line to the southwest corner of the Aransas National Wildlife Refuge at Texas State Highway 35 and the north shore of Cavasso Creek; thence northeast on a straight line to the corner of the Aransas National Wildlife Refuge north boundary adjacent to triangulation station "Twin"; thence along the north boundary of said refuge to the starting point at Webb Point.

NOTE: Map follows.

AMERICAN PEREGRINE FALCON (*Falco peregrinus anatum*)

California. Dry Creek Zone: areas of land, water, and airspace in Sonoma County, with the following components (Mt. Diablo Base Meridian): (1) T10N R11W W½ of SW¼ Sec. 6, W½ of NW¼ Sec. 6, NW¼ of NW¼

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Sec. 7; T10N R12W Sec. 1, E½ of NE¼ Sec. 2, SW¼ of NE¼ Sec. 2, SE¼ Sec. 2, E½ of SW¼ Sec. 2, SE¼ of NW¼ Sec. 2, N¼ of NE¼ Sec. 11, NE¼ of NW¼ Sec. 11, N¼ of NE¼ Sec. 12, N¼ of NW¼ Sec. 12; T11N R11W SW¼ of SE¼ Sec. 31, S¼ of SW¼ Sec. 31; T11N R12W SE¼ of SE¼ Sec. 36, SE¼ of SW¼ Sec. 36; (2) T10N R11W NW¼ of SW¼ Sec. 1, W¼ of NW¼ Sec. 1, N¼ Sec. 2, N¼ of SE¼ Sec. 2, N¼ of SW¼ Sec. 2, N¼ Sec. 3, N¼ of SE¼ Sec. 3, N¼ of SW¼ Sec. 3, NE¼ Sec. 4, N¼ of SE¼ Sec. 4, NE¼ of SW¼ Sec. 4, E½ of NW¼ Sec. 4; T11N R11W E¼ of SE¼ Sec. 33, S¼ Sec. 34, S¼ Sec. 35, W¼ of SE¼ Sec. 36, SW¼ Sec. 36; (3) T11N R12W S¼ Sec. 19, Sec. 30; T11N R13W SE¼ Sec. 24, E½ of SW¼ Sec. 24, E½ Sec. 25, E½ of SW¼ Sec. 25, E½ of NW¼ Sec. 25.

Palladas-Table Rock Zone: an area of land, water, and airspace in Napa County, with the following components (Mt. Diablo Base Meridian): T9N R6W S¼ Sec. 5, S¼ Sec. 6, Sec. 7, Sec. 8, Sec. 9, Sec. 16, Sec. 17, Sec. 18, Sec. 19, Sec. 20; T9N R7W E¼ Sec. 12, E¼ Sec. 13, NE¼ Sec. 24, E½ of SE¼ Sec. 24.

Mount St. Helena Zone: An area of land, water, and airspace in Lake, Napa, and Sonoma counties, with the following components (Mt. Diablo Base Meridian): T9N R7W W¼ of NE¼ Sec. 3, W¼ of SE¼ Sec. 3, W¼ Sec. 3, Sec. 4, E½ Sec. 5, E½ of SW¼ Sec. 5, E½ of NW¼ Sec. 5; T10N R7W that portion of Sec. 20 east of Ida Clayton Road, Sec. 21, W¼ of NE¼ Sec. 22, W¼ of SE¼ Sec. 22, W¼ Sec. 22, W¼ of NE¼ Sec. 27, W¼ of SE¼ Sec. 27, W¼ Sec. 27, Sec. 28, that portion of Sec. 29 east of Ida Clayton Road, that portion of the NE¼ Sec. 32 east and south of Ida Clayton Road, SE¼ Sec. 32, E½ of SW¼ Sec. 32, that portion of the SE¼ of NW¼ Sec. 32 south of the Ida Clayton Road, Sec. 33, W¼ of NE¼ Sec. 34, W¼ of SE¼ Sec. 34, W¼ Sec. 34.

NOTE: Map follows.

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FLORIDA EVERGLADE KITE (*Rostrhamus sociabilis plumbeus*)

Florida. Areas of land (predominantly marsh), water, and airspace, with the following components (Tallahassee Meridian): (1) St. Johns Reservoir, Indian River County: T33S R37E SW¼ Sec. 6, W¼ Sec. 7, Sec. 18, Sec. 19; (2) Cloud Lake Reservoir, St. Lucie County: T34S R38E S¼ Sec. 16, N¼ Sec. 21; (3) Strazzulla Reservoir, St. Lucie County: T34S R38E SW¼ Sec. 21; (4) western parts of Lake Okeechobee, Glades and Hendry Counties, extending along the western shore to the east of the levee system and the undiked high ground at Fisheating Creek, and from the Hurricane Gate at Clewiston northward to the mouth of the Kissimmee River, including all the *Eleocharis* flats of Moonshine Bay, Monkey Box, and Observation Shoal, but excluding the open water north and west of the northern tip of Observation Shoal, north of Monkey Box, and east of Fisheating Bay; (5) Loxahatchee National Wildlife Refuge (Central and Southern Florida Flood Control District Water Conservation Area 1), Palm Beach County, including Refuge Management Compartments A, B, C, and D, and all of the main portion of the Refuge as bounded by Levees L-7, L-39, and L-40; (6) Central and Southern Florida Flood Control District Water Conservation Area 2A, Palm Beach and Broward Counties, as bounded by Levees L-6, L-35B, L-36, L-38, and L-39; (7) Central and Southern Florida Flood Control District Water Conservation Area 2B, Broward County, as bounded by Levees L-35, L-35B, L-36, and L-38; (8) Central and Southern Florida Flood Control District Water Conservation Area 3A, Broward and Dade Counties, as bounded by Florida Highway 84, Levees L-68A, L-67A (north of Miami Canal), L-67C (south of Miami Canal), L-29, and L-28, and a line along the undiked northwestern portion of the Area; (9) that portion of Everglades National Park, Dade County, within the following boundary: beginning at the point where the Park boundary meets Florida Highway 94 in T54S R35E Sec. 20, thence eastward and southwest along the Park boundary to the southwest corner of Sec. 31 in T7S R37E, thence southwestward along a straight line to the southwest corner of Sec. 2 in T58S R35E, thence westward along the south sides of Sec. 3, 4, 5, and 6 in T58S R35E to the Dade-Monroe county line, thence northward along the Dade-Monroe county line to the Park boundary, thence eastward and northward along the Park boundary to the point of beginning.

NOTE: Map follows.

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CRITICAL HABITAT FOR THE FLORIDA
EVERGLADE KITE

PALILA (*Psittirostra bailliei*)

Hawaii. An area of land, water, and airspace on the island of Hawaii, Hawaii County, with the following components: (1) The State of Hawaii Mauna Kea Forest Reserve, except (a) that portion above the 10,000 foot contour line, (b) that portion south of the Saddle Road (State Highway 20), (c) lands owned by the United States in the Pohakuloa Training Area north of the Saddle Road (State Highway 20) established by Executive Order 1719 (Parcel 6, State of Hawaii Tax Map Key 4-4-16, Third Division), (d) that portion (Parcel 10, Kaohi IV, State of Hawaii Tax Map Key 4-4-16, Third Division) lying north of the Saddle Road

(State Highway 20) and south of the Power Line Road; (2) that portion of the State of Hawaii Kaohi Game Management Area (Parcel 4, State of Hawaii Tax Map Key 4-4-15, Third Division) to the north and east of the Saddle Road (State Highway 20); (3) that portion of the Upper Waikii Paddock (Parcel 2, State of Hawaii Tax Map Key 4-4-15, Third Division) northeast of the Saddle Road (State Highway 20); (4) that portion of the lands of Humuula between Puu Kahinahina and Kole lying southeast of the Mauna Kea Forest Reserve fence (portions of Parcels 2, 3, and 7, State of Hawaii Tax Map Key 3-8-1, Third Division) which are included in the State conservation district.

NOTE: Map follows.

CAPE SABLE SPARROW (*Ammospiza maritima mirabilis*)

Florida. Areas of land, water, and airspace in the Taylor Slough vicinity of Collier, Dade, and Monroe counties, with the following components (Tallahassee Meridian): Those portions of Everglades National Park within T57S R36E, T57S, R36½E, T57S R37E, T58S R35E, T58S R36E, T58S R37E, T58½S R35E, T58½S R36½E T59S R35E, T59S, R36E, T59S R37E. Areas outside of Everglades National Park within T55S R37E Sec. 36; T55S R38E Sec. 31, 32; T56S R37E Sec. 1, 2, 11-14, 23-26; T56S R38E Sec. 5-7, 18, 19; T57S R37E Sec. 5-8, T58S R38E Sec. 27, 29-32; T59S R38E Sec. 4.

NOTE: Map follows.

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DUSKY SEASIDE SPARROW (*Ammodramus maritima nigrescens*)

Florida. Cordgrass (*Spartina bakeri*) savannas and associated land, water, and airspace within the following boundary. Brevard County: Beginning at the point where Florida Highway 528 intersects Interstate Highway 95; thence westward along Florida Highway 528 and 520 to the main channel of the St. Johns River; thence northward along said channel to Florida Highway 46; thence eastward along Florida Highway 46 to Interstate Highway 95; thence southward along Interstate Highway 95 to the point of beginning. Marshes and associated airspace within the mosquito control impoundments designated by the Brevard County Mosquito Control District as T-10-J and T-10-K, northwest of Florida Highway 406 on the Merritt Island National Wildlife Refuge, Brevard County.

NOTE: Map follows.

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INYO BROWN TOWHEE (*Pipilo fuscus eremophilus*)

California, Inyo County: lands within and adjacent to the China Lake Naval Weapons Center identified as follows:

- (1) Approximately 2.0 miles of streambed and ¼ mile on either side of the wash from Margaret Ann Spring and proceeding downstream to the eastern boundary of Section 3 near Snooky Spring. The above includes portions of Sections 3, 4, 9, and 10, T23S R42E. (Map location A)
- (2) A circle ¼ mile in radius with the spring in T23S R42E W¼ NE¼ Section 8 as the center. (Map location B)
- (3) Approximately 2 miles of streambed and ¼ mile on either side of the wash from Ruby Spring (T23S R42E, Section 22) and proceeding downstream to the boundary between Sections 25 and 26. The above includes portions of Sections 22, 23, 25, and 26, T23S R42E. (Map location C)
- (4) A circle ¼ mile in radius with Quail Spring as the center in T23S R42E, NE¼ Section 28. (Map location D)
- (5) A circle ¼ mile in radius with Benko Spring as the center in T23S R42E, Sections 34 and 35. (Map location E)
- (6) A circle ¼ mile in radius with Bench Mark 5485 (some USGS maps report this as 5484) near the common boundary of Sections 31 and 32, T23S R42E, as the center and lying within Sections 31 and 32. (Map location F)
- (7) T24S R42E, NW¼ NW¼ Section 2 and NE¼ NE¼ Section 3. (Map location G)
- (8) T24S R42E, E¼ SE¼ Section 6. (Map location H)
- (9) Approximately 1.8 miles of streambed and ¼ mile on either side of Great Falls

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Basin Wash commencing from the western boundary of E $\frac{1}{4}$ Section 11, T24S R42E, and proceeding downstream along the streambed to the eastern boundary of Section 13. The above includes portions of Sections 11, 12, 13, and 14, T24S R42E. (Map location I)

(10) Circles with $\frac{1}{4}$ mile radii around Mumford and Austin Springs in T24S R43E, Section 7 and Bainter Spring in Section 18 and around Indian Joe Spring in T24S R42E Section 24. (Map locations J)

(11) Approximately 5 miles of streambed and $\frac{1}{4}$ mile on either side of Mountain Springs Canyon commencing from the southern border of Section 8 and continuing along the streambed to the point at which Mountain Springs Canyon Wash intersects the eastern boundary of SW $\frac{1}{4}$ Section 12. The above includes portions of Sections 8, 9, 10, 11, 12, 13, 14, and 17, T23S R41E. (Map location K)

Major constituent element: desert riparian scrub vegetation.

(c) Reptiles.

MONITO GECKO (*Sphaerodactylus micropithecus*)

Puerto Rico—Isla Monito, entire island.

NOTE: Map follows.

MONA BOA (*Epicrates monensis monensis*)

Commonwealth of Puerto Rico. Mona Island—entire island.

NOTE: Map follows.

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GIANT ANOLE (*Anolis roosevetti*)

NOTE: No text. Map follows.

AMERICAN CROCODILE (*Crocodylus acutus*)

Florida. All land and water within the following boundary: Beginning at the easternmost tip of Turkey Point, Dade County, on the coast of Biscayne Bay; thence south-eastward along a straight line to Christmas Point at the southernmost tip of Elliott Key; thence southwestward along a line following the shores of the Atlantic Ocean side of Old Rhodes Key, Palo Alto Key, Angle-

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fish Key, Key Largo, Plantation Key, Wind-ley Key, Upper Matecumbe Key, Lower Ma-tecumbe Key, and Long Key, to the west-ernmost tip of Long Key; thence North-westward along a straight line to the west-ernmost tip of Middle Cape; thence north-ward along the shore of the Gulf of Mexico to the north side of the mouth of Little Sable Creek; thence eastward along a straight line to the northernmost point of Nine-Mile Pond; thence northeastward along a straight line to the point of begin-ning.

NOTE: No map.

MONA GROUND IGUANA (*Cyclura stenegei*)

Commonwealth of Puerto Rico. Mona Island—entire island.

NOTE: Map follows.

COACHELLA VALLEY FRINGE-TOED LIZARD (*Uma inornata*)

California. Riverside County. S $\frac{1}{4}$ Section 5, SE $\frac{1}{4}$ Section 6, E $\frac{1}{4}$ Section 7, all of sections 8 through 11, W $\frac{1}{4}$ Section 12, W $\frac{1}{4}$ Section 13, all of sections 14 through 16, E $\frac{1}{4}$ Section 17, E $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, E $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, all of sections 21 through 26, E $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ Section 27, all of sections 35 and 36, T4S R6E.

NOTE: Map follows.

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ST. CROIX GROUND LIZARD (*Ameiva polops*)

U.S. Virgin Islands. Protestant Cay, roughly defined by the coordinates 64°42'15" N. and 17°45'7.5" W.; and Green Cay, roughly defined by the coordinates 67°37'30" N. and 17°46'15" W.

NOTE: Map follows.

NEW MEXICAN RIDGE-NOSED RATTLESNAKE
(*Crotalus willardi obscurus*)

New Mexico. Hidalgo County. Elevations between 6,200 feet and 8,532 feet in Bear,

Indian, and Spring Canyons, Animas Mountains.

NOTE: Map follows.

BEAVER DAM SLOPE POPULATION OF THE
DESERT TORTOISE (*Gopherus agassizii*)

Utah. Washington County. E½ Sections 13 and 24, T43S R20W; S½ Section 7, all of Sections 8 through 28, E½ Section 29, SE¼ Section 5, SW¼ Section 4, T43S R19W; all of Sections 7 through 10, 15 through 22, 28 through 30, and W½ Section 27, T43S R18W.

NOTE: Map follows.

BEAVER DAM SLOPE POPULATION

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HAWKSBILL SEA TURTLE (*Eretmochelys imbricata*)

Puerto Rico: (1) Isla Mona. All areas of beachfront on the west, south, and east sides of the island from mean high tide inland to a point 150 meters from shore. This includes all 7.2 kilometers of beaches on Isla Mona. (2) Culebra Island. The following areas of beachfront on the north shore of the island from mean high tide inland to a point 150 meters from shore: Playa Resaca, Playa Brava, and Playa Larga. (3) Cayo Norte. South beach, from mean high tide inland to a point 150 meters from shore. (4) Isla Culebrita. All beachfront areas on the southwest facing shore, east facing shore, and northwest facing shore of the island from mean high tide inland to a point 150 meters from shore.

NOTE: Maps follow.

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LEATHERBACK SEA TURTLE (*Dermochelys coriacea*)

U.S. Virgin Islands—A strip of land 0.2 mile wide (from mean high tide inland) at

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Sandy Point Beach on the western end of the island of St. Croix beginning at the southwest cape to the south and running 1.2 miles northwest and then northeast along the western and northern shoreline, and from the southwest cape 0.7 mile east along the southern shoreline.

NOTE: Map follows.

PLYMOUTH RED-BELLIED TURTLE (*Chrysemys rubriventris bangsi*)

Massachusetts (Plymouth County).

An area including Briggs Reservoir, Cooks Pond, Little South Pond, South Triangle Pond, Great South Pond, Powderhorn Pond, Boat Pond, Hoyte Pond, Gunners Exchange Pond, Crooked Pond and Island Pond as follows: Beginning at the intersection of the centerline of the right-of-way of the Boston Edison and New Bedford Gas and Edison Light Company transmission lines and the westerly right-of-way line of Long Pond Road, thence southeasterly, along the westerly right-of-way line of Long Pond Road, 10,370 feet to the intersection of the said right-of-way line and the boundary line of the Myles Standish State Forest; thence southerly and westerly, along the

boundary line of the Myles Standish State Forest, crossing and re-crossing Snake Hill Road, 11,200 feet, more or less; thence westerly, leaving the boundary line of the State Forest, 1,550 feet, more or less, to the boundary line of the Myles Standish State Forest; thence westerly, along the boundary line of the Myles Standish State Forest, 9,180 feet, more or less, to the intersection of the boundary of the said State Forest and the easterly right-of-way line of the Algonquin Gas Transmission Company pipeline; thence northerly, along the easterly right-of-way line of the said pipeline, 6,223 feet, more or less, to the intersection of the easterly right-of-way line of the said pipeline and the northerly right-of-way line of Kings Pond Plain Road; thence northeasterly, along the northerly right-of-way line of said road 3,100 feet to a point; thence northerly, 800 feet, more or less, to the southerly right-of-way line of the Boston Edison and New Bedford Gas and Edison Light Company transmission lines; thence northwesterly, along the southerly right-of-way base of the said transmission lines, 4,150 feet, more or less, to the intersection of the southerly right-of-way line of the said transmission lines and the easterly right-of-way line of the Algonquin Gas Transmission Company pipeline; thence northerly, along the easterly right-of-way line of the said pipeline, 2,500 feet, more or less, to the intersection of the easterly right-of-way line of the said pipeline and the southerly right-of-way line of Black Cat Road; thence southeasterly, along the southerly right-of-way line of said road, crossing South Pond road and continuing southeasterly, along the southerly right-of-way line of an unnamed road, 10,370 feet, more or less, to a point; thence southerly 2,300 feet, more or less, to the northerly right-of-way line of the Boston Edison and New Bedford Gas and Edison Light Company transmission lines, thence easterly, along the northerly right-of-way line of the said transmission lines, 1,300 feet, more or less, to the intersection of the northerly right-of-way line of the said transmission lines and the westerly right-of-way line of Long Pond Road; thence southerly, along the westerly right-of-way line of said road, 100 feet, more or less, the place of beginning.

NOTE: Map follows.

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7741 and 738 along Highway 738 to its junction with Highway 15.

NOTE: Maps follow.

(d) Amphibians.

GOLDEN COQUI (*Eleutherodactylus jasper*)

Puerto Rico. Areas of land, water and air-space with the following components: (1) Cerro Avispa-elevation above 700 meters on the south and southeastern slope of the mountain: from the northern junction of Highway 715 and an unnumbered dirt road southeast and southwest along Highway 715 to the southern junction with the same unnumbered dirt road and Highway 715, north and northeast along the unnumbered dirt road just below the southeast facing crest of Cerro Avispa to its junction with Highway 715.

(2) Monte el Gato-entire summit above 700 meters: from the junction of Highway 715 to the junction of Highway 715 and the 700 meter contour interval west along Highway 715 to the junction of Highway 715 and an unnumbered road, north and northeast along this road to where it crosses the 700 meter contour interval, and east along the 700 meter contour interval to where it crosses Highway 715.

(3) Sierra de Cayey-elevations above 700 meters: southeast from the junction of Highways 738 and 15 along Highway 15 to point .5 kilometer south of Benchmark 684.5, northeast from this point in a line to a point on Highway 7741 two kilometers south of the junction of Highway 738 and 7741, north and northwest along Highway 7741 to its junction with Highway 738, and northwest from the junction of Highways

Refer to 7.5 minute U.S.G.S. Topographical Map, Cayey, Puerto Rico, 1972.

NOTE: Map follows.

SAN MARCOS SALAMANDER (*Eurycea nana*)

Texas, Hays County; Spring Lake and its outflow, the San Marcos River, downstream approximately 50 meters from the Spring Lake Dam.

NOTE: Map follows.

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HOUSTON TOAD (*Bufo houstonensis*)

Texas: Areas of land, water, and airspace as follows:

(1) *Bastrop County*. From the junction of a line corresponding to 30°12'00" N. and Texas State Highway 95 east along a line corresponding to 30°12'00" N. to where it intersects a line corresponding to 97°7'30" W. and south along a line corresponding to 97°7'30" W. to where it intersects the Colorado River, west and northwest along the north bank of the Colorado River to the due southward extension of Texas State Highway 95, and north along that extension and Texas State Highway 95 to where it intersects a line corresponding to 30°12'00" N.

NOTE: Map follows.

(2) *Burleson County*. A circular area with a 1-mile radius, the center being the north entrance to Lake Woodrow from Texas FM 2000.

NOTE: Map follows.

(e) Fishes.

YAQUI CATFISH (*Ictalurus pricei*)

Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S R30E.

Known constituent elements include clean unpolluted permanent water in streams with medium current with clear pools in the

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Rio Yaqui drainage. These waters should be without introduced exotic fishes.

NOTE: Map follows.

ALABAMA CAVEFISH (*Speoplatyrhinus poulsoni*)

Alabama. Lauderdale County. More Specific locality data for Federal agencies fulfilling their obligations under Section 7 of the Endangered Species Act of 1973 can be obtained from the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

NOTE: No map.

BORAX LAKE CHUB (*Gila boraxobius*)

Oregon. Harney County. Borax Lake and environments associated with the outflow from Borax Lake located within SW¼ Sec. 11, W¼ Sec. 14, E¼ of the SE¼ Sec. 15, and the SE¼ of the NE¼ Sec. 15; T37S; R33E.

NOTE: Map follows.

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OWENS TUI CHUB (*Gila bicolor snyderi*)

CALIFORNIA, MONO COUNTY

1. Hot Creek, adjacent springs and their outflows in the vicinity of Hot Creek Hatchery, and 50 feet of riparian habitat on all sides of the creek and springs in T3S, R28E, SW¼ Section 35.

NOTE: Map follows.

2. Owens River, and 50 feet on both sides of the river, from Long Valley Dam downstream for 8 stream miles in T4S, R30E, Sections 19, 20, 21, 22, 23, 24, 25, and 36.

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NOTE: Map follows.

Known constituent elements include high quality, cool water with adequate cover in the form of rocks, undercut banks, or aquatic vegetation and a sufficient insect food base.

SLENDER CHUB (*Hybopsis cahrti*)

Tennessee. Claiborne and Hancock Counties. Powell River, main channel from backwaters of Norris Lake upstream to the Tennessee-Virginia State line. Clinch River, main channel from backwaters of Norris Lake upstream to the Tennessee-Virginia State line.

Virginia. Lee and Scott Counties. Powell River, main channel from the Tennessee-Virginia State line upstream through Lee County, Va. Clinch River, main channel from the Tennessee-Virginia State line upstream through Scott County, Va.

NOTE: Map follows.

SONORA CHUB (*Gila ditaenia*)

Arizona, Santa Cruz County. An area of land and water in the Coronado National Forest, consisting of the following:

1. Sycamore Creek, and a riparian zone 25 feet wide along each side of the creek, from Yank's Spring downstream approximately 5 stream miles to the International Border with Mexico within sections 14, 22, 23, 27, 33, and 34, T. 23 S.; R. 11 E.

2. Yank's Spring in the SE¼ of the NW¼ of sec. 14, T. 23 S.; R. 11 E.

3. Penasco Creek, including a riparian zone 25 feet wide along each side of the creek, from its confluence with Sycamore Creek (SW¼ of the SW¼ of sec. 23, T. 23 S.; R. 11 E.) upstream approximately 1¼ miles to the east boundary of sec. 26, T. 23 S. R. 11 E.;

4. An unnamed tributary to Sycamore Creek, from its confluence with Sycamore Creek (SW¼ of the NW¼ of sec. 23, T. 23 S.; R. 11 E.) upstream approximately ¼ mile to

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the west boundary of the NE¼ of the SE¼
of the NE¼ sec. 22, T. 23 S.; R. 11 E.

NOTE: Map follows:

Known primary constituent elements include clean permanent water with pools and intermediate riffle areas and/or intermittent pools maintained by bedrock or by subsurface flow in areas shaded by canyon walls.

SPOTFIN CHUB (*Hybopsis monacha*)

North Carolina. Macon and Swain Counties. Little Tennessee River, main channel from the backwaters of Fontana Lake upstream to the North Carolina-Georgia State line.

NOTE: Map follows..

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Tennessee. Cumberland, Fentress, and Morgan Counties. Emory and Obed Rivers and Clear and Daddys Creek in Morgan County. Clear Creek in Fentress County: Obed River upstream to U.S. Interstate Highway 40, Clear Creek upstream to U.S. Interstate Highway 40 and Daddys Creek upstream to U.S. Highway 127 in Cumberland County.

NOTE: Map follows.

Tennessee. Hawkins and Sullivan Counties. North Fork Holston, main channel upstream from junction with South Fork Holston River to the Tennessee-Virginia State line.

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Virginia, Scott and Washington Counties. North Fork Holston River, main channel from the Virginia-Tennessee State line upstream through Scott and Washington Counties.

NOTE: Map follows.

YAQUI CHUB (*Gila purpurea*)

Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean permanent water with deep pools and intermediate areas with riffles, areas of detritus or heavily overgrown cut banks in the Rio Yaqui drainage, and the absence of introduced exotic fishes.

NOTE: Map follows.

ASH MEADOWS SPECKLED DACE (*Rhinichthys osculus nevadensis*)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters (164 feet) from these springs and outflows:

Bradford Springs in Section 11, T18S, R50E, and their outflows for a distance of 300 meters (984 feet) from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24 in T18S, R50E and Section 19, T18S, R51E.

Big Spring and its outflow to the boundary between Section 19, T18S, R51E and Section 24, T18S, R50E.

NOTE: Map follows.

Known constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

DESERT DACE (*Eremichthys acros*)

Nevada, Humboldt County. Thermal springs and their outflows plus surrounding riparian areas for a distance of 50 feet from these springs and outflows in T40N, R25E, SW¼ Section 5, NW¼NW¼ Section 8, W¼ Section 18, W¼SW¼ Section 19; T40N, R24E, Section 23, N¼SE¼ and S¼NE¼ Sec-

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tion 24, SE¼ Section 25, N¼ Section 25, and
N¼ Section 26.

NOTE: Map follows.

Primary constituent elements of the habitat are considered to be quantity, and thermal and chemical quality of water in head-pools and spring outflow streams; presence of a stable, natural substrate supporting food plants for the fish; and length of outflow streams; adequate for seasonal movements in response to changes of water temperature.

AMBER DARTER (*Percina antesella*)

Tennessee and Georgia: Conasauga River from the U.S. Route 411 bridge in Polk County, Tennessee, downstream approximately 33.5 miles through Bradley County, Tennessee and Murray and Whitfield Counties, Georgia, to the Tibbs Bridge Road bridge (Murray County Road 109 and Whitfield County Road 100).

Constituent elements include high quality water, riffle areas (free of silt) composed of sand, gravel, and cobble, which becomes vegetated primarily with *Podostemum* during the summer.

NOTE: Map follows.

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FOUNTAIN DARTER (*Etheostoma fonticola*)

Texas, Hays County; Spring Lake and its outflow, the San Marcos River, downstream approximately 0.5 miles below Interstate Highway 35 bridge.

NOTE: Map follows.

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LEOPARD DARTER (*Percina pantherina*)

Oklahoma. McCurtain and Pushmataha Counties. Little River, main channel in Pushmataha County from mouth of Cloudy Creek (T. 3 S.; R. 20 E.; Section 3) upstream to the Pushmataha-Le Flore County line. Black Fork Creek in McCurtain County from its junction with Little River (T. 1 S.; R. 20 E.; Section 22) upstream to Oklahoma Highway 144 crossing (T. 1 S.; R. 19 E.; Section 12). Glover Creek, main channel in McCurtain County from Oklahoma Highway 7 crossing (T. 5 S.; R. 23 E.; Section 28) upstream to the junction of the East Fork and West Fork of Glover Creek. East Fork and West Fork of Glover Creek. East Fork of Glover Creek, main channel in Pushmataha County from its junction with the West Fork Glover Creek (T. 3 S.; R. 23 E.; Section 7) upstream to 4 air miles north-northeast of the community of Bethel (T. 2 S.; R. 24 E.; Section 5). West Fork Glover Creek, main channel in McCurtain County from its junction with the East Fork Glover Creek upstream to the community of Battiest (T. 2 S.; R. 23 E.; Section 7). Mountain Fork Creek, main channel in McCurtain County, from mouth of Boktukola Creek (T. 2 S.; R. 25 E.; Section 9), 6 air miles south-southwest of Smithville, upstream to the Oklahoma-Arkansas State line.

Arkansas. Polk County. Mountain Fork Creek, main channel from the Arkansas-Oklahoma State line upstream to the community of Mountain Fork (T. 1 S.; R. 32 W.; Section 29).

NOTE: Map follows.

MARYLAND DARTER (*Etheostoma sellare*)

Maryland (Harford County): (1) Deer Creek main channel from the junction with Elbow Branch thence downstream to the junction with the Susquehanna River. (2) Gasheys Run (also known as Gasheys Creek) main channels of east and west forks from their overcrossing by old Penn Central Railroad (presently titled to National Railroad Passenger Corporation, Amtrak) south to their confluence, thence south to the confluence with Swan Creek.

NOTE: Map follows.

Constituent elements of this habitat are considered to be quality and permanence of streamflow in shallow areas of the streams (riffles), and presence of unsilted rocky crevices for shelter and production of aquatic insects and snails for food.

NIANGUA DARTER (*Etheostoma nianquae*)

Missouri. Big Tavern Creek, Miller County. Big Tavern Creek and 50 feet along each side of the creek from Highway 52 upstream to Highway 17.

NOTE: Map follows.

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Missouri. Niangua River, Dallas County. Niangua River and 50 feet on each side of the river from county road K upstream to 1 mile beyond county road M to the Webster County line.

Missouri. Pomme de Terre River, Greene County. Pomme de Terre River and 50 feet on each side of the river from Highway 65 upstream to the Webster County line.

NOTE: Map follows.

Missouri. Brush Creek, Cedar, and St. Clair Counties. Brush Creek and 50 feet on each side of the creek from 1000 feet upstream of county road J to the boundary of

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Sections 34 and 35, Township 36 N, Range 25 W.

NOTE: Map follows.

Missouri. Little Niangua River, Camden, Dallas, and Hickory Counties. Little Niangua River and 50 feet on each side of the river from 1 mile below (downstream of) Highway 54, Camden County, to county road E, Dallas County.

NOTE: Map follows.

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Constituent elements, for all areas designated as critical habitat, consist of medium-sized creeks with silt-free pools and riffles and moderately clear water draining hilly areas underlain by chert and dolomite. Water ranges from 8 to 46 inches in depth over gravel with scattered rubble.

SLACKWATER DARTER (*Etheostoma boschungii*)

Alabama. Lauderdale County. All permanent and intermittent streams with flowing water from December to June tributary to Cypress Creek and its tributaries upstream from the junction of Burcham Creek, including Burcham Creek, excluding Threet Creek and its tributaries.

Tennessee. Wayne County. All permanent and intermittent streams with flowing water from December to June tributary to Cypress and Middle Cypress Creek drainage.

NOTE: Maps follow.

Tennessee. Lawrence County. Buffalo River and its tributaries in Lawrence County, Tenn.

SAN MARCOS GAMBUSIA (*Gambusia georgei*)

Texas, Hays County; San Marcos River from Highway 12 bridge downstream to approximately 0.5 miles below Interstate Highway 35 bridge.

NOTE: Map follows.

CONASAUGA LOGPERCH (*Percina jenkinsi*)

Tennessee and Georgia: Conasauga River from the confluence of Halfway Branch with the Conasauga River in Polk County, Tennessee, downstream approximately 11

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miles to the Georgia State Highway 2 Bridge, Murray County, Georgia.

Constituent elements include high quality water, pool areas with flowing water and silt free riffles with gravel and rubble substrate, and fast riffle areas and deeper chutes with gravel and small rubble.

NOTE: Map follows.

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SMOKY MADTOM (*Noturus baileyi*)

Tennessee, Monroe County, Citico Creek, Cherokee National Forest. Citico Creek from the Cherokee National Forest boundary at upper Citico Bridge on Mountain Settlement Road (approximately creek mile 4.3) upstream to the confluence of Citico Creek with Barkcamp Branch (approximately creek mile 10.8).

Constituent elements of the critical habitat include the present good water quality in Citico Creek and run/pool areas with relatively silt-free pea-size gravel substrate containing scattered large flat rocks for breeding habitat. The species utilizes palm-size slab rocks for cover and relatively silt-free riffle areas during other times of the year. The area designated as critical habitat provides the smoky madtom with all of the necessary constituent elements for completion of its life cycle.

NOTE: Map follows.

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YELLOWFIN MADTOM (*Noturus flavipinnis*)

Tennessee, Claiborne and Hancock Counties. Powell River, main channel from backwaters of Norris Lake upstream to the Tennessee-Virginia State line.

Virginia, Lee, Scott, and Russell Counties. Powell River, main channel from the Virginia-Tennessee State line upstream through

Lee County. Copper Creek, main channel from its junction with Clinch River upstream through Scott County and upstream in Russell County to Dickensonville.

NOTE: Map follows.

CRITICAL HABITAT FOR THE YELLOWFIN MADTOM

CRITICAL HABITAT FOR THE SLENDER CHUB

ASH MEADOWS AMARGOSA PUFFISH (*Cyprinodon nevadensis mionectes*)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters (164 feet) from these springs and outflows:

Fairbanks Spring and its outflow to the boundary between Sections 9 and 10, T17S, R50E.

Rogers Spring and its outflows to the boundary between Sections 15 and 16, T17S, R50E.

Longstreet Spring and its outflow to the boundary between Sections 15 and 22, T17S, R50E.

Three unnamed springs in the northwest corner of Section 23, T17S, R50E, and each of their outflows for a distance of 75 meters (246 feet) from the spring.

Crystal Pool and its outflow for a distance of 400 meters (1,312 feet) from the pool.

Bradford Springs in Section 11, T18S, R50E, and their outflows for a distance of 300 meters (984 feet) from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24, T18S, R50E and Section 19, T18S, R51E.

Big Spring and its outflow to the boundary between Section 19, T18S, R51E and Section 24, T18S, R50E.

Point of Rocks Springs and their entire outflows within Section 7, T18S, R51E.

NOTE: Map follows.

Known constituent elements include warm-water springs and their outflows and

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surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which this species feeds.

DESERT PUFFISH (*Cyprinodon macularius*)

Arizona: Pima County. 1. *Quitobaquito Spring*, approximately 25 miles WNW Lukeville, Arizona in Organ Pipe Cactus National Monument, in T17S R8N; and a 100-foot riparian buffer zone around the spring.

NOTE: Map follows.

California: Imperial County.

1. *San Felipe Creek*. Approximately 8½ stream miles and 100 feet on either side of San Felipe Creek or the stream channel commencing at the State Highway 36 bridge crossing (approximately ¼ mile south of intersection of Hwy. 78 and Hwy. 86) upstream to the eastern boundary of Section 31, T12S; R10E; including those areas of the stream channel in: T12S; R11E; Section 17, 18, and 19; T12S; R10E; Section 22, 23, 24, 26, 27, 28, 29, and 32.

2. *Carrizo Wash*. Approximately 1¼ stream miles and 100 feet on either side of or the stream channel commencing at the confluence of Carrizo Wash with San Felipe Creek upstream to the southern boundary of N¼ Section 33; T12S; R10E; including those areas of the stream channel in T12S; R10E; Section 27, 28, and N¼ Section 33.

3. *Fish Creek Wash*. Approximately three-fourths of one stream mile and 100 feet on either side of the stream channel from the confluence of Fish Creek Wash with San Felipe Creek upstream to the southern boundary of N¼ Section 32; T12S; R10E; including those areas of the stream channel in T12S; R10E; Section 29 and N¼ Section 32.

NOTE: Map follows.

Constituent elements for all four areas designated as critical habitat include clean unpolluted water that is relatively free of exotic organisms, especially exotic fishes, in small slow-moving desert streams and spring pools with marshy backwater areas.

LEON SPRINGS PUFFISH (*Cyprinodon bovinus*)

Texas, Pecos County. Diamond Y Spring and its outflow stream, Leon Creek; from the head of Diamond Y Spring downstream in Leon Creek to a point 1 mile northeast of the Texas Highway 18 crossing, approximately 10 miles north of Fort Stockton.

NOTE: Map follows.

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BEAUTIFUL SHINER (*Notropis formosus*)

Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include small permanent streams with riffles, or intermittent creeks with pools and riffles in the Rio Yaqui drainage with clean unpolluted water. These waters should be free of introduced exotic fishes.

NOTE: Map follows.

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CAPE FEAR SHINER (*NOTROPIS MEKISTOCHOLAS*)

(1) *North Carolina*. Chatham County. Approximately 4.1 river miles of the Rocky River from North Carolina State Highway 902 Bridge downstream to Chatham County Road 1010 Bridge;

(2) *North Carolina*. Chatham and Lee Counties. Approximately 0.5 river mile of Bear Creek, from Chatham County Road 2156 Bridge downstream to the Rocky River, then downstream in the Rocky River (approximately 4.2 river miles) to the Deep River, then downstream in the Deep River (approximately 2.6 river miles) to a point 0.3 river mile below the Moncure, North Carolina, U.S. Geological Survey Gaging Station; and

(3) *North Carolina*. Randolph and Moore Counties. Approximately 1.5 river miles of Fork Creek, from a point 0.1 river mile upstream of Randolph County Road 2873 Bridge downstream to the Deep River then downstream approximately 4.1 river miles of the Deep River in Randolph and Moore Counties, North Carolina, to a point 2.5 river miles below Moore County Road 1456 Bridge.

NOTE: Map follows.

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PECOS BLUNTNOSSE SHINER (*Notropis simus pecosensis*).

1. New Mexico: De Baca and Chaves Counties. Pecos River from point at the north boundary of NE ¼ Sec. 2; T1N; R26E (approximately 10 mi. (16 km.) south of Fort Sumner) extending downstream approximately 64 mi. (103 km.) to a point at the south boundary SW ¼ Sec. 35; T5S; R25E.

NOTE: Map follows.

2. New Mexico. Chaves and Eddy Counties. Pecos River from the west boundary NW ¼ Sec. 7; T14S; R27E, extending downstream approximately 37 mi. (60 km.) to the NW ¼ Sec. 18; T17S; R27E (to the U.S. highway 82 bridge near Artesia).

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NOTE: Map follows.

Constituent elements include clean, permanent water; a main river channel habitat with sandy substrate; and a low velocity flow.

WACCAMAW SILVERSIDE (*Menidia extensa*)

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North Carolina, Columbus County. Lake Waccamaw in its entirety to mean high water level, and Big Creek from its mouth at Lake Waccamaw upstream approximately 0.6 kilometer (0.4 mile) to where the creek is crossed by County Road 1947.

Constituent elements include high quality clear open water, with a neutral pH and clean substrate.

BIG SPRING SPINEDACE (*Lepidomeda mollispinis pratensis*)

Nevada, Condor Canyon, Lincoln County. Four stream miles of Meadow Vally Wash and 50 feet on either side of the stream as it flows through the following sections: T. 1 S., R. 68 E., Sections 13, 23, 24, 26, 27, and 28.

Known constituent elements include clean permanent flowing spring-fed stream with deep pool areas and shallow marshy areas along the shore and the absence of exotic fishes.

NOTE: Map follows.

LITTLE COLORADO SPINEDACE (*Lepidomeda vittata*)

Arizona:

1. Coconino County. East Clear Creek; approximately 18 miles of stream extending from the confluence with Leonard Canyon (NE ¼ Sec. 11 T14N R12E) upstream to the Blue Ridge Reservoir dam (SE ¼ Sec. 33 T14N R11E), and approximately 13 miles of stream extending from the upper end of Blue Ridge Reservoir (east boundary SE ¼ Sec. 36 T14N R10E) upstream to Potato Lake (NE ¼ Sec. 1 T12N R9E).

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2. Navajo County. Chevelon Creek; approximately 8 miles of stream extending from the confluence with the Little Colorado River (NW¼ Sec. 23 T18N R17E) upstream to Bell Cow Canyon (SE¼ of the SW¼ Sec. 11 T17N R17E).

3. Apache County. Nutrioso Creek; approximately 5 miles of stream extending from the Apache-Sitgreaves National Forest boundary (north boundary Sec. 5 T8N

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R30E) upstream to the Nelson Reservoir dam (NE¼ Sec. 29 T8N R30E).

Constituent elements, for all areas of critical habitat, include clean, permanent flowing water, with pools and a fine gravel or silt-mud substrate.

WHITE RIVER SPINEDACE (*Lepidomeda albivallis*)

Nevada, White Pine County. Each of the following springs and outflows plus surrounding land areas for a distance of 50 feet from these springs and outflows:

Preston Big Spring and associated outflows within T12N, R61E, NE ¼ Sec. 2.

Lund Spring and associated outflows within T11N, R62E, NE ¼ of NE ¼ of Sec. 4; T12N, R62E, S ¼ of SE ¼ Sec. 33.

NOTE: Map follows.

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1. Nevada, Nye County, Lockes Area. North, Hay Corral, Big, and Reynolds Springs and their outflow pools, streams, and marshes, and a 50-foot riparian zone around the springs, outflow pools, streams, and marshes in T8N, R55E, SW¼ Sec. 11, NW¼ Sec. 14, SW¼ Sec. 14, SE¼ Sec. 15, NE¼ Sec. 15, SW¼ Sec. 15.

NOTE: Map follows.

Known constituent elements for all areas of critical habitat of the Railroad Valley springfish include clear, unpolluted thermal spring waters ranging in temperature from 29° to 36°C in pools; flowing channels;

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marshy areas with aquatic plants, insects, and mollusks.

WHITE RIVER SPRINGFISH (*Crenichthys baileyi baileyi*)

Nevada, Lincoln County. Ash Springs and associated outflows plus surrounding land areas for a distance of 50 feet from the springs and outflows within the following areas: T6S, R60E, E¼ of E¼ Sec. 1 and T6S, R61E, NW¼ of NW¼ Sec. 6.

NOTE: Map follows.

Known constituent elements include warmwater springs and their outflows and surrounding land areas that provide vegetation for cover and habitat or insects and other invertebrates on which the species feeds.

JUNE SUCKER (*Chasmistes liorus*)

Utah, Utah County. Provo River, Sec. 5, T7S, R2E; to Sec. 36, T6S, R2E, the lower 7.8 kilometers (4.9 miles) of the main channel of the river as measured from its confluence with Utah Lake, upstream to the Tanner Race diversion.

NOTE: Map follows.

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Known constituent elements of the critical habitat include one to three feet of high quality water constantly flowing over a clean, unsilted gravel substrate. Larval June suckers require shallow areas with low velocities connected to the main channel of the river.

MODOC SUCKER (*Catostomus microps*)

California, Modoc County.

1. Turner Creek. Approximately 4.5 stream miles and 50 feet on either side of the stream channel from the juncture of Turner Creek with the Pit River upstream to T42N, R8E, Section 20; including those areas of the stream channel in T41N, R8E, Sections 1 and 2; and in T42N, R8E, Sections 21, 27, 28, 34, and 35.

2. Washington Creek. Approximately 4 stream miles and 50 feet on either side of the stream channel from the juncture of Washington Creek with Turner Creek to T42N, R8E, Section 11; including those areas of the stream channel in T42N, R8E, Sections 14, 23, 24, 25, 26, and 35. Also Coffee Mill Gulch, a tributary of Washington Creek, for approximately 1.5 miles and 50 feet on either side of the stream channel from the juncture of this tributary with Washington Creek upstream to T42N, R8E, Section 22; including those areas of the stream channel in T42N, R8E, Sections 22, 23, and 26.

3. Hulbert Creek. Approximately 3.5 stream miles and 50 feet on either side of the stream channel from the juncture of Hulbert Creek with Turner Creek upstream to T42N, R8E, Section 31; including those areas of the stream channel in T42N, R8E, Sections 29, 30, 32, 33, 34, and 35; and Cedar Creek, a tributary of Hulbert Creek, for approximately 1.5 stream miles and 50 feet on either side of the stream channel from the juncture of Cedar Creek with Hulbert Creek upstream to Cedar Spring; including those areas of the stream channel in T41N, R8E, Section 4; and in T42N, R8E, Section 33.

NOTE: Map follows:

4. Johnson Creek. Approximately 4 stream miles and 50 feet on either side of the stream channel from the juncture of Johnson Creek with Rush Creek upstream to T40N, R10E, Section 6; including those areas of the stream channel in T40N, R9E, Sections 1, 11, 12, 14, 23, and 24. Also in unnamed tributary of Johnson Creek in Rice Flat, for approximately 1 stream mile and 50 feet on either side of the stream channel from the juncture of this tributary with Johnson Creek upstream to T40N, R9E, Section 10; including those areas of the stream channel in T40N, R9E, Sections 11 and 14. Also in unnamed tributary of Johnson Creek in Higgins Flat, for approximately 1 stream mile and 50 feet on either side of the stream channel from the juncture of this tributary with Johnson Creek upstream to T40N, R9E, Section 10; including those areas of the stream channel in T40N, R9E, Sections 14 and 15.

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5. Rush Creek. Approximately 5 stream miles and 50 feet on either side of the stream channel from the gauging station at the State Route 299 crossing upstream to T40N, R10E, Section 16; including those areas of the stream channel in T40N, R9E, Sections 24, 25, 26, 35, and 36; and in T40N, R10E, Sections 17, 18, and 19.

NOTE: Map follows.

Known constituent elements include intermittent and permanent-water creeks, and adjacent land areas that provide vegetation for cover and protection from soil erosion.

WARNER SUCKER (*Catostomus warnerensis*)

Oregon: Lake County.

1. Twelvemile Creek—Approximately 4 stream miles and 50 feet on either side of the stream commencing at the confluence of Twelvemile Creek and Twentymile Creek and extending upstream, and including those portions of Twelvemile Creek in T40S, R23E, Section 35; and T41S, R23E, Sections 1, 2, 12, 13, 23, and 24.

2. Twentymile Creek—Approximately 18 stream miles and 50 feet on either side of the stream commencing about 9 miles upstream of the junction of Twelvemile and Twentymile Creeks and extending to a point about 9 miles downstream of the junction, and including those portions of Twentymile

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Creek in T40S, R22E, Sections 25, 35, and 36; T40S, R23E, Sections 19, 20, 24, 25, 28, 29, 30, 33, 34, 35 and 36; T40S, R24E, Sections 15, 16, 19, 20, 21, 22, 28, 29, 30; and T41S, R23E, Sections 2 and 3.

NOTE: Map follows.

3. Spillway Canal north of Hart Lake—Approximately 2 stream miles and 50 feet on either side of the waterway commencing at its confluence with Hart Lake and extending to a point about 2 miles downstream, and including those portions of the waterway in T36S, R24E, Sections 7, 18, and 19.

4. Snyder Creek—Approximately 3 stream miles and 50 feet on either side of the stream commencing at the confluence of Snyder Creek and Honey Creek and extending to a point about 3 miles upstream on Snyder Creek, and including those portions of Snyder Creek in T36S, R22E, Sections 1 and 12; and T36S, R23E, Sections 7, 17, and 18.

5. Honey Creek—Approximately 16 stream miles and 50 feet on either side of the stream commencing at the confluence of Honey Creek with Hart Lake and extending to a point about 16 miles upstream on Honey Creek, and including those portions of Honey Creek in T36S, R24E, Sections 19, 20, 27, 28, 29, 30, 33, 34, and 35; T36S, R23E, Sections 17, 18, 20, 21, 22, 23, 24, 26, 27, and 28; and T36S, R22E, Sections 13, 14, 22, and 23.

NOTE: Map follows.

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Constituent elements of all areas proposed as critical habitat include streams 15 feet to 60 feet wide with gravel-bottom shoal and riffle areas with intervening pools. Streams should have clean, unpolluted flowing water and a stable riparian zone. The streams should support a variety of aquatic insects, crustaceans, and other small invertebrates for food.

LITTLE KERN GOLDEN TROUT (*Salmo aguabonita whitei*)

California, Tulare County. Little Kern River, main channel and all streams tributary to the Little Kern River above barrier falls located on the Little Kern River one mile below the mouth of Trout Meadows Creek

NOTE: Map follows.

(f)-(g) [Reserved]

(h) *Crustaceans.*

KENTUCKY CAVE SHRIMP (*Palaemonias ganteri*)

Kentucky, Edmonson County: The Roaring River passage of the Flint-Mammoth Cave System in Mammoth Cave National Park.

NOTE: Map follows.

Known constituent elements include a stream in a base level cave passage with abundant organic material and sediments

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consisting of coarse silt and very coarse to very fine sand.

(i) *Insects.*

DELTA GREEN GROUND BEETLE (*Elaphrus viridis*)

California. Solano County. T.5N. R.1E. West ¼ Sec. 12, southwest ¼ Sec. 13, southeast ¼ Sec. 14, northeast ¼ Sec. 23, northwest ¼ Sec. 24.

NOTE: Map follows.

VALLEY ELDERBERRY LONGHORN BEETLE (*Desmocerus californicus dimorphus*)
California. Sacramento County.

(1) *Sacramento Zone.* An area in the city of Sacramento enclosed on the north by the Route 160 Freeway, on the west and southwest by the Western Pacific railroad tracks, and on the east by Commerce Circle and its extension southward to the railroad tracks.

NOTE: Map follows.

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(2) *American River Parkway Zone.* An area of the American River Parkway on the south bank of the American River, bounded on the north by latitude 38°37'30"N, on the west and southwest by Elmanto Drive from its junction with Ambassador Drive to its extension to latitude 38°37'30"N, and on the south and east by Ambassador Drive and its extension north to latitude 38°37'30"N. Goethe Park, and that portion of the American River Parkway northeast of Goethe Park, west of the Jedediah Smith Memorial Bicycle Trail, and north to a line extended eastward from Palm Drive.

NOTE: Map follows.

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tat include the larval foodplant (*Viola adunca*), grasses and forbs in which the larvae find shelter, the composite plants from which the adults obtain nectar, and the spruce woods in which the adults find shelter.

PALOS VERDES BLUE BUTTERFLY
(*Glaucopsyche lygdamus palosverdesensis*)

California. Los Angeles County.

1. Agua Amarga Canyon Zone. Palos Verdes Estates. A square area of land 0.4 x 0.4 kilometers located at the southeast corner of the southernmost corporate boundary of Palos Verdes Estates.

2. Frank Hesse Park Zone. Rancho Palos Verdes. An area enclosed by Hawthorne Boulevard, Locklenna Lane, and Verde Drive.

NOTE: Map follows.

OREGON SILVERSPOT BUTTERFLY (*Speyeria zerene hippolyta*)

Oregon. Lane County T. 16 S., R. 12 W. Those portions of section 15 and of the south half of section 10 which are west of a line parallel to, and 1500 feet west of, the eastern section boundaries of sections 10 and 15.

NOTE: Map follows.

3. Palos Verdes Drive Zone. Rancho Palos Verdes. The Switchback area of Palos Verdes Drive East, bounded by a line connecting the two eastern curves, a line parallel to and 0.3 kilometers southwest of this line, and the upper and lower portions of Palos Verdes Drive East.

NOTE: Map follows.

Constituent biological elements essential to the continued existence of the Oregon silverspot butterfly within the Critical Habi-

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Within these Critical Habitat areas, the known biological constituent elements essential to the conservation of this species are colonies of the larval foodplant, *Astragalus trichopodus leucopsis*.

ASH MEADOWS NAUCORID (*Ambrysus amargosus*)

Nevada, Nye County, Point of Rocks Springs and their immediate outflows in SE $\frac{1}{4}$ sec. 7, T18S, R51E.

Known primary constituent elements include flowing warm water over rock and gravel substrate.

NOTE: Map follows.

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[42 FR 47840, Sept. 22, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 17.95, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: Section 17.95(e) was amended at 52 FR 35040, Sept. 16, 1987, by adding "Little Colorado Spinedace", effective October 16, 1987, and at 52 FR 36039, Sept. 25, 1987, by adding "Cape Fear Shiner", effective October 26, 1987. At 52 FR 36776, Oct. 1, 1987, the map appearing at 52 FR 36039 was correctly revised.

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

Family Asteraceae—*Enceliopsis nudicaulis* var. *corrugata* (Ash Meadows sunray). Nevada, Nye County, Ash Meadows: SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 15, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 21, NW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 22, E $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 34, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 35, T17S R50E. SE $\frac{1}{4}$ sec. 20, T17S, R51E. NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 1, E $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and E $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 2, NE $\frac{1}{4}$ NW $\frac{1}{4}$ S. 12, E $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 13, T18S, R50E. SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 7, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 18, T18S, R51E.

Known primary constituent elements include dry washes or whitish saline soil associated with outcrops of pale whitish limestone.

NOTE: Map follows.

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Family Asteraceae—*Grindelia fraxino-pratensis* (Ash Meadows gumplant). California, Inyo County, Ash Meadows: NE¼, E¼NW¼, SW¼NW¼, N¼SW¼, and NW¼SE¼ sec. 30, T26N, R6E.

Nevada, Nye County, Ash Meadows: SE¼NW¼ sec. 26, W¼SW¼NE¼ and W¼NW¼SE¼ sec. 33, W¼NW¼, SW¼SW¼, E¼SE¼, and W¼SE¼ sec. 35, T17S, R50E. N¼SW¼ sec. 1, N¼NW¼ sec. 2, NE¼NE¼ and NW¼NW¼ sec. 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼ sec. 4; W¼NE¼ and NW¼SE¼ sec. 5, N¼NE¼ sec. 7, NE¼SE¼ sec. 10, W¼NW¼ and NW¼SW¼ sec. 11, SW¼NE¼ and E¼SE¼ sec. 14; SW¼NW¼, SW¼SE¼, W¼SW¼, and SE¼SW¼ sec. 20 northeast of the Nevada-California boundary, E¼NE¼ and E¼SE¼ sec. 23, W¼SW¼ sec. 24, NW¼NE¼ sec. 29 northeast of the Nevada-California boundary, T18S, R50E. SW¼NW¼ and NW¼SW¼ sec. 18, T18S, R51E.

Known primary constituent elements include saltgrass meadows along streams and pools or drier areas with alkali clay soils.

NOTE: Map follows.

Family Asteraceae: *Senecio franciscanus* (San Francisco Peaks groundsel).

Arizona: Coconino County; Coconino National Forest, Agassiz Peak and Humphreys Peak, T22N, R7E, N¼ of NW¼ Sec. 5; T23N, R7E, W¼ Section 32 and W¼ Section 29. Primary constituent elements are the loose cinder talus slopes of the alpine tundra system of the San Francisco Peaks and absence of disturbance and damage from hikers.

NOTE: Map follows.

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Added
October 28, 1987
52 FR 41440

Family *Asclepiadaceae*—*Asclepias welshii*
(Welsh's milkweed)

Utah, Kane County: entire Coral Pink Sand Dunes, within T43S, R7W and R8W, and T44S, R8W about 10 miles west of Kanab;

also, the area of the Sand Hills, about 10 miles north of Kanab, within T42S, R6W, Section 8 (S½ of the N½ and N½ of the S½). The constituent elements of this critical habitat are the sand dunes themselves.

Note.—Map follows.

Family *Asteraceae*: Malheur wire-lettuce (*Stephanomeria malheurensis*). Oregon, Harney County: the lands west of State Highway 205 within the SE ¼ of the NE ¼ and the NE ¼ of the SE ¼, Section 11; and the W ¼ of the SW ¼ of the NW ¼, and the SW ¼ of the NE ¼ of the SW ¼, and the NW ¼ of the SW ¼, Section 12, T27S, R30E, Willamette Meridian.

Note: Map follows.

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Family *Boraginaceae*: *Amsinckia grandiflora*
(large-flowered fiddleneck)

California, San Joaquin County, Mount Diablo Meridian, T3S R4E Section 28 W½ NW¼ and W½ SW¼.

This includes the known primary constituent elements of a steep, west- and south-facing slope with light textured but stable soils.

Note: Map follows.

Family *Brassicaceae*: Contra Costa Wallflower (*Erysimum capitatum* var. *angustum*). California. An area of land, water, and airspace in Contra Costa County, with the following components: T. 2 N. R. 2 E. SW¼ section 17, E½ of S½ of section 18.

Note: Map follows.

Family *Cistaceae*: Mountain golden heather (*Hudsonia montana*) North Carolina; Burke County: the areas bounded by the following: on the west by the 2200' contour;

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on the east by the Linville Gorge Wilderness Boundary north from the intersection of the 2200' contour and the Shortoff Mountain Trail to where it intersects the 3400' contour at "The chimneys"—then following the 3400' contour north until it reintersects the Wilderness Boundary—then following the Wilderness Boundary again northward until it intersects the 3200' contour extending west from its intersection with the Wilderness Boundary until it begins to turn south—at this point the Boundary extends due east until it intersects the 2200' contour.

NOTE: Map follows.

Family Chenopodiaceae—*Nitrophila mohavensis* (Amargosa niterwort). California,

Inyo County, Ash Meadows: W $\frac{1}{4}$ sec. 5, E $\frac{1}{4}$ sec. 6, NE $\frac{1}{4}$ and E $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 7, NW $\frac{1}{4}$ sec. 8, T25N, R6E.

Known primary constituent elements include salt-encrusted alkaline flats.

NOTE: Map follows.

Cyperaceae—*Carex specuicola*

Arizona: Coconino County; Navajo Indian Reservation. A 40 x 5 meter rectangular area, with its long axis in the direction of seep-spring flow, around each of the following points: (1) Latitude 36°39'53" N, longitude 110°47'18" W; (2) latitude 36°40'07" N, longitude 110°47'55" W; and (3) latitude 36°40'18" N, longitude 110°48'15" W. Primary constituent elements include moist sandy to silty soils at shady seep-springs within the Navajo Sandstone Formation.

NOTE: Map follows:

Added
November 6, 1987
52 FR 42657

Family Fabaceae: *Astragalus montii*
(Heliotrope milk-vetch)

Utah, Sanpete County, western
Heliotrope Mountain. T19S R4E, Sec. 34,
SE ¼ of SW ¼ of SE ¼ of NW ¼; S ½
of SE ¼ of SE ¼ of NW ¼; NE ¼ of NW
¼ of NE ¼ of SW ¼; NE ¼ of NE ¼ of
SW ¼; E ½ of SE ¼ of NE ¼ of SW ¼;
NE ¼ of NW ¼ of SE ¼ of SW ¼; S ½

of NW ¼ of SE ¼ of SW ¼; NW ¼ of
SE ¼ of SW ¼; N ½ of SW ¼ of SE ¼
of SW ¼; SW ¼ of SW ¼ of SE ¼ of
SW ¼; W ½ of SE ¼ of NW ¼ of SE
¼; NW ¼ of NW ¼ of SW ¼ of SE ¼.
The primary constituent element is the
white limestone barrens of the Flagstaff
Formation.

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Family Fabaceae—*Astragalus phoenix* (Ash Meadows milk-vetch). Nevada, Nye County, Ash Meadows: W $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 14, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 21, NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 22, NW $\frac{1}{4}$ sec. 26, T17S, R50E. SW $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 1, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 12, SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 13, W $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 24, T18S, R50E. SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 7, N $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 18, NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 19, T18S, R51E.

Known primary constituent elements include dry, hard, white, barren, saline, clay flats, knolls, and slopes.

NOTE: Map follows.

Family Gentianaceae—*Centaurium namophilum* (spring-loving centaury). Nevada, Nye County, Ash Meadows: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$, and W $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 21; W $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 28, SE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$ and E $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 35, T17S, R50E. SW $\frac{1}{4}$ sec. 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 2, E $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 3, NE $\frac{1}{4}$ sec. 7; SE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 23, SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 24, T18S, R50E. NW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 7, S $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ sec. 18, NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 19, E $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 20, N $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 29, NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 30, T18S, R51E.

Known primary constituent elements include moist to wet clay soils along banks of streams or in seepage areas.

NOTE: Map follows.

Family Lamiaceae: *Hedeoma apiculatum* (McKittrick pennyroyal) Texas, Culberson County: 3 areas in Guadalupe Mountains National Park: 85 acres in Devil's Den Canyon; 60 acres above Turtle Rock on McKittrick Ridge and 180 acres in South McKittrick Canyon.

1. Devil's Den Canyon: from the 5,400' contour on the canyon floor (1.1 km northwest of Pratt Lodge) and along the sides of the canyon southwestward following the 6,000' contour on the north side of the canyon (beginning at Texas coordinates 19,892 m E., 39,169 m N.) and the 6,200' contour on the south side (beginning at Texas coordinates 19,699 m E., 38,651 m N.) to approximately the 6,000' elevation point of the canyon floor.

2. Above Turtle Rock on McKittrick Ridge: high ridge surrounding unnamed peak 2.65 km southwest of Pratt Lodge and located 19,073 m E., 36,439 m N. on the Texas coordinate system. The boundaries defined approximately by the 6,800' contour on the southeast, southwest, and northeast and by the 7,400' contour on the northwest. The 7,400' contour connected to the 6,800' contour by a line passing through Texas coordinates 18,699 m E., 36,530 m N., and 18,781 m E., 36,854 m N. on the southwest and coordinates 19,145 m E., 36,819 m N., and 19,000 m E., 36,952 m N. on the northeast.

3. South McKittrick Canyon: from the 5,400' contour on the canyon floor (2.2 km southwest of Pratt Lodge) and southwestward along the sides of the canyon following the 5,800' contour on the north side of

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the canyon (beginning at Texas coordinates 20,169 m E., 36,434 m N.) and the 6,200' contour on the south side of the canyon (beginning at Texas coordinates 20,289 m E., 36,121 m N.) to the 5,800' contour of the canyon floor.

NOTE: Map follows.

Family *Lamiaceae*: Todsens pennyroyal (*Hedeoma todsenii*).

New Mexico; Sierra County; the Critical Habitat of *Hedeoma todsenii* is best defined by two one-square kilometer sections on the 1000 m2 Universal Transverse Mercator Grid, Zone 13. The more northern critical habitat lies between 76 and 77,000 m N and 39 and 40,000 m E. The southern area lies between 74 and 75,000 m N and 40 and 41,000 m E. Gypsum limestone soils.

NOTE: Map follows.

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Family *Loasaceae*—*Mentzelia leucophylla* (Ash Meadows blazing star). Nevada, Nye County, Ash Meadows: SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 15, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 21, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 23, NW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 28, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ sec. 35, SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 36, T17S, R50E. NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and E $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 1, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 2, N $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 11, NW $\frac{1}{4}$ sec. 12, T18S, R50E.

Known primary constituent elements include sandy or saline clay soils along canyon washes and near springs and seeps.

NOTE: Map follows.

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Malvaceae—*Kokia drynarioides* (koki'o). Hawaii, Island and County of Hawaii, North Kona District, three areas totaling approximately 2,600 acres.

1. Kaupulehu Ahupua'a area, bounded as follows: from a point of origin at Universal Transverse Mercator (UTM) coordinate 925880 near or on the west boundary of the Kaupulehu 1800-1801 lava flow (approximately at intersection of said west boundary and 2600 ft elevation contour); thence west southwesterly approximately 864 ft to UTM coordinate 914875 (also near 2600 ft elevation contour); thence north northwesterly approximately 1987 ft to UTM coordinate 909899 (near the 1400 ft elevation contour); thence east northeasterly approximately 378 ft to UTM coordinate 913900 (also near the 1400 ft elevation contour); then south southeasterly approximately 720 ft to UTM coordinate 916891; thence east northeasterly approximately 320 ft to UTM coordinate 920892 (near the said west boundary of the 1800-1801 lava flow); thence south southeasterly approximately 1140 ft to the point of origin. Included in this area is Kaupulehu Forest Reserve, Section B.

NOTE: Map follows.

2. Kaupulehu Ahupua'a and Pu'uwa'awa'a Ahupua'a boundary area, identified as follows: An unnamed kipuka (discontinuity) in 1800-1801 lava that straddles the boundary between Kaupulehu and Pu'uwa'awa'a Ahupua'a and also crosses Mamalahoe Highway between 2400 and 1000 feet of elevation. Excluded is a small tongue of the said kipuka that extends south of UTM coordinate 941885 at approximately 2400 ft of elevation and above. UTM coordinate 931924 marks the low elevation end of the said kipuka.

NOTE: Map follows.

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3. Pu'uwa'awa'a Ahupua'a area, identified as follows: Halepi'ula 3, Waimea Paddock of Pu'uwa'awa'a Ranch, which lies south of (upslope) and abuts Mamalahoe Highway just east of the boundary between Ka'upulehu and Pu'uwa'awa'a Ahupua'a. East boundary of the 1800-1801 Ka'upulehu lava flow is the west boundary of the paddock. The paddock corners are near UTM coordinates 948901 (NW), 985909 (NE) 973886 (SE), and 971879 (SW).

NOTE: Map follows.

Primary constituent elements of critical habitat are appropriate soil type, climate, protection from grazing damage, protection from aggressive exotic weeds, and presence of suitable pollinators.

Family *Onagraceae*: Antioch Dunes Evening-Primrose (*Oenothera deltoides* ssp. *howellii*). California. An area of land, water, and airspace in Contra Costa County with the following components: T. 2 N. R. 2 E. SW¼ section 17, E½ of S½ of section 18.

NOTE: Map follows.

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Family *Poaceae*: Carter's panicgrass (*Panicum carteri*) Hawaii: City and County of Honolulu: Entire island of Mokoli'i (see map).

Probable primary constituent elements include: Exposure to strong sunlight; low rainfall; exposure to sea spray; and presence of gravelly, basalt-derived soil.

NOTE: Map follows.

Family *Poaceae*: Texas Wild-Rice (*Zizania texana*) Texas, Hays County; Spring Lake and its outflow, the San Marcos River, downstream to its confluence with the Blanco River.

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NOTE: Map follows.

Family Polygonaceae: Gypsum Wild Buckwheat (*Eriogonum gypsophilum*) New Mexico; Eddy County: T20S, R25E, Section 19: N½, N½ NE¼ SE¼, N½ NW¼ SE¼; and T20S, R24E, Section 24: N½ NE¼, N½ S½ NE¼, NE¼ NW¼, N½ SE¼ NW¼; gypsum soils.

NOTE: Map follows.

Family Polygonaceae: *Eriogonum pelino-*
philum (clay-loving wild-buckwheat). Colo-
rado, Delta County. About 3 miles east of
Austin near Highway 92. T14S, R94W 6th

P.M. Section 26—west 225 feet of Section 26
lying south of State Highway 92 (5.6 acres).
Section 27—that part of the SE¼SE¼ lying
south of State Highway 92 (35.6 acres). Sec-
tion 34—an area bounded by a line begin-
ning at the northeast corner of Section 34,
thence south along the section line 200 feet
to a point; thence southwesterly to a point
1050 feet south and 550 feet west of the
northeast corner of Section 34; thence
southwesterly to a point 700 feet north and
900 feet east of center ¼ corner of Section
34; thence westerly 900 feet to the north-
south ¼ line; thence northerly 600 feet
along the ¼ line to a point; thence north-
easterly to a point of the east ½ line;
thence northerly along the ½ line 300 feet
to the north section line of Section 34;
thence easterly along the north section line
to the point of beginning (65.0 acres). Sec-
tion 35—north 200 feet of the west 225 feet
(1.0 acres). Section 27—west 200 feet of
Section 27 lying south of State Highway 92 (4.3
acres). Section 28—east 400 feet of Section
28 lying south of State Highway 92 (8.3
acres). Total 119.8 acres. The primary con-
stituent elements include those factors asso-
ciated with the whitish alkaline clay soils
within the sparsely vegetated badlands of
Mancos shale.

NOTE: Map follows.

Family Rhamnaceae: *Gouania hillebran-*
dii Hawaii, Maui County, Maui Island, La-
haina District, two zones located as follows:

(1) Pa'upa'u Zone, Ahupua'a of Kula. The
following Universal Transverse Mercator
(UTM) designations form the corners of the
quadrangular Pa'upa'u habitat area:

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NW:0744123121
NE:0744723122
SW:0744223118
SE:0744723117

NOTE: Map follows.

(2) Lihau Zone, Ahupua'a of Kula. This zone consists of three circular areas having radii of 0.1 mile on the western slopes of Lihau Mountain, one centered at Pu'u Hipa (near UTM 0746823070), one at UTM 0747723063, and the third at UTM 0747223059.

NOTE: Map follows.

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Primary constituent habitat elements are considered to be climatic and edaphic factors that discourage introduced plant competitors and insect pests, and freedom from unrestricted browsing and trampling by domestic or feral livestock.

Family Rosaceae—*Invesia eremica* (Ash Meadows *invesia*). Nevada, Nye County, Ash Meadows: SW¼NE¼ and W¼SE¼ sec. 21, S¼SW¼ and SW¼SE¼ sec. 35, T17S, R50E. SW¼ sec. 1, N¼NW¼ and SW¼SW¼ sec. 2, NE¼NE¼ sec. 3, NW¼NE¼ sec. 12, N¼NE¼ and SE¼NE¼ sec. 23, N¼NW¼, SW¼NW¼, and NW¼SW¼ sec. 24, T18S, R50E.

Known primary constituent elements include saline seep areas of light colored clay uplands.

NOTE: Map follows.

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Family *Rosaceae*: Robbins cinquefoil (*Potentilla robbinsiana*). New Hampshire, Coos County; the area is a strip of land 4,066 feet long and 450 feet wide with east and west boundaries running parallel to Trail A (see map): starting at the north junction of Trail A and B and ending at their southern junction with two-thirds of the strip (300 ft.) lying to the east and south of Trail A and with one-third (150 ft.) lying to the west and north of Trail A.

NOTE: Map follows.

[43 FR 39043, Aug. 31, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 17.96, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart J—Manatee Protection Areas

AUTHORITY: Marine Mammal Protection Act of 1972, 86 Stat. 1027, as amended, 101(a), 102(a)(2), 104, 105, 112(a) (16 U.S.C. 1371(a), 1372(a)(2), 1374, 1375, and 1382(a)); Endangered Species Act of 1973, 87 Stat.

884, as amended, 4 (d) and (f), 9(a)(1)(G), and 11(a)(1) (16 U.S.C. 1533 (d) and (f), 1538(a)(1)(G), and 1540(a)(1)).

SOURCE: 44 FR 60864, Oct. 22, 1979, unless otherwise noted.

§ 17.100 Purpose.

This subpart provides a means for establishing manatee protection areas without waters under the jurisdiction of the United States, including coastal waters adjacent to and inland waters within the several States, within which certain waterborne activities will be restricted or prohibited for the purpose of preventing the taking of manatees.

§ 17.101 Scope.

This subpart applies to the West Indian manatee (*Trichechus manatus*), also known as the Florida manatee and as the sea cow. The provisions of this subpart are in addition to, and not in lieu of, other regulations contained in this Chapter I which may require a permit or prescribe additional restrictions on the importation, exportation, transportation, or taking of wildlife, and the regulations contained in Title 33, CFR, which regulate the use of navigable waters.

§ 17.102 Definitions.

In addition to definitions contained in the Acts, Part 10 of this subchapter, and § 17.3 of this part, and unless the context otherwise requires, in this subpart:

“Acts” means the Endangered Species Act of 1973, as amended (87 Stat. 884, 16 U.S.C. 1531-1543) and the Marine Mammal Protection Act of 1972, as amended (86 Stat. 1027, 16 U.S.C. 1361-1407);

“Authorized officer” means any commissioned, warrant, or petty offi-

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cer of the U.S. Coast Guard, or any officer or agent designated by the Director of the U.S. Fish and Wildlife Service, the Secretary of the Interior, the Secretary of Commerce, or the Secretary of the Treasury, or any officer designated by the head of a Federal or State agency which has entered into an agreement with the Secretary of the Interior, Secretary of Commerce, Secretary of the Treasury, or Secretary of Transportation to enforce the Acts, or any Coast Guard personnel accompanying and acting under the direction of a person included above in this definition;

"Manatee protection area" means a manatee refuge or a manatee sanctuary;

"Manatee refuge" means an area in which the Director has determined that certain waterborne activity would result in the taking of one or more manatees, or that certain waterborne activity must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment;

"Manatee sanctuary" means an area in which the Director has determined that any waterborne activity would result in a taking of one or more manatees, including but not limited to a taking by harassment;

"Waterborne activity" includes, but is not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations;

"Water vehicle" includes, but is not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, across, or underneath the surface of the water.

§ 17.103 Establishment of protection areas.

The Director may, by regulation issued in accordance with 5 U.S.C. 553 and 43 CFR Part 14, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent

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the taking of one or more manatees. Any regulation establishing a manatee protection area shall state the following information:

(a) Whether the area is to be a manatee sanctuary or refuge.

(1) If the area is to be a manatee sanctuary, the regulation shall state that all waterborne activities are prohibited.

(2) If the area is to be a manatee refuge, the regulation shall state which, if any, waterborne activities are prohibited, and it shall state the applicable restrictions, if any, on permitted waterborne activities.

(b) A description of the area sufficient enough so that its location and dimensions can be readily ascertained without resort to means other than published maps, natural or man-made physical reference points, and posted signs.

(c) Whether the designation is to remain in effect year-round, and if not, the time of year it is to remain in effect.

§ 17.104 Prohibitions.

Except as provided in § 17.105,

(a) *Manatee sanctuary.* It is unlawful for any person to engage in any waterborne activity within a manatee sanctuary.

(b) *Manatee refuge.* It is unlawful for any person within a particular manatee refuge to engage in any waterborne activity which has been specifically prohibited within that refuge, or to engage in any waterborne activity in a manner contrary to that permitted by regulation within that area.

(c) *State law.* It is unlawful for any person to engage in any waterborne activity prohibited by, or to engage in any waterborne activity in a manner contrary to that permitted by, any State law or regulation the primary purpose of which is the protection of manatees: *Provided:* that such State law or regulation has been issued as part of a program which is determined to be in accordance with the Endangered Species Act of 1973, pursuant to section 6(c) of that Act (16 U.S.C. 1535(c)) or has been approved as consistent with the Marine Mammal Protection Act of 1972 in accordance with

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section 109 of that Act (16 U.S.C. 1379) and 50 CFR 18.53.¹

§ 17.105 Permits and exceptions.

(a) The Director may issue permits allowing the permittee to engage in any activity otherwise prohibited by this subpart. Such permits shall be issued in accordance with the provisions of § 17.22 of this part. Such permits shall be issued only for scientific purposes or for the enhancement of propagation or survival. All of the provisions of § 17.22 shall apply to the issuance of such permits, including those provisions which incorporate other sections by reference. Compliance with this paragraph does not by itself constitute compliance with any applicable requirements of Part 18.

(b) Any authorized officer may engage in any activity otherwise prohibited by this subpart if:

(1) The officer is acting in the performance of his or her official duties; and

(2) The activity is being conducted to directly protect any manatees, to enhance the propagation or survival of manatees, or is reasonably required to enforce the other provisions of this subpart.

(c) Any person may engage in any activity otherwise prohibited by this subpart if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property.

(d) Any waterborne activity which would otherwise be prohibited by this subpart may be engaged in if it is conducted by or under a contract with a Federal agency and if the Secretary of Defense, in accordance with section 7(j) of the Endangered Species Act of 1973 (16 U.S.C. 1536(j)) makes a finding that such activity is necessary for reasons of national security. Such a finding must be made prior to the beginning of the activity or the designation of the protection area, whichever occurs later; except that in the case of an emergency establishment of a pro-

tection area under § 17.106, the finding must be made within 10 days after the beginning of the activity or the designation of the protection area, whichever occurs later.

§ 17.106 Emergency establishment of protection areas.

(a) The Director may establish a manatee protection area under the provisions of paragraphs (b) and (c) of this section at any time he determines there is substantial evidence that there is imminent danger of a taking of one or more manatees, and that such establishment is necessary to prevent such a taking.

(b) The establishment of a manatee protection area under this section shall become effective immediately upon completion of the following requirements:

(1) Publication of a notice containing the information required by § 17.103 of this section in a newspaper of general circulation in each county, if any, in which the protection area lies; and

(2) Posting of the protection area with signs clearly marking its boundaries.

(c) Simultaneously with the publication required by paragraph (b) of this section, the Director shall publish the same notice in the **FEDERAL REGISTER**. If simultaneous publication is impractical, because of the time involved or the nature of a particular emergency situation, failure to publish notice in the **FEDERAL REGISTER** simultaneously shall not delay the effective date of the emergency establishment. In such a case, notice shall be published in the **FEDERAL REGISTER** as soon as possible.

(d) No emergency establishment of a protection area shall be effective for more than 120 days. Termination of an emergency establishment of a protection area shall be accomplished by publishing notice of the termination in the **FEDERAL REGISTER** and in a newspaper of general circulation in each county, if any, in which the protection area lies.

(e) Within 10 days after establishing a protection area in accordance with this section, the Director shall com-

¹EDITORIAL NOTE: Section 18.53 was removed at 48 FR 22456, May 18, 1983. See the note at Part 18, Subpart F.

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mence proceedings to establish the area in accordance with § 17.103.

§ 17.107 Facilitating enforcement.

Water vehicles operating in manatee sanctuary or refuge waters are subject to boarding and inspection for the purpose of enforcing the Acts and these regulations.

(a) The operator of a water vehicle shall immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the water vehicle.

(b) Upon being approached by an authorized officer, the operator of a water vehicle shall be alert for signals conveying enforcement instructions.

(c) A water vehicle signaled for boarding shall:

(1) Guard channel 16, VHF-FM, if equipped with a VHF-FM radio;

(2) Stop immediately and lay to or maneuver in such a manner as to facilitate boarding by the authorized officer and his or her party;

(3) When necessary to facilitate the boarding, provide a safe ladder, man-rope, safety line and illumination of the ladder; and

(4) Take such other actions as may be necessary to ensure the safety of the authorized officer and his or her party and to facilitate the boarding and inspection.

(d) It is unlawful for any person to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or member of his or her party.

§ 17.108 List of designated manatee protection areas.

(a) *Manatee sanctuaries.* The following areas are designated as manatee sanctuaries. All waterborne activities are prohibited in these areas during the period November 15-March 31 of each year. The areas which will be posted are described as follows:

(1) That part of Kings Bay, Crystal River, Citrus County, within T. 18 S., R. 17 E., Tallahassee Meridian; located in SW¼ fractional section 28, more particularly described as follows:

Beginning at Corner 1 (N-1,653,459/E-308,915) Florida Coordinate System, West Zone, a point on the shoreline of Kings Bay near the southwest corner of Lot 9 as accepted on a plat by the Department of the Interior, General Land Office, dated Janu-

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ary 10, 1928; thence easterly, along said shoreline, approximately 1240 feet to Corner 2 (N-1,653,762/E-309,641) a point; thence S. 56°58'11" W., across open water, 776.49 feet to Corner 3 (N-1,653,339/E-308,990) a point; thence N. 32°03'07" W., across open water, 142.26 feet to the point of beginning, containing 3.41 acres, more or less, to be known as the Banana Island Sanctuary.

(2) That part of Kings Bay, Crystal River, Citrus County, Florida, within T. 18 S., R. 17 E., Tallahassee Meridian; located in SW¼ fractional section 28, more particularly described as follows:

Beginning at Corner 1 (N-1,652,684/E-309,396) Florida Coordinate System, West Zone, a point on the shoreline of Kings Bay, said point being the northwest corner of Lot 31 Sunset Shores Addition to Woodward Park (Plat Book 2, page 140 Citrus County Property Appraiser's Office); thence N. 35°05'33" W., across open water, 439.10 feet to Corner 2 (N-1,653,043/E-309,144) a point; thence N. 67°23'28" E., across open water, 873.45 feet to Corner 3, a point on the shoreline of Kings Bay said point also being a corner in the northerly boundary line of Lot 21 in said subdivision; thence southwesterly along said shoreline and the northerly boundary of Lots 21-31, including a canal, approximately 920 feet to the point of beginning, containing 5.62 acres, more or less, to be known as the Sunset Shores Sanctuary.

(3) That part of Crystal River, Citrus County, Florida, within the Springs O'Paradise subdivision, T. 18 S., R. 17 E., Tallahassee Meridian; located in SE¼ and SW¼ fractional section 21 and NE¼ fractional section 28, more particularly described as follows:

Beginning at Corner 1, the southeast corner of Lot 3 Paradise Isle Subdivision (Plat Book 3, page 88 Citrus County Property Appraiser's Office); thence N. 89°48'30" E. along an extension of the south line of said Lot 3, across Spring Run, approximately 120 feet to Corner 2, a point in the line of mean high water on the east side of Spring Run; thence northerly along said mean high water line approximately 500 feet to Corner 3, a point in the line of mean high water on the north side of Caspian Canal; thence westerly along said mean high water line approximately 300 feet to Corner 4, a point on the east side of the S.W. 1st Court bridge; thence south along said bridge approximately 50 feet to Corner 5, a point in the line of mean high water on the south side of Caspian Canal; thence easterly along said mean high water line approximately 200 feet to Corner 6, a point in the line of mean high water on the west side of Spring Run; thence southerly along said mean high water line approximately 400 feet to the

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point of beginning, containing 1.70 acres, more or less, to be known as the Magnolia Springs Sanctuary.

(b) *Exception for residents.* Boat access to private residences, boat houses, and boat docks through these sanctuaries by the residents and their authorized guests is permitted. Any such authorized boating activity must be conducted by operating motorboats at idle speed/no wake. Residents' boats will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each boat. Use of the waters within the sanctuaries by boats will be only for the purpose of access to residences and the storage of such boats in waters adjacent to residences.

[45 FR 74881, Nov. 12, 1980]

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- 222.11-5 Application for modification of certificate of exemption by holder.
- 222.11-6 Amendment of certificates of exemption.
- 222.11-7 Procedures for suspension, revocation, or modification of certificates of exemption.
- 222.11-8 Purchaser provisions.
- 222.11-9 Duration of certificate of exemption.
- 222.12 Locations covered by certificate of exemption.
- 222.12-1 Certificate of exemption not transferable; exception.
- 222.12-2 Change of address.
- 222.12-3 Certain continuance of business.
- 222.12-4 Change in trade name.
- 222.12-5 State or other law.
- 222.12-6 Right of entry and examination.
- 222.12-7 Records.
- 222.12-8 Record of receipt and disposition.
- 222.12-9 Importation.
- 222.13 Exportation.
- 222.13-1 Procedure by exporter.
- 222.13-2 Action by Customs.
- 222.13-3 Transportation to effect exportation.
- 222.13-4 Burden of proof; presumption.

Subpart C—Endangered Fish or Wildlife Permits

- 222.21 General permit requirement.
- 222.22 [Reserved]
- 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.
- 222.24 Procedures for issuance of permits.
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- 222.28 Possession of permits.

PART 222—ENDANGERED FISH OR WILDLIFE

Subpart A—Introduction

Sec.

- 222.1 Purpose of regulations.
- 222.2 Scope of regulations.

Subpart B—Certificates of Exemption for Pro-Act Endangered Species Parts

- 222.11-1 General certificate of exemption requirements.
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Subpart E—Incidental Capture of Endangered Sea Turtles

- 222.41 Policy regarding incidental capture of sea turtles.

AUTHORITY: 16 U.S.C. 1531-1543.

Subpart A—Introduction

- § 222.1 Purpose of regulations.

The regulations contained in this part identify the species or subspecies of fish or wildlife determined to be endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973, and presently deemed endangered spe-

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cies under the Endangered Species Act of 1973, which are under the jurisdiction of the Secretary of Commerce, and establish procedures and criteria for issuance of permits for the taking, importation, exportation, or otherwise prohibited acts, involving endangered fish or wildlife. The regulations of this part implement, in part, the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205, as amended.

[45 FR 57133, Aug. 27, 1980]

§ 222.2 Scope of regulations.

(a) The regulations of this part apply only to endangered fish or wildlife.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of Parts 217 through 222 of this chapter which may require a permit or prescribe additional restrictions or conditions for the taking, importation, exportation, and interstate transportation of fish or wildlife. (See also Parts 220 and 221 of this chapter.)

[45 FR 57133, Aug. 27, 1980]

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

SOURCE: 45 FR 57134, Aug. 27, 1980, unless otherwise noted.

§ 222.11-1 General certificate of exemption requirements.

(a) The Assistant Administrator, pursuant to the provisions of the Endangered Species Act, and pursuant to the provisions of this paragraph, may exempt any pre-Act endangered species part from one or more of the following:

(1) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(2) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(3) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or

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offer for sale in interstate or foreign commerce any such species part.

(b) No person shall engage in any of the above activities involving any pre-Act endangered species part without a valid certificate of exemption, or evidence of a right thereunder, issued pursuant to this Subpart B.

(c) After January 31, 1984, no person may export; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid certificate of exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

§ 222.11-2 Application renewal procedure.

(a) Any person to whom a certificate of exemption has been issued by the National Marine Fisheries Service and who desires to obtain a renewal of such certificate of exemption may make application therefor to the Assistant Administrator. The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration for further information deemed necessary.

(b) One copy of a completed application for renewal shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(c) The outside of the envelope should be marked, ATTENTION: Enforcement Division, "Certificate of Exemption Request." Assistance may be obtained by writing or calling the Enforcement Division, NMFS, in Washington, DC (AC 202, 634-7265). At least 15 days should be allowed for processing. An application for a certificate of exemption shall provide the information contained in § 222.11-3 (when the information requested is not applicable, put "N.A.") and such

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other information that the Assistant Administrator may require.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 48 FR 57302, Dec. 29, 1983]

§ 222.11-3 Application renewal requirements.

(a) The following information will be used as the basis for determining whether an application for renewal of a certificate of exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption Under Pub. L. 97-304.

(2) The date of application.

(3) The identity of the applicant including complete name, original certificate of exemption number, current address, and telephone number, including zip and area codes. If the applicant is a corporation, partnership, or association set forth the details.

(4) The period of time for which a renewal of the certificate of exemption is requested; however, no renewal of certificate of exemption, or right claimed thereunder, shall be effective after the close of the three-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: a unique serial number; the weight of the item in grams, to the nearest whole gram; and a description in detail sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of

exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. Provided that, the number must remain affixed to the item until it is sold to an ultimate user, as defined in § 222.11-8(b) of this part.

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a certificate of exemption.

(6) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my certificate of exemption under the Endangered Species Act of 1973, as amended by Pub. L. 94-359, 90 Stat. 911, Pub. L. 96-159, 93 Stat. 1225, Pub. L. 97-304, 95 Stat. 715, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Endangered Species Act of 1973.

(7) Signature of the applicant.

(b) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified by Certified Mail of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered as having been abandoned.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

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§ 222.11-4 Procedures for issuance of renewals of certificates of exemption.

Whenever application for a renewal of a certificate of exemption is received by the Assistant Administrator which the Assistant Administrator deems sufficient, he shall, as soon as practicable, issue a certificate of renewal to the applicant.

§ 222.11-5 Application for modification of certificate of exemption by holder.

Where circumstances have changed so that an applicant or certificate of exemption holder desires to have any material term or condition of his application or certificate modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part.

§ 222.11-6 Amendment of certificates of exemption.

All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a certificate of exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.11-7 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217 through 222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

[49 FR 1042, Jan. 6, 1984]

§ 222.11-8 Purchaser provisions.

(a) Any person granted a certificate of exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part

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sold, and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(b) Any purchaser of pre-Act endangered species parts included in a valid certificate of exemption, unless an ultimate user, must within 30 days after the receipt of such parts submit a written report to the address given in the certificate specifying the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. An ultimate user, for purposes of this paragraph, means any person who acquired such endangered species part or product for his own consumption or personal use (including as gifts), and not for resale.

(c) After January 31, 1984, no purchaser may export; deliver, receive, carry or transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered species part or product even though such part or product was acquired under a certificate of exemption either prior to or subsequent to that date.

(Approved by the Office of Management and Budget under control number 0648-0079)

[50 FR 12808, Apr. 1, 1985]

§ 222.11-9 Duration of certificate of exemption.

A certificate of exemption is valid only if renewed in accordance with the procedures set forth in § 222.11-3 of this part. All certificates so renewed will be valid for a period beginning April 1, 1985, and ending no later than March 31, 1988. A renewed certificate of exemption entitles the holder to engage in the business or activity specified in the certificate of exemption, within the limitations of the Act and the regulations contained in this subpart, for the period stated in the cer-

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tificate of exemption, unless sooner terminated.

[50 FR 12808, Apr. 1, 1985, as amended at 50 FR 25713, June 21, 1985]

§ 222.12 Locations covered by certificate of exemption.

The certificate of exemption covers the business or activity specified in the certificate of exemption at the address described therein. No certificate of exemption is required to cover a separate warehouse facility used by the certificate of exemption holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the certificate of exemption which is served by the warehouse or storage facility.

[50 FR 12809, Apr. 1, 1985]

§ 222.12-1 Certificate of exemption not transferable; exception.

Certificates of exemption issued under this subpart are not transferable: *Provided*, That in the event of the lease, sale or other transfer of the operations or activity authorized by the certificate of exemption the successor is not required by this subpart to obtain a new certificate of exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.11-8.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-2 Change of address.

A certificate of exemption holder may during the term of the certificate of exemption move his business or activity to a new location at which he intends regularly to carry on such business or activity, without obtaining a new certificate of exemption. However, in every case, notification of the new location of the business or activity must be given in writing within 10 days of such move to the Assistant Administrator. In each instance, the certificate of exemption must be endorsed by the Assistant Administrator. After endorsement of the certificate of exemption the Assistant Administrator

will provide an amended certificate of exemption to the person to whom issued.

§ 222.12-3 Certain continuance of business.

A certificate of exemption holder who requests that his certificate of exemption be amended by the Assistant Administrator for corrections or endorsement in compliance with the provisions contained in this subpart, may continue his operations while awaiting action by the Assistant Administrator.

§ 222.12-4 Change in trade name.

A certificate holder continuing to conduct business at the location shown on his certificate of exemption is not required to obtain a new certificate of exemption by reason of a change in trade name under which he conducts his business: *Provided*, That such certificate of exemption holder requests in writing that his certificate of exemption be endorsed to reflect such change of name to the Assistant Administrator within 30 days from the date the certificate of exemption holder begins his business under the new name.

§ 222.12-5 State or other law.

A certificate of exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under any Federal laws or regulations of any other Federal Agency.

§ 222.12-6 Right of entry and examination.

Any person authorized to enforce the Act may enter during business hours the premises, including places of storage, of any holder of a certificate of exemption or of any purchaser for the purpose of inspecting or examining any records or documents required to be kept by such certificate of exemption holder or successor under this subpart, and any endangered species parts at such premises or location.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

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§ 222.12-7 Records.

The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form, and shall be retained at the address shown on the certificate of exemption, or at the principal address of a purchaser in the manner prescribed by this subpart.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 48 FR 57302, Dec. 29, 1983; 50 FR 12809, Apr. 1, 1985]

§ 222.12-8 Record of receipt and disposition.

(a) Holders of certificates of exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, must similarly maintain records of all such parts or products they receive.

(b) Such records as referred to in paragraph (a) of this section may consist of invoices or other commercial records which must be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records must (1) show the name and address of the purchaser, seller, or other transferor; (2) show the type, quantity, and identity of the part or product; (3) show the date of such sale or transfer; and (4) be retained, in accordance with the requirements of this subpart, for a period of not less than three years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a certificate of exemption.

(c) (1) Each certificate of exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (b) on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

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(2) Quarterly reports are due on January 15, April 15, July 15, and October 15. The first report is due on October 15, 1985.

(d) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (b) of this section when it is shown by the record holder that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-9 Importation.

No pre-Act endangered species part shall be imported into the United States, and a certificate of exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

§ 222.13 Exportation.

(a) Any person desiring to export from the United States any pre-Act endangered species part or scrimshaw product, must possess a valid certificate of exemption issued in accordance with the provisions of this subpart.

(b) In addition to other information, which may be required by this subpart, the exporter will notify the Assistant Administrator by letter which shall show the name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. Such information should reach the Assistant Administrator not less than 10 days prior to shipment.

(c) No pre-Act endangered species part or scrimshaw product which is to be exported from the United States under a certificate of exemption issued therefor, shall be exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the exportation at non-designated ports for any reason if he deems it appropriate and consistent with the purposes of the

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Endangered Species Act, as amended, or it will facilitate the administration or enforcement of the Act and reducing the costs thereof. Exporters are advised to see 50 CFR Part 14 for a listing of the designated ports.

§ 222.13-1 Procedure by exporter.

Shipment may not be made until the requirements of § 222.13 are met by the exporter. A copy of the certificate of exemption, and any endorsements thereto, must be sent by the exporter to the District Director of Customs at the port of exportation, and must precede or accompany the shipment in order to permit appropriate inspection prior to lading.

§ 222.13-2 Action by Customs.

Upon receipt of a certificate of exemption authorizing the exportation of pre-Act endangered species parts or scrimshaw products, the District Director of Customs may order such inspection as deemed necessary prior to lading of the merchandise. If satisfied that the shipment is proper and agrees with the information contained in the certificate, and any endorsement thereto, the District Director of Customs will clear the merchandise for export. The certificate, and any endorsements, will be forwarded to the Chief, Enforcement Division, F/CM5 National Marine Fisheries Service, Washington, DC 20235.

§ 222.13-3 Transportation to effect exportation.

Notwithstanding any provision of this subpart, it shall not be required that authorization be obtained from the Assistant Administrator for the transportation in interstate or foreign commerce of pre-Act endangered species parts to effect an exportation of such parts authorized under the provisions of this subpart.

§ 222.13-4 Burden of proof; presumption.

Any person claiming the benefit of any exemption or certificate of exemption under the Act or regulations, shall have the burden of proving that the exemption or certificate is applicable, has been granted, and was valid and in force at the time of the alleged violation.

Subpart C—Endangered Fish or Wildlife Permits

SOURCE: 39 FR 41375, Nov. 27, 1974, unless otherwise noted.

§ 222.21 General permit requirement.

No person shall take, import, export, or engage in any other prohibited activity involving, any species or subspecies of fish or wildlife which the Secretary has determined to be endangered under the Endangered Species Act of 1973, as evidenced by its inclusion on the list of endangered fish or wildlife (see 50 CFR Chapter I, Part 17) or which the Secretary of the Interior determined to be endangered under the Endangered Species Conservation Act of 1969 and which are now under the jurisdictional responsibilities of the Secretary of Commerce, without a valid permit issued pursuant to this part.

(Pub. L. 94-359)

[41 FR 36028, Aug. 26, 1976]

§ 222.22 [Reserved]

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) The Director, National Marine Fisheries Service, may issue permits for scientific purposes or to enhance the propagation or survival of the affected endangered species which authorize, under such terms and conditions as he may prescribe, taking, importation, or certain other acts with respect to endangered species otherwise prohibited by section 9 of the Endangered Species Act of 1973. The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscion macdonaldi*) Gray whale (*Eschrichtius robustus* (*glaucus, gibbosus*)), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera novaeangliae*), Bowhead whale (*Balaena mysticetus*), Right whales (*Eubalaena* spp.), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenop-*

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tera borealis), Sperm whale (*Physeter catodon*); Cochito (*Phocoena Sinus*); Caribbean monk seal (*Monachus tropicalis*); Hawaiian monk seal (*Monachus schauinslandi*); Mediterranean monk seal (*Monachus monachus*); Leatherback sea turtle (*Dermochelys coriacea*); Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*); Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*); Atlantic ridley sea turtle (*Lepidochelys kempi*); Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico, and the olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico. Of these, the National Marine Fisheries Service has sole agency jurisdiction for sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction for sea turtles while the turtles are on land. Within the jurisdiction of a State, more restrictive State laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable State laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Director except for permits involving sea turtles in which case the applicant shall follow the procedures set out in 50 CFR Part 220 Subpart E. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species should be issued by the Director. An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, Washington, D.C. 20235.

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Assistance may be obtained by writing the Director or calling the Marine Mammal and Endangered Species Division in Washington, DC (202-343-9445 and effective December 2, 1974, it will become 202-634-7529). At least 45 days should be allowed for processing. An application for a permit shall provide the following information (when the information requested is not applicable put "N.A.") and such other information that the Director may require:

(1) Title: As applicable, either:

(i) Application for Permit for Scientific Purposes under the Endangered Species Act of 1973; or

(ii) Application for Permit to Enhance the Propagation or Survival of the Endangered Species Under the Endangered Species Act of 1973.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity set forth the details. If the endangered species is to be utilized by a person other than the Applicant, set forth the name of that person and such other information as would be required if such person were an Applicant.

(4) A description of the purpose of the proposed acts, including:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals (i.e., does the pro-

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posed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species, and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continued benefit to science, in a museum or other institutional collection.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name; the subspecies (if applicable); population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit, for each animal, and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals;

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise taken the animals, should a permit be granted;

(7) A description of the manner of transportation of any live animal taken, imported, exported, or shipped in interstate commerce, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable about the species (or related species) or group which is the subject of the application, or from a recognized expert on the species (or related species) or group covered in the application that he has personally reviewed the amendments for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph (b)(8)(vi) requirements of this section;

(9) A statement of willingness to participate in a cooperative breeding pro-

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gram and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of this application, provide a detailed description of all mortalities involving species which were under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and species related to the species which is the subject of this application; captured, transported, maintained, or utilized by the applicant for scientific purposes or to enhance the propagation or survival of the affected species, and/or for all such species caused to be captured, transported, maintained, or utilized for scientific purposes or to enhance the propagation or survival of the affected species, by the Applicant;

(ii) The numbers of mortalities among such animals by species, by date, location of capture, i.e., from which population, and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act of 1973 (87 Stat. 864, Pub. L. 93-205, 16 U.S.C. 1531 et seq.) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Endangered Species Act of 1973.

(13) The applicant and/or an officer thereof must sign the application.

(c) *Issuance criteria.* The Director shall specifically consider, among other criteria, the following in determining whether to issue a permit for scientific purposes or to enhance the

propagation or survival of the affected endangered species:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit if granted and exercised will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species, and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity—the applicant's qualifications for the proper care and maintenance of the species and the adequacy of his facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

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

(12) Opinions or views of scientists or other persons or organizations knowledgeable of the species which is the subject of the application or of other matters germane to the application; and

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The number and kind of species which are covered;

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(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny or the species product;

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 41375, Nov. 27, 1974, as amended at 41 FR 51612, Nov. 23, 1976; 43 FR 32809, July 28, 1978; 44 FR 21289, Apr. 10, 1979; 44 FR 29480, May 26, 1979; 48 FR 57302, Dec. 29, 1983; 50 FR 1059, Jan. 9, 1985]

§ 222.24 Procedures for issuance of permits.

(a) Whenever application for a permit is received by the Director which the Director deems sufficient, he shall, as soon as practicable, publish a notice thereof in the **FEDERAL REGISTER**. Information received by the Director as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party may within 30 days after the date of publication of such notice, submit to the Director his written data, views, or arguments with respect to the taking, importation, or other action proposed in the application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing

would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the **FEDERAL REGISTER** not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) Except as provided in Subpart D of 15 CFR Part 904, as soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the **FEDERAL REGISTER** within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) If a permit is issued, the Director shall publish notice thereof in the **FEDERAL REGISTER**, including his finding that (1) such permit was applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973.

(e) The Director may waive the thirty-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Director in the **FEDERAL REGISTER** within ten days following the issuance of the certificate of exemption or permit. The requirements of this section pertain solely to the permits issued pursuant to § 222.23.

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[39 FR 41375, Nov. 27, 1974, as amended at 42 FR 28139, June 2, 1977; 49 FR 1042, Jan. 6, 1984]

§ 222.25 Applications for modification of permit by permittee.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 222.23(c).

§ 222.26 Amendment of permits by NMFS.

All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.27 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217 through 222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

[49 FR 1043, Jan. 6, 1984]

§ 222.28 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking, importation, exportation, or other act;

(2) The period of any transit of such person or agent which is incident to such taking, importation, exportation, or other act; and

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(3) Any other time while any animal under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

Subpart D—Special Prohibitions

§ 222.31 Approaching humpback whales in Hawaii.

(a) *General:* Except as provided in §§ 222.23 through 222.28 (Scientific permits) and paragraph (b) of this section 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 to cause to be committed, within 200 nautical miles of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet of any humpback whale; or

(2) Approach by any means, within 100 yards of any humpback whale; or

(3) Cause a vessel or other object to approach within 100 yards of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation or evasive swimming patterns; interruptions of breeding, nursing, or resting activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movements; or the abandonment of a previously frequented area.

Added
November 23, 1987
52 FR 44915

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Added
November 23, 1987
52 FR 44915

(b) *Cow/calf waters*. Except as provided in §§ 222.23 through 222.28 (Scientific permits), it is unlawful for any person subject to the jurisdiction of the United States to commit, to solicit another to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, while in waters designated as cow/calf waters, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Approach by any means within 300 yards of any humpback whale; or

(2) Cause a vessel or other object to approach within 300 yards of a humpback whale; or

(3) Operate any aircraft within 1,000 feet of any humpback whale.

(c) The following areas are designated as cow/calf waters:

(1) Adjoining the island of Lanai—all waters within two miles of the mean high-water line along the north and east between lines extending perpendicular from the coast from Kaena Point to Kamaiki Point;

(2) Adjoining the island of Maui—all waters inshore of a straight line drawn between Hekili Point and Puu Olai.

Redesignated
November 23, 1987
52 FR 44915

E
**Subpart E—Incidental Capture of Endangered
Sea Turtles**

§ 222.41 Policy regarding incidental capture of sea turtles.

Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 227.72(e) of this subchapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

[52 FR 24251, June 29, 1987]

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**PART 225—FEDERAL/STATE COOP-
ERATION IN THE CONSERVATION
OF ENDANGERED AND THREAT-
ENED SPECIES**

Sec.

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- 225.4 Cooperation with the States.**
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- 225.6 Allocation of funds.**
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- 225.12 Project evaluation.**
- 225.13 Contracts.**
- 225.14 Inspection.**

AUTHORITY: Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205.

SOURCE: 41 FR 24354, June 16, 1976, unless otherwise noted.

§ 225.1 Purpose of regulations.

The regulations in this part implement section 6 of the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205 which provides, under certain circum-

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stances, for cooperative agreements with and financial assistance to the States.

§ 225.2 Scope of regulations.

This part applies to endangered and threatened species under the jurisdiction of the Department of Commerce (see 50 CFR 222.23(a)).

§ 225.3 Definitions.

In addition to the definitions contained in the Act, and unless the context otherwise requires, in this Part 225:

(a) "Act" means the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205.

(b) "Agreements" mean signed documented statements of the actions to be taken by the State(s) and the Director in furthering certain purposes of the Act. They include:

(1) A Cooperative Agreement entered into pursuant to section 6(c) of the Act and, where appropriate, containing provisions found in section 6(d)(2) of the Act.

(2) A Grant-In-Aid Award which includes a statement of the actions to be taken in connection with the conservation of endangered or threatened species receiving Federal financial assistance, objectives and costs of such actions, and costs to be borne by the Federal Government and by the State(s).

(c) "Application for Federal Assistance" means a description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(d) "Director" means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized designee.

(e) "Program" means a State-developed plan for the conservation and management of all resident species which are deemed by the Secretary to be endangered or threatened and those which are deemed by the State to be endangered or threatened, which includes goals, priorities, strategies, actions, and funding necessary to accom-

plish the objectives on an individual species basis.

(f) "Project" means a substantial undertaking to conserve the various endangered or threatened species.

(g) "Project segment" means an essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(h) "Resident species" means, for purposes of these regulations, with respect to a State, a species which exists in the wild in that State during any part of its life.

(i) "Secretary" means the Secretary of Commerce or his authorized designee.

§ 225.4 Cooperation with the States.

The Director shall cooperate with any State which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Director must find and reconfirm, on an annual basis, that:

(a) Authority resides in a State agency to conserve resident species determined by the State agency or the Director to be endangered or threatened;

(b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident species in the State which are deemed by the Director to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information and data requested to the Director;

(c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species;

(d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and

(e) Provisions are made for public participation in designating resident species as endangered or threatened.

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§ 225.5 Cooperative agreement.

Following receipt of an application by a State for a Cooperative Agreement and a determination by the Director that the State program for endangered and threatened species is adequate and active, the Director shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Grant-In-Aid Award can be approved for endangered or threatened species projects. The Cooperative Agreement must be reconfirmed annually to insure that it reflects new laws, species lists, rules or regulations, and programs, and to demonstrate that the program is still active and adequate. In order for a State to receive financial assistance, such Cooperative Agreement must also contain:

- (a) The actions that are to be taken by the Director and the State;
- (b) The benefits that are expected to be derived in connection with the conservation of endangered or threatened species; and
- (c) The estimated cost of these actions.

§ 225.6 Allocation of funds.

The Director shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various States using the following as the basis for his determination:

- (a) The international commitments of the United States to protect endangered or threatened species;
- (b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;
- (c) The number of federally listed endangered and threatened species within a State;
- (d) The potential for restoring endangered and threatened species within a State; and
- (e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 225.7 Financial assistance.

- (a) Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement.

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Subsequent to such agreement, the Director may further agree with a State(s) to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an Application for Federal Assistance and a Grant-In-Aid Award. The availability of Federal funds under a Grant-In-Aid Award shall be contingent upon the continued existence of the Cooperative Agreement.

- (b) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other requirements of the Office of Management and Budget Circular No. A-95 (as revised and published in the *FEDERAL REGISTER* on January 13, 1976 (41 FR 2052)).

- (c) The mutual obligations by the cooperating agencies will be set forth in a Grant-In-Aid Award executed between the State and the Director. The Grant-In-Aid Award shall cover the proposed financing and the work items described in the documents supporting it. The form and content for both the Application for Federal Assistance and the Grant-In-Aid Award are provided in the Federal Aid Handbook No. 22.

§ 225.8 Availability of funds.

Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a Grant-In-Aid Award is signed by the Director.

§ 225.9 Payments.

The payment of the Federal share of costs incurred in the conduct of activities included under a Grant-In-Aid Award shall be in accordance with the Treasury Circular 1075.

- (a) Federal payments under the Act shall not exceed 75 percent of the program costs as stated in the agreement; except, the Federal share may be in-

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creased to 90 percent when two or more States having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such States, jointly enter into an agreement with the Director.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Director as provided in Federal Management Circular 74-7.

(c) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of the Act shall have first been submitted to and approved by the Director. Payments shall be made for expenditures reported and certified by the State agency. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds for the State.

(d) Vouchers and forms provided by the Director and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Director by the State agency.

[41 FR 24354, June 18, 1976, as amended at 49 FR 30074, July 26, 1984]

§ 225.10 Assurances.

A State shall certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

§ 225.11 Submission of documents.

Documents required by section 6 of the Act or by these regulations shall be addressed to the Director, National Marine Fisheries Service, Washington, DC 20235.

§ 225.12 Project evaluation.

Any difference of opinion about a proposed project or appraised value of

land to be acquired or any other related matter will be considered by qualified representatives of the Director and the State. Final determination in the event of continued disagreement rests with the Director.

§ 225.13 Contracts.

The State may use its own regulations in obtaining services provided they adhere to Federal laws and the requirements set forth in Federal Management Circular 74-7. The State is the responsible authority without recourse to the Director regarding settlement of contractual issues.

§ 225.14 Inspection.

Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.

**PART 226—DESIGNATED CRITICAL
HABITAT**

226.11

Subpart A—Introduction

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226.1 Purpose of regulations.

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**Subpart B—Critical Habitat for Marine
Mammals**

226.11 Northwestern Hawaiian Islands.

**Subpart C—Critical Habitat for Marine Fish—
[Reserved]**

Subpart D—Critical Habitat for Marine Reptiles

226.71 Sandy Point, St. Croix, U.S. Virgin
Islands.

AUTHORITY: 16 U.S.C. 1533.

SOURCE: 44 FR 17711, Mar. 23, 1979, unless
otherwise noted.

Subpart A—Introduction

§ 226.1 Purpose of regulations.

The regulations contained in this part identify those habitats designated as critical under section 7 of the Endangered Species Act, as amended, by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, for those endangered and threatened species

under the jurisdiction of the Secretary of Commerce. The list of these species is found in 50 CFR 222.23(a) for endangered species and 50 CFR 227.4 for threatened species.

§ 226.2 Scope of regulations.

(a) The critical habitat designations contained in this part apply only to the endangered and threatened species listed in this part.

(b) Regulations implementing section 7 of the Endangered Species Act, as amended, are found in 50 CFR Part 402.

(c) The provisions in this part are in addition to, and not in lieu of other regulations of Parts 217 through 227 and 402 of this chapter.

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**Subpart B—Critical Habitat for
Marine Mammals**

§ 226.11 Northwestern Hawaiian Islands.

Hawaiian Monk Seal

(Monachus schauinslandi)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

Kure Atoll (28°24' N, 178°20' W)

Midway Islands, except Sand Island and its harbor (28°14' N, 177°22' W)

Pearl and Hermes Reef (27°55' N, 175° W)

Lisianski Island (26°46' N, 173°58' W)

Laysan Island (25°46' N, 171°44' W)

Maro Reef (25°25' N, 170°35' W)

Gardner Pinnacles (25°00' N, 168°00' W)

French Frigate Shoals (23°45' N, 166°00' W)

Necker Island (23°34' N, 164°42' W)

Nihoa Island (23°03.5' N, 161°55.5' W).

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53 FR 18990

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KURE ATOLL

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PEARL and HERMES REEF

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(51 FR 16053, Apr. 30, 1986)

**Subpart C—Critical Habitat for
Marine Fish—[Reserved]**

**Subpart D—Critical Habitat for
Marine Reptiles**

**§ 226.71 Sandy Point, St. Croix, U.S.
Virgin Islands.**

**LEATHERBACK SEA TURTLE
(DERMOCHELYS CORIACEA)**

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42'12" North and 64°50'00" West.

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**PART 227—THREATENED FISH AND
WILDLIFE**

Subpart A—General Provisions

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227.3 Definitions.

227.4 Enumeration of threatened species.

Subpart B—Threatened Marine Mammals

227.11 Guadalupe fur seal.

Subpart C—Threatened Marine Fish [Reserved]

Subpart D—Threatened Marine Reptiles

227.71 Prohibitions.

227.72 Exceptions to prohibitions.

AUTHORITY: 16 U.S.C. 1531 *et seq.*

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 227.1 Purpose.

The regulations contained in this part identify the species, subspecies, or any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature, under the jurisdiction of the Secretary of Commerce which have been determined to be threatened species under the Endangered Species Act of 1973 and provide for the conservation of such spe-

cies by establishing rules and procedures to govern activities involving the species.

§ 227.2 Scope.

(a) The regulations contained in this part apply only to the threatened species enumerated in § 227.4.

(b) The provision of this part are in addition to, and not in lieu of other regulations of Parts 217 through 222 and Part 225 of this Chapter II which prescribe additional restrictions or conditions governing threatened species.

(c) Certain of the threatened fish or wildlife listed in 50 CFR 17.11 and enumerated in 50 CFR 227.4 are included in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation, and reexportation of such species are subject to additional regulations provided in Part 23, Chapter I (Title 50).

§ 227.3 Definitions.

In addition to the definitions contained in the Act, and in Parts 217 and 225 of this chapter, and unless the context otherwise requires, in this Part 227:

(a) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1547;

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized delegate. The Assistant Administrator for Fisheries is in charge of the National Marine Fisheries Service;

(c) "Ongoing project(s)" means an activity for scientific purposes or to enhance the propagation or survival of such species which are not conducted in the course of a commercial activity initiated before the listing of the affected species;

(d) "Plastron" means the ventral part of the shell of a sea turtle consisting typically of nine symmetrically placed bones overlaid by horny plates; and

(e) "Sea turtle(s)" means those sea turtle species enumerated in § 227.4 and any part(s), product(s), egg(s) or

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offspring thereof, or the dead body or part(s) thereof.

§ 227.4 Enumeration of threatened species.

The species listed as threatened under the Act which are under the jurisdiction of the Secretary of Commerce are:

(a) Green sea turtle (*Chelonia mydas*) except for those populations listed under 50 CFR 222.23(a).¹

(b) Loggerhead sea turtle (*Caretta caretta*).¹

(c) Pacific ridley sea turtle (*Lepidochelys olivacea*) except for those populations listed under 50 CFR 222.23(a).¹ The effective date of the listing of the species in paragraphs (a), (b), and (c) of this section is September 6, 1978.

(d) Guadalupe fur seal (*Arctocephalus townsendi*).

[43 FR 32809, July 18, 1978, as amended at 45 FR 29055, May 1, 1980; 50 FR 51258, Dec. 16, 1985]

Subpart B—Threatened Marine Mammals

§ 227.11 Guadalupe fur seal.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of Part 222 Subpart C—Endangered Fish or Wildlife Permits.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:

(i) Is accomplished in a humane manner;

¹Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, jurisdiction for sea turtles is limited to turtles while in the water.

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(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Director, Southwest Region.

[50 FR 51258, Dec. 16, 1985]

Subpart C—Threatened Marine Fish [Reserved]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

Except as provided in § 227.72, 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 to cause to be committed in any of the following acts with respect to any species of threatened marine reptile enumerated in § 227.4 (a), (b) and (c):

(a) Import any such species into, or export any such species from, the United States;

(b) Take any such species within the United States or the territorial sea of the United States;

(c) Take any such species upon the high seas;

(d) Possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of the prohibitions in paragraphs (b) and (c) of this section;

(e) Deliver, receive, carry, transport, or ship in foreign commerce by any means whatsoever, and in the course of a commercial activity, any such species;

(f) Sell, or offer for sale, in foreign commerce any such species;

(g) Deliver, receive, carry, transport, or ship in interstate commerce, by any

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means whatsoever, and in the course of commercial activity; provided that this paragraph (g) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing; or

(h) Sell, or offer for sale, in interstate commerce any such species; provided that this paragraph (h) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing.

[43 FR 32809, July 28, 1978, as amended at 50 FR 51258, Dec. 16, 1985]

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that the application is complete and sufficient for processing within the 90-day period. Projects not receiving a permit or letter indicating sufficiency by the 90th day must cease. Within 30 days of receipt of an application, the Assistant Administrator will determine the completeness and sufficiency of the application for processing. If an application is deemed complete and sufficient for processing, a permit will be issued or denied within the next 90 days beginning with the date of the letter informing the applicant that the application is sufficient. Approved projects shall continue in accordance with the conditions of the permit.

(b) *Permits for zoological exhibition or educational purposes.* The Assistant Administrator may issue permits authorizing activities which would be otherwise prohibited under § 227.71 for zoological exhibition or educational purposes. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(c) *Exceptions for injured, dead, or stranded specimens.* If any member of any threatened species listed in § 227.4 is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a State agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Wherever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235, and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

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(7) Such other information as the Assistant Administrator may require.

(d) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a State fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 8(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at his discretion.

(e) *Exception for incidental taking—*
(1) *General.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, the incidental taking of any member of any species listed in § 227.4 during fishing or scientific research activities not directed toward such members of such species is allowed under the following conditions:

(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(1) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot, or

(2) Placing the turtle on its breastplate (plastron) and elevating its hind-quarter several inches for a period of one up to twenty-four hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles.

Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to twenty-four if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, offloaded, transhipped, or kept below deck.

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(1) Canaveral Area, offshore—all year, commencing October 1, 1987.

(2) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(1) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(2) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(3) Southwest Florida Area, offshore—all year, commencing January 1, 1989.

(4) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(ii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iii) In the Canaveral and Atlantic Areas, a shrimp trawler fishing for or

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possessing rock shrimp or royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are rock shrimp or royal red shrimp.

(iv) A single test net having a headrope length of 20 feet or less is exempt from the TED requirement provided that the test net is pulled immediately in front of any other net or is not connected to another net in any way.

(3) *Tow time restrictions.* (i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 3 and 4 for depictions of the areas):

(A) Atlantic Ocean:

(1) Canaveral Area, inshore—all year, commencing October 1, 1988.

(2) Atlantic Area, inshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(1) Southwest Florida Area, inshore—all year, commencing January 1, 1988.

(2) Gulf Area, inshore—March 1 through November 30, each year, commencing March 1, 1988.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp

trawler less than 25 feet in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(1) Canaveral Area, offshore—all year, commencing October 1, 1987.

(2) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(1) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(2) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(3) Southwest Florida Area, offshore—all year, commencing January 1, 1988.

(4) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(iii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the tow time restrictions provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iv) In the Atlantic and Canaveral Areas, a shrimp trawler fishing for or possessing royal red or rock shrimp is exempt from the tow time restriction provided that 90 percent of all shrimp offloaded from, the trawler are royal red or rock shrimp.

TABLE 1—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET OR LONGER IN LENGTH

Area	Start date	Season
Atlantic Ocean:		
Canaveral Area—offshore.....	October 1, 1987.	All year.
Atlantic Area—offshore.....	May 1, 1988.	May 1 through August 31, each year.
Gulf of Mexico:		
Southwest Florida Area—offshore to 15 nautical miles.....	Jan. 1, 1988.	All year.
Gulf Area—offshore to 15 nautical miles.....	March 1, 1988.	March 1 through November 30, each year.
Southwest Florida Area—offshore.....	Jan. 1, 1989.	All year.
Gulf Area—offshore.....	March 1, 1989.	March 1 through November 30, each year.

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TABLE 2—90 MINUTE TOW TIMES ¹

Area	Start date	Season	Vessel sizes
Atlantic Ocean:			
Canaveral Area—Inshore.....	October 1, 1988.	All year.....	All.
Atlantic Area—Inshore.....	May 1, 1988.	May 1 through August 1, each year.....	All.
Gulf of Mexico:			
Southwest Florida Area—Inshore.....	January 1, 1988.	All year.....	All.
Gulf Area—Inshore.....	March 1, 1988.	March 1 through November 1, each year. year.....	All.
Atlantic Ocean:			
Canaveral Area—Offshore.....	October 1, 1987.	All year.....	< 25 feet.
Atlantic Area—offshore.....	May 1, 1988.	May 1 through August 31, each year.....	< 25 feet.
Gulf of Mexico:			
Southwest Florida Area—offshore to 15 nautical miles.....	January 1, 1988.	All year.....	< 25 feet.
Gulf Area—offshore to 15 nautical miles.....	March 1, 1988.	March 1 through November 30, each year.....	< 25 feet.
Southwest Florida area—offshore.....	January 1, 1988.	All year.....	< 25 feet.
Gulf Area—offshore.....	March 1, 1988.	March 1 through November 30, each year.....	< 25 feet.

¹ Tow time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

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MAP 1. OFFSHORE ATLANTIC WATERS WHERE TEDS ARE REQUIRED

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MAP 2. OFFSHORE GULF OF MEXICO WATERS WHERE TEDS ARE REQUIRED

NOTE: The numbered zones on map 2 correspond to the numbered zones on map 4.

The seaward margin of the stippled area on map 2 is the 15 nautical mile line. The following 55 points are connected by this line.

1. 24°28' N., 81°00' W.	15. 27°30' N., 83°01' W.	29. 28°08' N., 88°43' W.	43. 28°44' N., 95°07' W.
2. 24°18' N., 81°42' W.	16. 27°52' N., 83°08' W.	30. 28°45' N., 89°00' W.	44. 28°31' N., 95°30' W.
3. 24°17' N., 82°00' W.	17. 28°32' N., 82°57' W.	31. 28°40' N., 89°30' W.	45. 28°19' N., 96°00' W.
4. 24°23' N., 82°58' W.	18. 28°22' N., 83°37' W.	32. 28°03' N., 89°47' W.	46. 28°07' N., 96°16' W.
5. 24°38' N., 83°12' W.	19. 28°45' N., 83°54' W.	33. 28°52' N., 90°05' W.	47. 27°59' N., 96°30' W.
6. 24°53' N., 82°55' W.	20. 28°39' N., 84°12' W.	34. 28°48' N., 90°23' W.	48. 27°43' N., 96°47' W.
7. 24°51' N., 82°07' W.	21. 28°21' N., 85°00' W.	35. 28°48' N., 90°55' W.	49. 27°30' N., 96°52' W.
8. 24°54' N., 81°48' W.	22. 28°27' N., 85°30' W.	36. 28°01' N., 91°24' W.	50. 27°16' N., 97°03' W.
9. 25°06' N., 81°25' W.	23. 28°59' N., 86°00' W.	37. 28°13' N., 91°50' W.	51. 27°00' N., 97°05' W.
10. 25°32' N., 81°33' W.	24. 30°08' N., 86°43' W.	38. 28°17' N., 92°22' W.	52. 26°45' N., 97°02' W.
11. 25°43' N., 81°55' W.	25. 30°04' N., 87°12' W.	39. 28°31' N., 93°19' W.	53. 26°30' N., 96°57' W.
12. 26°11' N., 82°05' W.	26. 28°58' N., 88°00' W.	40. 28°26' N., 93°49' W.	54. 26°15' N., 96°54' W.
13. 26°20' N., 82°25' W.	27. 28°58' N., 88°32' W.	41. 28°14' N., 94°28' W.	55. 25°59.5' N., 96°52' W.
14. 27°11' N., 82°49' W.	28. 28°29' N., 88°52' W.	42. 28°05' N., 94°37' W.	

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MAP 3. INSHORE ATLANTIC WATERS WHERE 90 MINUTE TOW TIMES APPLY

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MAP 4. INSHORE GULF OF MEXICO WATERS WHERE 90 MINUTE TOW TIMES APPLY

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(4) *Qualified turtle excluder devices*—(i) *General*. In a qualified TED, the space between deflector bars cannot exceed four inches. Any other specification of dimension or strength of construction materials is a minimum requirement; i.e., a component that is larger or more durable than specified in paragraph (e)(4)(ii) of this section meets the requirement. Floats may be attached to any device.

(ii) *Approved TEDs*. The following TEDs are approved for use wherever and whenever a TED is required and for use where and when the 90 minute tow time would otherwise apply.

(A) *NMFS TED (Figure 1)*. The NMFS TED consists of two oblong end hoops holding a diagonal deflector grid that are sewn into the trawl net ahead of the cod end. The device has a top-opening door. The end hoops are made from ½-inch welded steel pipe. The deflector grid and door are made from ¼-inch (inside diameter) welded galvanized pipe. The device may be rigid or collapsible and can be constructed using fiberglass rod or aluminum pipe of similar strength. The rigid version has rods welded to the front and rear hoops to align the deflector grid and to support the weight of the net and its catch. In the collapsible version, ¼-inch steel cables perform these functions. Net webbing is sewn to the door frame and to the bottom and both sides of the end

hoops. The cod end attaches to the rear hoop. A finfish deflecting apparatus may be installed in the device to eliminate unwanted bycatch. A finfish deflecting apparatus may consist of a webbing accelerator funnel placed in front of the TED diagonal bars and a rectangular grid with approximately 2½ inches between bars behind the TED diagonal bars. Holes are cut in the webbing, which has been stretched around the TED frame, to allow finfish to escape. When a sea turtle enters the net, it passes through the front hoop and is deflected upwards by the grid. The turtle is then able to open the door and escape. Shrimp pass through the grid to be retained in the cod end. The minimum dimensions for a NMFS TED used in the Gulf of Mexico Area and the Southwest Florida area are end hoops 20 inches high by 34 inches wide, door frame 25 inches by 25 inches, door opening 10 inches above the rear hoop. The minimum dimensions for a NMFS TED used in the Atlantic Area and the Canaveral Area are end hoops 30 inches high by 45 inches wide, door frame 30 inches by 30 inches, door opening 12 inches above the rear hoop. In all areas, the deflector grid angle must measure between 30° and 45° from the horizontal when the device is deployed. NMFS TEDs of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used.

FIGURE 1 (NMFS TED)

(B) *Cameron TED* (Figure 2). The Cameron TED is a rigid device similar to the NMFS TED in both form and function. It uses round end hoops instead of oblong ones. It is made from ¼-inch aluminum rod and is sewn into the trawl net ahead of the cod end. The device may be constructed of steel pipe, fiberglass rod or other materials of similar strength. This TED does not use a movable door. Instead, a turtle escape opening is cut in the top mesh of the net above the deflector grid. The minimum dimensions for a Cameron TED used in the Gulf Area and the Southwest Florida Area are 32-inch inside diameter end hoops and a

32-inch top mesh opening. The minimum dimensions for a Cameron TED used in the Atlantic Area and the Canaveral Area are 35 inch inside diameter end hoops and a 35 inch top mesh opening. For all areas, the deflector grid must be angled between 30° and 45° from horizontal. Cameron TEDS of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used. Cameron TEDs, as originally designed, used a quick release hoop fastener. This feature may not be used. A Cameron TED must be sewn into the net to be a qualified device.

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FIGURE 2 (CAMERON TED)

(C) *Matagorda TED* (Figure 3). The Matagorda TED is a single, rigid, rectangular deflector grid that may be made from a variety of materials including $\frac{1}{4}$ -inch steel pipe, $\frac{1}{2}$ -inch aluminum rod, or fiberglass rod of comparable strength. Unlike the NMFS or Cameron TEDs, the Matagorda TED does not use two end hoops to position the deflector grid. The grid itself must be sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water. The angled grid

deflects turtles either upward or downward to allow them to escape through an opening in the net mesh. The minimum dimensions for a Matagorda TED used in the Gulf Area and the Southwest Florida Area are a deflector grid 28 inches wide, by 36 inches long, and a minimum release opening of 32 inches. The minimum dimensions for a Matagorda TED used in the Atlantic Area and the Canaveral Area are a deflector grid 30 inches wide by 42 inches long, and a minimum release opening of 35 inches.

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FIGURE 3 MATAGORDA TED

(D) *Georgia TED (Figure 4)*. The Georgia TED is a single, rigid, oval deflector grid similar to the Matagorda TED in form and function. It may be made from ½-inch steel pipe, ½-inch aluminum rod, or fiberglass rod of comparable strength. Like the Matagorda TED, the grid must be sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water to allow turtles to escape either upward or downward through an opening in the net mesh. The minimum dimensions for a Georgia TED used in the Gulf Area and the Southwest Florida Area are a 28-inch smallest inside diameter and a minimum release opening of 32 inches. The minimum dimensions for a Georgia TED

used in the Atlantic Area and the Canaveral Area are a 30-inch smallest inside diameter and a minimum release opening of 35 inches. A variation of the Georgia TED uses removable deflector bars (inside a hoop) or varying spacing which are bolted to a permanently affixed second hoop. This feature may be used only if the deflector bar hoop is also laced to the net and the permanently attached hoop so that it cannot be easily removed at sea. Deflector bars can be spaced no more than 4 inches apart. Georgia type TEDs that were acquired prior to July 1, 1987, may continue to be used as long as they meet minimum size standards and both hoops are permanently affixed to the trawl net.

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FIGURE 4 (GEORGIA TED)

Added
October 5, 1987
52 FR 37154

§ 227.72 Exceptions to prohibitions.

- (e) . . .
- (4) . . .
- (ii) . . .

(E) *Morrison TED (Figure 5)*. In the Morrison TED, webbing is substituted for the rigid deflector grids used in the TEDs described above. The webbing consists of number 42 (3 millimeters thick) or larger polypropylene, heat-set knotted or braided. The polypropylene must be untreated and of a color easily distinguished from the trawl net. The stretched opening of the mesh may not exceed 8". Depending on the trawl net type, the webbing may be installed as one panel or as a main and two side (jib) panels (Figure 6). In either case, the webbing must form a complete barrier to large objects inside the trawl net forward of the cod end. The base of the

webbing must be attached to the trawl net not less than 16'8" forward of the point at which the cod end is attached to the trawl net. The apex of the webbing must be attached to the top center of the trawl net not more than 20" forward of the point at which the cod end is attached to the trawl net. Each point on the circumference of the webbing must be attached to the trawl net. The meshes of the webbing must be under tension when the cod end is pulled aft thus forming diamond patterns pointing toward the top of the trawl net. As an escape hole, a slit at least 4'8" in length must be cut in a fore and aft direction at the top of the trawl net immediately forward of the apex of the webbing. The slit may not be covered or closed in any manner.

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Figure 5 (MORRISON TED)

Figure 6 SCHEMATIC EXAMPLE OF MORRISON TED'S MAIN PANEL & JIBS

101A

January 1, 1989
Revision 5

Added
September 1, 1988
53 FR 33821

In § 227.72, a new paragraph (e)(4)(ii)(F) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

- (e) * * *
- (4) * * *
- (ii) * * *

(F) *Parrish TED (Figure 7)*. This TED is a unit that is installed between the body of the trawl and the bag. The unit consists of three major components: the extension, the deflector panel, and the frame. The extension is a piece of netting of 1¾ inch stretch mesh, No. 15 thread, treated nylon, measuring 150 meshes by 100 meshes. When installed in the trawl, the extension is cylindrically shaped with a circumference of 150 meshes and a depth of 100 meshes. The deflector panel, which slopes down the inside of the extension, is a rectangular piece of 8 inch stretched mesh, 3 mm diameter, braided polyethylene netting. The deflector panel measures 8 meshes across the leading and trailing edges of the deflector panel and is 15½ meshes deep. The 8 meshes at the leading edge of the deflector panel are sewn into the small mesh (1¾ inch) of the extension 3

meshes down from the top edge of the extension. The 8 meshes at the trailing edge of the deflector panel are attached to the top edge of the frame. Each side edge of the panel is attached at 5½ inch intervals to a ¾ inch diameter, 3 strand polydacron rope which is attached to the small mesh of the extension at 5½ inch intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame is a rectangular ¾ inch diameter welded galvanized steel rod unit with a 40 x 4 inch opening and small pad eyes at the top corners. The trailing edge meshes of the deflector panel are attached to the top of the frame, and 50 lateral meshes of the extension netting (1¾ inch mesh) are centered and sewn to the bottom and sides of the frame. The escape opening consists of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A 50 inch, ¼ inch diameter, bungee cord is laced through the meshes at the cut. Opposing ends of the bungee cord are secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep is attached to the meshes at the cut.

Figure 7. (PARRISH T.E.D.)

(iii) *Other TEDs*. Additional devices may be approved as qualified TEDs if they demonstrate a turtle exclusion rate of 97 percent according to a NMFS-approved scientific protocol published in the *FEDERAL REGISTER*. One such protocol was published on June 29, 1987. Turtle exclusion testing

must be conducted under the supervision of the Assistant Administrator or a designee. A person interested in testing a TED should contact the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

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(iv) *Fishing efficiency experiments.* From time to time, the Director, Southeast Region, NMFS, may authorize public or private experimentation to develop alternative turtle excluder devices or to determine effects on shrimp fishing efficiency. A research protocol is available for such purposes. Requests for approval of experimental programs should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702.

(5) [Reserved]

(6) *Prohibitions.* It is unlawful for any person to do any of the following:

(i) Fail to use a qualified TED in each net during trawling on a vessel 25 feet or longer in length in an area where and at a time when a TED is required pursuant to this part;

(ii) Fail to restrict a tow time to 90 minutes in an area and at a time such restriction applies, unless a qualified TED is being used in each net during trawling.

(iii) Land from or possess on board a vessel white, brown, pink, or seabob shrimp in quantities exceeding 10 per cent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in a TED required area without using a qualified TED in each net during trawling;

(iv) Fail to follow sea turtle handling and resuscitation procedures specified in paragraph (e)(1)(i) of this section; or

(v) Fail to comply with instructions and signals issued by an authorized officer. Enforcement procedures and signals used in the Gulf of Mexico shrimp fishery are listed at 50 CFR Part 658. These procedures will be used to enforce the rules of this section in all geographic areas.

(7) *Enforcement policy regarding incidental capture of threatened sea turtles.* Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with the rules of paragraph (e) of this section will not be subject to civil penalties under the Act for incidental capture of threatened sea turtles by shrimp trawl gear.

(f) *Subsistence.* The prohibition in § 227.71(b) shall not apply with respect to the taking of any member of

the species of green sea turtle (*Chelonia mydas*) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

[43 FR 32809, July 28, 1978, as amended at 46 FR 43977, Sept. 2, 1981; 52 FR 24251, June 29, 1987]

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Sec.

Subpart B—Consultation Procedures

- 402.10 Conference on proposed species or proposed critical habitat.
- 402.11 Early consultation.
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- 402.15 Responsibilities of Federal agency following issuance of a biological opinion.
- 402.16 Reinitiation of formal consultation.

AUTHORITY: 16 U.S.C. 1531 *et seq.*

SOURCE: 51 FR 19957, June 3, 1986, unless otherwise noted.

Subpart A—General

§ 402.01 Scope.

(a) This part interprets and implements sections 7(a)-(d) [16 U.S.C. 1536(a)-(d)] of the Endangered Species Act of 1973, as amended ("Act"). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical ("critical habitat"). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR Parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

Subpart A—General

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such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)-(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR Part 451, and regulations governing the exemption process are found at 50 CFR Parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR Part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species

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the Federal Agency shall contact the FWS.

§ 402.02 Definitions.

"Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

"Action" means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

"Applicant" refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

"Biological assessment" refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

"Biological opinion" is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

"Conference" is a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

"Conservation recommendations" are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a pro-

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posed action on listed species or critical habitat or regarding the development of information.

"Critical habitat" refers to an area designated as critical habitat listed in 50 CFR Parts 17 or 226.

"Cumulative effects" are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

"Designated non-Federal representative" refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

"Destruction or adverse modification" means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

"Director" refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

"Early consultation" is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

"Effects of the action" refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.

Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

"Formal consultation" is a process between the Service and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

"Incidental take" refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

"Informal consultation" is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

"Jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

"Listed species" means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11-17.12.

"Major construction activity" is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].

"Preliminary biological opinion" refers to an opinion issued as a result of early consultation.

"Proposed critical habitat" means habitat proposed in the FEDERAL REGISTER to be designated or revised as

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critical habitat under section 4 of the Act for any listed or proposed species.

"*Proposed species*" means any species of fish, wildlife, or plant that is proposed in the **FEDERAL REGISTER** to be listed under section 4 of the Act.

"*Reasonable and prudent alternatives*" refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

"*Reasonable and prudent measures*" refer to those actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take.

"*Recovery*" means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

"*Service*" means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

§ 402.03 Applicability.

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

§ 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service. Such counterpart regulations shall be published in the **FEDERAL REGISTER** in proposed form and shall be subject to public comment for at least 60 days before final rules are published.

§ 402.05 Emergencies.

(a) Where emergency circumstances mandate the need to consult in an ex-

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pedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)-(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

§ 402.06 Coordination with other environmental reviews.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*, implemented at 40 CFR Parts 1500-1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligations to comply with the procedures set forth in this part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determin-

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ing an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

§ 402.08 Designation of non-Federal representative.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

§ 402.03 Irreversible or irretrievable commitment of resources.

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

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§ 402.10 Conference on proposed species or proposed critical habitat.

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in § 402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only if no significant new information is developed (including that developed during the rule-making process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental

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take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

§ 402.11 Early consultation.

(a) *Purpose.* Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) *Request by prospective applicant.* If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) *Initiation of early consultation.* If the Federal agency receives the prospective applicant's certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in § 402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in § 402.12.

(d) *Procedures and responsibilities.* The procedures and responsibilities for early consultation are the same as outlined in § 402.14(c)-(j) for formal consultation, except that all references to the "applicant" shall be treated as the "prospective applicant" and all references to the "biological opin-

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ion" or the "opinion" shall be treated as the "preliminary biological opinion" for the purpose of this section.

(e) *Preliminary biological opinion.* The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) *Confirmation of preliminary biological opinion as final biological opinion.* A preliminary biological opinion may be confirmed as a biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency's request, the Service shall either:

(1) Confirm that the preliminary biological opinion stands as a final biological opinion; or

(2) If the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

§ 402.12 Biological assessments.

(a) *Purpose.* A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) *Preparation requirement.* (1) The procedures of this section are required for Federal actions that are "major construction activities"; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who

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may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

(c) *Request for information.* The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

(d) *Director's response.* Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency

must confer with the Service if required under § 402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

(e) *Verification of current accuracy of species list.* If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

(f) *Contents.* The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.

(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) *Incorporation by reference.* If a proposed action requiring the preparation of a biological assessment is iden-

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tical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) *Permit requirements.* If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and Part 17 of this title (with respect to species under the jurisdiction of the FWS) or Parts 220, 222, and 227 of this title (with respect to species under the jurisdiction of the NMFS) is required.

(i) *Completion time.* The Federal agency or the designated non-Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(j) *Submission of biological assessment.* The Federal agency shall submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment. At the option of the Federal agency, formal consultation may be initiated under § 402.14(c) concurrent-

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ly with the submission of the assessment.

(k) *Use of the biological assessment.*

(1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under § 402.14 or § 402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.

(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

§ 402.14 Formal consultation.

(a) *Requirement for formal consultation.* Each Federal agency shall review its actions at the earliest possible time

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to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under § 402.12 or as a result of informal consultation with the Service under § 402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under § 402.11, is confirmed as the final biological opinion.

(c) *Initiation of formal consultation.* A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with § 402.12.

Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) *Responsibility to provide best scientific and commercial data available.* The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) *Duration and extension of formal consultation.* Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

(f) *Additional data.* When the Service determines that additional data would provide a better information

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base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to § 402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service's request for additional data is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion using the best scientific and commercial data available.

(g) *Service responsibilities.* Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.

(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service's review and evaluation conducted under paragraphs (g)(1) through (3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2). The Service will utilize the expertise of the Federal agency and any

applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) *Biological opinions.* The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse

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modification of critical habitat (a "jeopardy biological opinion"); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "no jeopardy" biological opinion). A "jeopardy" biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) *Incidental take.* (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraph (i)(1)(ii) above; and

(iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45(FWS) and 222.23(d)(NMFS).

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded,

the Federal agency must reinstate consultation immediately.

(j) *Conservation recommendations.* The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) *Incremental steps.* When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and

(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(l) *Termination of consultation.* (1) Formal consultation is terminated with the issuance of the biological opinion.

(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.

(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated.

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§ 402.15 Responsibilities of Federal agency following issuance of a biological opinion.

(a) Following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its section 7 obligations and the Service's biological opinion.

(b) If a jeopardy biological opinion is issued, the Federal agency shall notify the Service of its final decision on the action.

(c) If the Federal agency determines that it cannot comply with the requirements of section 7(a)(2) after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR Part 451.

§ 402.16 Reinitiation of formal consultation.

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

(a) If the amount or extent of taking specified in the incidental take statement is exceeded;

(b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;

(c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

(d) If a new species is listed or critical habitat designated that may be affected by the identified action.

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**PART 424—LISTING ENDANGERED
AND THREATENED SPECIES AND
DESIGNATING CRITICAL HABITAT**

Subpart A—General Provisions

Sec.

- 424.01 Scope and purpose.
- 424.02 Definitions.

Subpart B—Revision of the Lists

- 424.10 General.
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- 424.12 Criteria for designating critical habitat.
- 424.13 Sources of information and relevant data.
- 424.14 Petitions.
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- 424.16 Proposed rules.
- 424.17 Time limits and required actions.
- 424.18 Final rules—general.
- 424.19 Final rules—impact analysis of critical habitat.
- 424.20 Emergency rules.
- 424.21 Periodic review.

AUTHORITY: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

SOURCE: 49 FR 38908, Oct. 1, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that pertain to the listing of species and the determination of critical habitats.

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§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this Part 424, except as otherwise stated.

(b) "Candidate" means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) "Conservation," "conserve," and "conserving" mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) "Critical habitat" means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

(e) "Endangered species" means a species that is in danger of extinction throughout all or a significant portion of its range.

(f) "List" or "lists" means the Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

(g) "Plant" means any member of the plant kingdom, including, without limitation, seeds, roots, and other parts thereof.

(h) "Public hearing" means an informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

(i) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, as appropriate, or their authorized representatives.

(j) "Special management considerations or protection" means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

(k) "Species" includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) "State agency" means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(m) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(n) "Wildlife" or "fish and wildlife" means any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Subpart B—Revision of the Lists

§ 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40-17.48 and Parts 222 and 227) applied to a threatened species only in accordance with the procedures of this part.

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§ 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section *solely* on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or classified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

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

(2) Over utilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

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

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction*. Unless all individuals of the listed species had been previous-

ly identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery*. The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error*. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(e) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see Part 23 of this Title 50) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protec-

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tion of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

§ 424.12 Criteria for designating critical habitat.

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (e.g., trees, sand bars) shall not be used in defining critical habitat.

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

EXAMPLE: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated critical habitat if it were concluded that the upland areas were essential to the conservation of an aquatic species located in the ponds and lakes.

(e) The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inad-

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equate to ensure the conservation of the species.

(f) Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated.

(g) Existing critical habitat may be revised according to procedures in this section as new data become available to the Secretary.

(h) Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

§ 424.14 Petitions.

(a) *General.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) *Petitions to list, delist, or reclassify species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be war-

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ranted. For the purposes of this section, "substantial information" is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the **FEDERAL REGISTER** and so notify the petitioner.

(2) In making a finding under paragraph (b)(1) of this section, the Secretary shall consider whether such petition—

(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;

(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) Provides information regarding the status of the species over all or a significant portion of its range; and

(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the **FEDERAL REGISTER** and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the **FEDERAL REG-**

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ISTER a proposed regulation to implement the action pursuant to § 424.16 of this part, or

(iii) The petitioned action is warranted, but that—

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and

(B) Expeditionous progress is being made to list, delist, or reclassify qualified species,

in which case, such finding shall be promptly published in the **FEDERAL REGISTER** together with a description and evaluation of the reasons and data on which the finding is based.

(4) If a finding is made under paragraph (b)(3)(iii) of this section with regard to any petition, the Secretary shall, within 12 months of such finding, again make one of the findings described in paragraph (b)(3) with regard to such petition, but no further finding of substantial information will be required.

(c) *Petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the **FEDERAL REGISTER** and so notify the petitioner.

(2) In making the finding required by paragraph (c)(1) of this section, the Secretary shall consider whether a petition contains—

(i) Information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

(3) Within 12 months after receiving a petition found under paragraph

(c)(1) of this section to present substantial information indicating that revision of a critical habitat may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the **FEDERAL REGISTER**.

(d) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

§ 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the **FEDERAL REGISTER**. The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

(c) Such notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of

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State, to the governments of any foreign countries in which the subject species normally occur.

§ 424.16 Proposed rules.

(a) *General.* Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.

(c) *Procedures—(1) Notifications.* In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the *FEDERAL REGISTER*;

(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

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(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) *Period of public comments.* At least 60 days shall be allowed for public comment following publication in the *FEDERAL REGISTER* of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the *FEDERAL REGISTER*. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the *FEDERAL REGISTER*, and shall specify the basis for so doing.

(3) *Public hearings.* The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the *FEDERAL REGISTER* not less than 15 days before the hearing is held.

§ 424.17 Time limits and required actions.

(a) *General.* (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the *FEDERAL REGISTER*:

(i) A final rule to implement such determination or revision,

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(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) *Critical habitat designations.* A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,

in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **FEDERAL REGISTER**. This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat will also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

(b) *Effective date.* A final rule shall take effect—

(1) Not less than 30 days after it is published in the **FEDERAL REGISTER**, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the **FEDERAL REGISTER** of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with § 424.16(c)(1)(ii).

(c) *Disagreement with State agency.* If a State agency, given notice of a proposed rule in accordance with § 424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with § 424.14, the Secretary shall provide such agency with a written justification for the

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failure to adopt a rule consistent with the agency's comments or petition.

§ 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

§ 424.20 Emergency rules.

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in § 424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the **FEDERAL REGISTER**. In the case of

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any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the **FEDERAL REGISTER** of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§ 424.16, 424.17, 424.18, and 424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

§ 424.21 Periodic review.

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§ 424.11, 424.16, and 424.17 of this part, as appropriate. A notice announcing those species under active review will be published in the **FEDERAL REGISTER**. Notwithstanding this section's provisions, the Secretary may review the status of any species at any time based upon a petition (see § 424.14) or upon other data available to the Service.

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SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

PART 450—GENERAL PROVISIONS

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 450.01 Definitions

The following definitions apply to terms used in this subchapter.

"Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*

"Agency action" means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

"Alternative courses of action" means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

"Benefits" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

"Biological assessment" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

"Biological opinion" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

"Chairman" means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

"Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

"Critical habitat" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

"Destruction or adverse modification" is defined at 50 CFR 402.02.

"Federal agency" means any department, agency or instrumentality of the United States.

"Irreversible or irretrievable commitment of resources" means any commitment of resources which has the effect

of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

"Jeopardize the continued existence of" is defined at 50 CFR 402.02.

"Mitigation and enhancement measures" means measures, including live propagation, transplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

"Permit or license applicant" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

"Proposed action" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

"Secretary" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

"Service" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

"To the extent that such information is available to the applicant" means

all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

[50 FR 8126, Feb. 28, 1985]

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**PART 451—APPLICATION
PROCEDURE**

Sec.

451.01 Definitions.

451.02 Applications for exemptions.

451.03 Endangered Species Committee.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

SOURCE: 50 FR 8127, Feb. 28, 1985, unless otherwise noted.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, D.C. 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20030.

(c) *Who may apply.* (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary's opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days

following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licens-

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ing or permitting agency, and by the permit or license applicant, to the extent known.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a

comprehensive description of the license or permit applicant's proposed action.

(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(vii) A description of all alternatives considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.

(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A complete discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A complete statement explaining why the proposed action is in the public interest.

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(v) A complete explanation of why the action is of regional or national significance.

(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) *Review of the application by the Secretary.* (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d) and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (c) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with Part 452.

(g) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02.

(h) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the **FEDERAL REGISTER** (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Commit-

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tee upon receipt of an application for exemption.

(i) The information collection requirements contained in Part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 451.03 Endangered Species Committee.

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

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**PART 452—CONSIDERATION OF
APPLICATION BY THE SECRETARY**

Sec.

452.01 Purpose and scope.

452.02 Definitions.

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452.08 Submission of Secretary's report.

452.09 Consolidated and joint proceedings.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

SOURCE: 50 FR 8129, Feb. 28, 1985, unless otherwise noted.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Threshold determinations.* Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources; and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) *Burden of proof.* The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) *Negative finding.* If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary's denial shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(d) *Positive finding.* If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) *Secretary of State opinion.* The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Secretary's report.

(a) *Contents of the report.* If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) *Preparation of the report.* The report shall be prepared in accordance

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with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) *Hearings.* (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by § 451.02(e)(5). This information will be made part of the record.

(b) *Prehearing conferences.* (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Hearings and prehearing conferences will be announced by a notice in the **FEDERAL REGISTER** stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at

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least 15 days before the scheduled hearings.

(d) *Conduct of hearings.*—(1) *Admissibility of evidence.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) *Applicant responsibility.* In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) *Open meetings and record.* All hearings and all hearing records shall be open to the public.

(g) *Requests for information, subpoenas.* (1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject

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to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(h) *Information collection.* The information collection requirements contained in § 452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 452.06 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor's participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) *Separation of functions.* (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex parte communications.* The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

§ 452.08 Submission of Secretary's report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary's report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under § 452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

**PART 453—ENDANGERED SPECIES
COMMITTEE****Sec.****453.01 Purpose.****453.02 Definitions.****453.03 Committee review and final determinations.****453.04 Committee information gathering.****453.05 Committee meetings.****Sec.****453.06 Additional committee powers.****AUTHORITY:** Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.**SOURCE:** 50 FR 8130, Feb. 28, 1985, unless otherwise noted.**§ 453.01 Purpose.**

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Final determinations.* Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:

(i) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and,

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical

habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) *Decision and order.* The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the **FEDERAL REGISTER** as soon as practicable.

(c) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action (1) regardless of whether the species was identified in the biological assessment, and (2) only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if (i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and (ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent. If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) *Finding by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwith-

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standing any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the **FEDERAL REGISTER** inviting written submissions from interested persons. The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the **FEDERAL REGISTER** a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the **FEDERAL REGISTER**. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpoenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

SECTION 4. UPDATE - ENDANGERED SPECIES ACT

The update section of the Endangered Species Act and the Fish and Wildlife Coordination Act reference book generally includes proposed changes to the statute or regulatory program. In addition, policy statements, interagency agreements, and other supplementary material are provided when pertinent.

Endangered Species List (50 CFR Parts 17.11 and 17.12)

The Fish and Wildlife Service has published a cumulative update of threatened and endangered species as of January 1, 1989. This list is included in Section 3 of this Reference Book. Additional copies are available from the Office of Endangered Species, Publication Unit, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

National Oceanic and Atmospheric Administration - Identification of Marine Vertebrate and Invertebrate Candidate Species for possible listing under the Endangered Species Act

On August 31, 1988, the National Marine Fisheries Service (NMFS) published in the Federal Register (53 FR 33516) a list of marine vertebrate and invertebrate candidate species for possible addition to the List of Endangered and Threatened Wildlife and Plants. NMFS intends for the list to be considered by federal agencies or other appropriate parties when developing new projects. Only animal species are identified. However, marine plant species will be included in a future notice.

Endangered and Threatened Wildlife and Plants - Future Action (50 CFR 17)

The Fish and Wildlife Service published in the Federal Register (53 FR 13914, 13915, 13916, and 13917) on April 25, 1988 lists of species for which regulations will be developed to list, classify, or delist under the Endangered Species Act. Statutory action is required within one year.

Notice of Decision on Procedural Change to Species Listings

International trade in certain species of animal and plants is regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). Species for which trade is controlled are listed in

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three appendices. Appendix III, affected by a notice published March 28, 1988 in the Federal Register (53 FR 9945), includes native species that any party nation identifies for regulation within its jurisdiction in order to prevent or restrict exploitation. The Fish and Wildlife Service has decided to make additions to Appendix III as final rules incorporated into 50 CFR 23.23 without requiring prior comments about entering reservations on any species added. This procedural change which applies to parties other than the U.S. became effective April 27, 1988.

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