§ 17.41  Special rules—birds.

(a) [Reserved]

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

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

   (i) The NCCP plan has been prepared, approved, and implemented pursuant to the State’s NCCP Conservation and Process Guidelines, provided that:

   (ii) The Fish and Wildlife Service (Service) has issued written concurrence that the NCCP plan meets the standards set forth in 50 CFR 17.32(b)(2). The Service shall issue its concurrence pursuant to the provisions of the Memorandum of Understanding (MOU), dated December 4, 1991, between the California Department of Fish and Flora (CITES), or both, provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

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

(4) None of the prohibitions in §17.31(b)(2) and (3) of this section apply to any taking of polar bears that is incidental to, but not the purpose of, carrying out an otherwise lawful activity within the United States, except for any incidental taking caused by activities in areas subject to the jurisdiction or sovereign rights of the United States within the current range of the polar bear.

[40 FR 44415, Sept. 26, 1975]
Game and the Service regarding coastal sage scrub natural community conservation planning in southern California. (Copies of the State's NCCP Conservation and Process Guidelines and the MOU are available from the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, CA 92008.) The Service shall monitor the implementation of the NCCP plan and may revoke its concurrence under this paragraph (b)(2)(ii) if the NCCP plan, as implemented, fails to adhere to the standards set forth in 50 CFR 17.32(b)(2).

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

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

(c) Salmon-crested cockatoo (Cacatua moluccensis). (1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§17.31 and 17.32 of this part apply to the salmon-crested cockatoo.

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

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

(ii) Specimens held in captivity prior to January 18, 1990: You must provide documentation to demonstrate that the specimen was held in captivity prior to January 18, 1990. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to January 18, 1990.

(3) Interstate commerce. Except where use after import is restricted under §23.55 of this chapter, you may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce a live salmon-crested cockatoo.

§ 17.42 Special rules—reptiles.

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

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