

## § 17.44

## 50 CFR Ch. I (10–1–23 Edition)

section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

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

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

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

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

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

(3) *Exceptions from prohibitions.* In regard to the Central Coast DPS and North Feather DPS of the foothill yellow-legged frog, you may:

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

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

(iii) Take as set forth at §17.31(b).

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

(A) Forest management activities for the purposes of reducing the risk or severity of catastrophic wildfire, which include fuels reduction activities, non-emergency firebreak establishment or maintenance, and other non-emergency wildfire prevention and suppression activities that are in accordance with an established forest or fuels management plan that follow current State of California Forest Practice Rules, State fire codes, or local fire codes/ordinances as appropriate.

(B) Habitat restoration efforts that are specifically designed to provide for the conservation of the foothill yellow-legged frog. These efforts must be part of and carried out in accordance with finalized conservation plans or strategies specifically identified for the foothill yellow-legged frog and include measures that minimize impacts to the North Feather DPS or Central Coast DPS. Habitat restoration efforts for other species that may not share habitat requirements (*e.g.*, salmonid species) are not included in this exception.

(C) Efforts to remove and clean up trespass cannabis cultivation sites and related water diversion infrastructure and restore areas to precultivation conditions.

(D) Removal or eradication of non-native animal species including, but not limited to, American bullfrogs, smallmouth bass, and nonnative crayfish species occurring within stream reaches unoccupied by the foothill yellow-legged frog within the range of the Central Coast DPS or North Feather DPS. Actions involving habitat disturbance or the use of chemical treatments are not included.

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

[40 FR 44415, Sept. 26, 1975, as amended at 45 FR 47363, July 14, 1980; 67 FR 40811, June 13, 2002; 69 FR 47248, Aug. 4, 2004; 71 FR 19293, Apr. 13, 2006; 77 FR 16375, Mar. 20, 2012; 80 FR 47428, Aug. 7, 2015; 86 FR 30728, June 9, 2021; 88 FR 59725, Aug. 29, 2023]

### § 17.44 Special rules—fishes.

(a) Lahontan cutthroat trout, Paiute cutthroat trout, and Arizona trout (*Salmo clarki henshawi*, *Salmo clarki seleniris*, and *Salmo apache*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

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

(b) Bayou darter (*Etheostoma rubrum*). (1) All the provisions of §17.31 apply to this species, except that they may be taken in accordance with applicable State law.

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

(c) Slender chub (*Hybopsis cahnii*), spotfin chub (*Erimonax monachus*), slackwater darter (*Etheostoma boschungii*), and yellowfin madtom (*Noturus flavipinnis*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

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

(d) Leopard darter (*Percina pantherina*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

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

(e) Little Kern golden trout (*Salmo aguabonita whitei*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

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

(f) Greenback cutthroat trout (*Salmo clarki stomias*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

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

(g) Chihuahua chub (*Gila nigrescens*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

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

(h) Yaqui catfish (*Ictalurus pricei*) and beautiful shiner (*Notropis formosus*). (1) All provisions of §17.31 apply to these species, except that they may be taken for educational, scientific, or conservation purposes in accordance with applicable Arizona State laws and regulations.

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

(i) Big Spring spinedace (*Lepidomeda mollispinis pratensis*). (1) All the provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

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

(j) Hutton tui chub (*Gila bicolor* subspecies). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival

of the species, zoological exhibition, and other conservation purposes consistent with the Act.

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

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

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

(k) Niangua darter, *Etheostoma nianguae*. (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

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

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

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

(l) Warner sucker (*Catostomus warnerensis*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species,

§ 17.44

50 CFR Ch. I (10–1–23 Edition)

zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

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

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

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

(m) Desert dace (*Eremichthys acros*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

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

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

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

(n) Railroad Valley springfish (*Crenichthys nevadae*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation

or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

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

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

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

(o) Sonora chub (*Gila ditaenia*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

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

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

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

(p) Kentucky arrow darter (*Etheostoma spilotum*).

(1) *Prohibitions*. Except as noted in paragraph (p)(2) of this section, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the Kentucky arrow darter.

(2) *Exceptions from prohibitions.*

(i) All of the activities listed in paragraph (p)(2)(ii) of this section must be conducted in a manner that:

(A) Maintains connectivity of suitable Kentucky arrow darter habitats, allowing for dispersal between streams;

(B) Minimizes instream disturbance by occurring during low-flow periods when possible; and

(C) Maximizes the amount of instream cover that is available for the species.

(ii) Incidental take of the Kentucky arrow darter will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently occupied by the Kentucky arrow darter:

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

(B) Bank stabilization projects that use State-approved bioengineering methods (specified by the Kentucky Energy and Environment Cabinet and the Kentucky Transportation Cabinet) to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these methods,

stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects that remove migration barriers (e.g., collapsing, blocked, or perched culverts) or generally allow for improved upstream and downstream movements of Kentucky arrow darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species.

(D) Repair and maintenance of U.S. Forest Service concrete plank stream crossings on the Daniel Boone National Forest (DBNF) that allow for safe vehicle passage while maintaining instream habitats, reducing bank and stream bed erosion and instream sedimentation, and improving habitat conditions for the species. These concrete plank crossings have been an effective stream crossing structure on the DBNF and have been used for decades. Over time, the planks can be buried by sediment, undercut during storm events, or simply break down and decay. If these situations occur, the DBNF must make repairs or replace the affected plank.

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

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

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

(iii) Possession and other acts with unlawfully taken specimens, as set

§ 17.44

50 CFR Ch. I (10–1–23 Edition)

forth at §17.21(d)(1) for endangered wildlife.

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

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

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

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

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

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

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

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

(B) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known trispot darter spawning habitat, that take place between May 1 and December 31. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(C) Streambank stabilization projects that utilize bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the

stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (riparap) or the use of rock baskets or gabion structures.

(D) Silviculture practices and forest management activities that:

(1) Implement State best management practices, particularly for streamside management zones, for stream crossings, for forest roads, for erosion control, and to maintain stable channel morphology; or

(2) Remove logging debris or any other large material placed within natural or artificial wet weather conveyances or ephemeral, intermittent, or perennial stream channels; and

(3) When such activities involve trispot darter spawning habitat, are carried out between May 1 and December 31.

(E) Transportation projects that provide for fish passage at stream crossings that are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within spawning habitat, if such habitat is affected by the activity.

(F) Projects carried out in the species' range under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(1) Do not alter habitats known to be used by the trispot darter beyond the fish's tolerances; and

(2) Are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within its spawning habitat, if such habitat is affected by the activity.

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

(r) Pecos bluntnose shiner (*Notropis simus pecosensis*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

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

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

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

(s) Waccamaw Silverside (*Menidia extensa*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations.

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

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

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

(t) Little Colorado spinedace (*Lepidomeda vittata*). (1) No person shall take this species, except in accordance with applicable State Fish and Wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition,

and other conservation purposes consistent with the Act.

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

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

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

(u) Pygmy sculpin (*Cottus pygmaeus*). The City of Anniston Water Works and Sewer Board will continue to use Coldwater Spring as a municipal water supply. Pumpage may remove all spring flow in excess of 3 cubic feet per second (1,938,000 gallons per day).

(v) Gulf sturgeon (*Acipenser oxyrinchus desotoi*). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Act.

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

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

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

(5) Taking of this species for purposes other than those described in paragraph (v)(1) of this section, including taking incidental to otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32.

(w) *What species are covered by this special rule?* Bull trout (*Salvelinus confluentus*), wherever found in the coterminous lower 48 States, except in the Jarbidge River Basin in Nevada and Idaho (see 50 CFR 17.44(x)).

(1) *What activities do we prohibit?* Except as noted in paragraph (w)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout in the coterminous United States as defined in paragraph (w) of this section.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable State, National Park Service, and Native American Tribal fish and conservation laws and regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) *What activities do we allow?* In the following instances you may take this species in accordance with applicable State, National Park Service, and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout in effect on November 1, 1999:

(i) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations;

(3) *How does this rule relate to State protective regulations?* Any violation of applicable State, National Park Service, or Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(x) Bull trout (*Salvelinus confluentus*), Jarbidge River population segment. (1) *Prohibitions.* Except as noted in paragraph (x)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the bull trout in the Jarbidge River population segment within the United States.

(2) *Exceptions.* No person may take this species, except in the following instances in accordance with applicable State fish and wildlife conservation laws and regulations relevant to protection of bull trout in effect on April 8, 1999.

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that any bull trout caught are immediately returned to the stream.

(iii) The exceptions in paragraphs (x)(2) (i) and (ii) of this section will be in effect until April 9, 2001. At that time, all take prohibitions of the Act will be reinstated for the Jarbidge River population segment unless exceptions to take prohibitions are otherwise provided through a subsequent special rule.

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

(4) No person may possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such species taken in violation of this section or in violation of applicable State fish and conservation laws and regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (x)(2) through (4) of this section.

(y) Beluga sturgeon (*Huso huso*)

(1) *How are various terms defined in this special rule?* In addition to the definitions specified in §10.12 of subchapter B of this chapter, we define certain terms that specifically apply to beluga sturgeon trade and this special rule as follows:

*Aquacultured beluga sturgeon products.* Eggs, larvae, fingerlings, or other products derived from *Huso huso* captive-bred or grown in captivity for commercial purposes starting at least at the F1 generation in captivity (*i.e.*, captive-bred for at least one generation).

*Beluga caviar.* Processed unfertilized eggs from female *Huso huso* intended for human consumption, including products containing such eggs (e.g., cosmetics).

*Beluga meat.* Excised muscle tissue of *Huso huso* destined for human consumption.

*Black Sea.* The contiguous waters of the Black Sea and the Sea of Azov.

*CITES.* The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

*Export.* The transport of a beluga sturgeon specimen out of its country of origin.

*Hatchery-origin beluga sturgeon.* Specimens of *Huso huso* captive-bred solely in the littoral states, primarily for re-introduction and stock enhancement purposes. Such specimens can occur in the natural marine environment of the littoral states.

*Live or living beluga sturgeon.* Any living specimen of *Huso huso*, including viable unfertilized or fertilized eggs, larvae, fingerlings, juveniles, and adults.

*Littoral states.* Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine.

*Re-export.* Export of beluga sturgeon specimens that were previously imported.

*Wild beluga sturgeon.* Specimens of *Huso huso* born and reared in the natural marine environment within the current or former geographic range of the species.

(2) *What activities involving beluga sturgeon are affected by this rule?* (i) *International trade in beluga sturgeon.* Except as provided in paragraphs (y)(3) and (y)(5) of this section, all prohibitions and provisions of §§17.31(a) and 17.32 apply to the international trade in beluga sturgeon, including its parts and derivatives. Live beluga sturgeon remain subject to all the prohibitions and provisions of §§17.31(a) and 17.32.

(ii) *Trade without CITES documents.* Except as provided in paragraph (y)(3) of this section, you may not import, export, or re-export, or present for export or re-export, beluga sturgeon or beluga sturgeon products without valid CITES permits and other permits and

licenses issued under parts 13, 17, and 23 of this chapter.

(iii) *Commercial activity.* Except as provided in paragraphs (y)(3) and (5) of this section and §17.32, you may not sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any beluga sturgeon or beluga sturgeon products.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (y)(2)(i) and (iii) of this section.

(3) *What activities are exempted from threatened species permits by this rule?* (i) *Import, export or re-export, and interstate and foreign commerce involving certain caviar and meat obtained from beluga sturgeon.* You may import, export or re-export, or conduct interstate or foreign commerce in beluga sturgeon caviar and meat without a threatened species permit issued according to §17.32 only if the caviar and meat are derived from wild or hatchery-origin beluga sturgeon that were caught and processed in the littoral states, or the caviar and meat are exempt from permits because they originate from qualifying aquaculture facilities outside of littoral states (see paragraph (y)(5) of this section). Also, the provisions in parts 13, 14, and 23 of this chapter and the following requirements must be met:

(A) Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(B) The shipment must be accompanied by a valid CITES permit or certificate upon import, export, or re-export.

(C) For each shipment covered by this exemption, the country of origin and each country of re-export, and the country of import involved in the trade of a particular shipment, must have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country from which Parties



should not accept permits for beluga sturgeon or all CITES-listed species in general.

(D) The littoral state from which the beluga sturgeon caviar or meat originated has complied with all of the requirements shown in paragraph (y)(4) of this section, and none of the exporting, importing, or re-exporting countries involved in the commercial activity has been subject to an administrative trade restriction or suspension as outlined in paragraphs (y)(6) and (7) of this section.

(E) Any relevant aquaculture facility located outside of a littoral state has complied with all of the requirements shown in paragraph (y)(5) of this section.

(ii) *Personal and household effects.* You may import, export, or re-export, or conduct interstate or foreign commerce in beluga sturgeon specimens that qualify as personal or household effects under 50 CFR part 23 without a threatened species permit otherwise required under §17.32. Trade suspensions or trade restrictions administratively imposed by the Service under paragraphs (y)(6) or (y)(7) of this section may also apply to personal and household effects of beluga sturgeon caviar.

(4) *What must beluga sturgeon littoral states do to be authorized under the special rule to export to the United States?* The following requirements apply to the littoral states wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under §17.32. These requirements apply to all shipments of beluga caviar and beluga meat that originate in the littoral states, even if the shipments are re-exported to the United States via an intermediary country. (See paragraph (y)(7) of this section for more information on the Service's biennial reviews under the special rule.)

(i) *Basin-wide beluga sturgeon management plans.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under §17.32 must submit to the Service's Division of Scientific Authority a copy of a cooperative management plan for its respective basin (*i.e.*, Black Sea or Cas-

pian Sea) that addresses *Huso huso* conservation. Each of these two basin-wide management plans must be agreed to by all of the littoral states (not just exporting nations) in the Black Sea or the Caspian Sea, as appropriate. Upon receipt, the Division of Scientific Authority will review these basin-wide management plans within 90 days for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit basin-wide management plans by the specified deadline, or if we are unable to confirm that all littoral states are signatories to those plans, we will immediately suspend trade with all littoral states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist. Submission of documents in English may help expedite the Service's review. These cooperative management plans must contain the following elements:

(A) A clear statement of the recovery and management objectives of the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

(B) A statement of standard regulations and habitat improvement strategies (e.g., size limits, target harvest rates, quotas, seasons, fishing gear, effort caps, fish passage improvement, water quality controls) to be utilized by the nations involved;

(C) A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

(D) A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

(E) Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards

mentioned in paragraph (y)(4)(i)(B) of this section; and

(F) A complete schedule by which nations must take particular actions to be in compliance with the plan.

(ii) *National regulations.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States under this special rule must provide the Service's Division of Scientific Authority with copies of national legislation and regulations that implement the basin-wide cooperative management plan described in paragraph (y)(4)(i) of this section, including regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. Upon receipt, the Division of Scientific Authority will review these national laws and regulations within 90 days for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit copies of national laws and regulations by the specified deadline, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect. Submission of documents in English may help expedite the Service's review.

(iii) *CITES compliance.* Trade in beluga sturgeon specimens must comply with CITES requirements in 50 CFR part 23. Except for specimens that qualify as personal or household effects under 50 CFR part 23, all beluga sturgeon specimens, including those exempted from threatened species permits under this special rule, must be accompanied by valid CITES documents upon import, export, or re-export. Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(iv) *Initial reporting period.* Until September 6, 2005, no threatened species permits will be required for the import, export, re-export, or interstate or foreign commerce of beluga sturgeon caviar

and meat that originated in the littoral states, in order to provide the littoral states time to submit the required documentation. After this 6-month period, the exemption from threatened species permits will continue only while the Service reviews littoral state compliance with paragraphs (y)(4)(i) through (iv) of this section. If this review demonstrates that the provisions of this special rule are not met, the Service will announce and institute trade restrictions or suspensions in beluga sturgeon caviar or meat with one or more littoral states as per paragraph (y)(7) of this section.

(v) *Biennial reports.* Littoral state governments wishing to export specimens of beluga sturgeon caviar or meat to the United States under this special rule must provide to the Service's Division of Scientific Authority reports containing the most recent information available on the status of the species, following the information guidelines specified below. The Service must receive the first report no later than December 1, 2005, and every 2 years thereafter on the anniversary of that date. Starting in December 2005, and thereafter on a biennial basis, the Service will review the national reports within 90 days of receiving them and any other pertinent information on wild beluga sturgeon conservation. If any elements of the biennial reports are missing or unclear, the Service will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit biennial reports by the specified deadline, we will immediately suspend trade with the given littoral states (*see* paragraph (y)(7) of this section for details on how such a suspension would be instituted and announced). Submission of documents in English may help expedite the Service's review. We propose to use these reviews to determine whether littoral state management programs are leading to recovery of wild beluga sturgeon stocks. For each littoral state, the following information must be provided in the biennial reports:

(A) A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective littoral

state, with any changes from the previous report highlighted;

(B) A description of any revisions to the cooperative management program mentioned in paragraph (y)(4)(i) of this section, including any new models, assumptions, or equations used to set harvest and export quotas;

(C) New information obtained in the last 2 years on beluga sturgeon distribution, stock size, models used for quota-setting, spawning activity, habitat use, hatchery programs and results, or other relevant subjects;

(D) A summary of law enforcement activities undertaken in the last 2 years, and a description of any changes in programs to prevent poaching and smuggling, including indicators of their effectiveness;

(E) A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective littoral state, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (e.g., revenues allocated to hatchery and restocking programs or research programs); and

(F) Export data for the previous two calendar years.

(5) *Can aquacultured beluga sturgeon products be exempt from threatened species permits if the products originate outside the littoral states?* We will consider exemptions from threatened species permits for beluga caviar and meat obtained from aquaculture facilities outside the littoral states. These exemptions will be for individual facilities, and would allow aquacultured beluga caviar and meat originating from these facilities to be imported, exported, re-exported, or traded in interstate and foreign commerce without threatened species permits issued under Section 10 of the Act. Aquaculture facilities within the United States could also be exempt from prohibitions against take for purposes of harvesting caviar or meat (*i.e.*, killing of beluga sturgeon), or for conducting activities involving research to enhance the survival or propagation of the species. Facilities outside the littoral states wishing to obtain such exemptions must submit a written request to the Division of Management Authority at the address provided at 50 CFR 2.1(b) and provide in-

formation that shows, at a minimum, all of the following:

(i) The facility in question is using best management practices to prevent the escape of beluga sturgeon and disease pathogens into local ecosystems, as certified by the relevant regulatory agency. In the case of the United States, the relevant regulatory authority will be the state agency with jurisdiction over aquaculture. In the case of foreign aquaculture facilities outside the littoral states, the relevant regulatory agency will be the designated CITES Management Authority with jurisdiction over sturgeon. Best management practices that affect the applicant's facility must be part of the application and available for Service review.

(ii) The facility in question has entered into a formal agreement with one or more littoral states to study, protect, or otherwise enhance the survival of wild beluga sturgeon. Copies of such agreements must be provided.

(iii) The facility in question does not rely on wild beluga sturgeon for broodstock. Proof of broodstock origin, including relevant CITES permits that accompanied broodstock specimens upon import into the United States, must be part of the application.

(iv) Exemptions granted under paragraph (y)(5) of this section shall not apply to trade (import, export, re-export, or interstate and foreign commerce) in live beluga sturgeon, and may be revoked at any time if the Service determines that any of the criteria shown in paragraphs (y)(5)(i) through (iii) of this section are not met by the facility. Applicants will be required to submit biennial reports on their compliance with paragraphs (y)(5)(i) through (iii) of this section, starting on the second anniversary of any programmatic exemption granted to the applicants. These biennial reports must show that exempted facilities have actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation. Any beluga caviar originating from aquaculture facilities outside the littoral states must comply with CITES caviar-labeling requirements, even in interstate commerce

within the United States. We will publish an information notice if the Service grants a programmatic exemption to any aquaculture facility outside the littoral states, and announce such actions through our website and posting notices at our wildlife ports of entry. We will follow the provisions of paragraph (y)(7) of this section to announce restrictions or revocations of such programmatic exemptions, based on our review of facilities' biennial reports.

(6) *How will the Service inform the public of CITES restrictions on trade in beluga sturgeon?* We will issue a public bulletin that identifies a restriction or suspension of trade in specimens of beluga sturgeon and post it on our websites (<http://le.fws.gov> and <http://international.fws.gov>) and at our staffed wildlife ports of entry if any criterion in paragraphs (y)(6)(i) or (ii) of this section is met:

(i) The country is lacking a designated Management Authority or Scientific Authority for the issuance of valid CITES documents or their equivalent for beluga sturgeon.

(ii) The country is identified in any action adopted by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification to the Parties issued by the CITES Secretariat as a country from which Parties are asked not to accept shipments of specimens of beluga sturgeon or all CITES-listed species.

NOTE TO PARAGRAPH (y)(6): A listing of all countries that have not designated either a Management Authority or Scientific Authority, or that have been identified as countries from which Parties should not accept permits, is available by writing to the Division of Management Authority at the address provided at 50 CFR 2.1(b).

(7) *How will the Service set trade restrictions or prohibitions under the special rule?* The Service's Division of Scientific Authority will conduct a biennial review of beluga sturgeon conservation based on information in the cooperative basin-wide management plans, national regulations and laws, and biennial reports (submitted as per paragraph (y)(4) of this section, and, for aquaculture facilities, as per paragraph (y)(5)(iv) of this section). We will combine that review with a review of other relevant information (e.g., sci-

entific literature, law enforcement data, government-to-government consultations) to determine whether littoral state management programs and aquaculture operations are effectively achieving conservation benefits for beluga sturgeon. Based on this information, or the failure to obtain it, the Service may restrict or prohibit trade from a littoral state, a re-exporting intermediary country, or an entire basin (*i.e.*, the Caspian Sea or Black Sea) or a specific aquaculture facility outside the littoral states if we determine that the conservation or management status of beluga sturgeon has been adversely affected and the continued recovery of beluga sturgeon may be compromised. The decision to restrict or prohibit trade in beluga sturgeon products on a national, basin, or region-wide scale will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a national, basin, or region-wide scale.

(i) Trade restrictions or suspensions will result basin-wide, for specific littoral states, or for non-littoral state aquaculture facilities under one or more of the following scenarios:

(A) Failure to submit any of the reports, legislation, and management plans described in paragraph (y)(4) of this section, or failure to respond to requests for additional information;

(B) A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

(C) A change in littoral state laws or regulations that compromises beluga sturgeon recovery or survival in the wild;

(D) Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

(E) A decline in wild *Huso huso* populations, as documented in national reports outlined above or the scientific literature, that goes unaddressed by regional or national management programs;

(F) Failure to address poaching or smuggling in beluga sturgeon, their parts, or products in the littoral states or re-exporting countries, as documented in national reports described

§ 17.44

50 CFR Ch. I (10–1–23 Edition)

above or other law enforcement sources;

(G) Failure of the littoral states to address the loss of beluga sturgeon habitat quality or quantity;

(H) Failure of the littoral states or re-exporting countries to follow the caviar-labeling recommendations of the CITES Parties (currently embodied in Resolution Conf. 12.7);

(I) Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries; or

(J) An aquaculture facility outside the littoral states has been issued a programmatic exemption from threatened species permits under paragraph (y)(5) of this section, but is not abiding by the provisions of paragraphs (y)(5)(i) through (iii) of this section, or, based on the biennial reports required under paragraph (y)(5) of this section, has not actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation.

(K) Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

(ii) We will publish an information notice in the FEDERAL REGISTER, as well as on our Web site and at our wildlife ports of entry, if the Service's Division of Scientific Authority administratively suspends or restricts trade in beluga sturgeon products after determining that wild beluga sturgeon stock status worsens or threats to the species increase. This information notice will provide:

(A) The problem(s) identified in the biennial reports or other salient documents.

(B) The scope of the problem and the number of nations involved.

(C) The scope of the trade restriction or suspension we are imposing, including products covered, duration of the restriction or suspension, and criteria for lifting it and reinstating any exemption to threatened species permits.

(D) How the public can provide input, make comments, and recommend remedial action to withdraw the trade measures imposed.

(z) Gila trout (*Oncorhynchus gilae*). (1) Except as noted in paragraph (z)(2) of this section, all prohibitions of 50 CFR

17.31 and exemptions of 50 CFR 17.32 apply to the Gila trout.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable fish and conservation laws and regulations promulgated by the States of New Mexico or Arizona.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense listed in paragraph (z)(1)(i) of this section.

(2) In the following instances you may take Gila trout in accordance with applicable State fish and wildlife conservation laws and regulations to protect this species in the States of New Mexico or Arizona:

(i) Fishing activities authorized under New Mexico or Arizona laws and regulations; and

(ii) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act.

(3) The four relict populations of Gila trout (Main Diamond Creek, South Diamond Creek, Spruce Creek, and Whiskey Creek) will not be opened to fishing.

(4) Any changes to State recreational fishing regulations will be made by the States in collaboration with the Service.

(5) Any violation of State applicable fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act of 1973, as amended.

(aa) Shovelnose sturgeon (*Scaphirhynchus platorynchus*). (1) Within the geographic areas set forth in paragraph (aa)(2) of this section, except as expressly noted in this paragraph, take of any shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe associated with or related to a commercial fishing activity is prohibited. Capture of shovelnose sturgeon or shovelnose-pallid sturgeon hybrids in commercial fishing gear is not prohibited if it is accidental or incidental to otherwise legal commercial fishing

**U.S. Fish and Wildlife Serv., Interior**

**§ 17.44**

activities, such as commercial fishing targeting nonsturgeon species, provided the animal is released immediately upon discovery, with all roe intact, at the point of capture.

(2) The shovelnose and shovelnose-pallid sturgeon hybrid populations covered by this special rule occur in portions of Arkansas, Iowa, Illinois, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Montana, North Dakota, Nebraska, South Dakota, and Tennessee. The specific areas are:

(i) The portion of the Missouri River in Iowa, Kansas, Missouri, Montana, North Dakota, Nebraska, and South Dakota;

(ii) The portion of the Mississippi River downstream from the Melvin

Price Locks and Dam (Lock and Dam 26) in Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, and Tennessee;

(iii) The Platte River downstream of the Elkhorn River confluence in Nebraska;

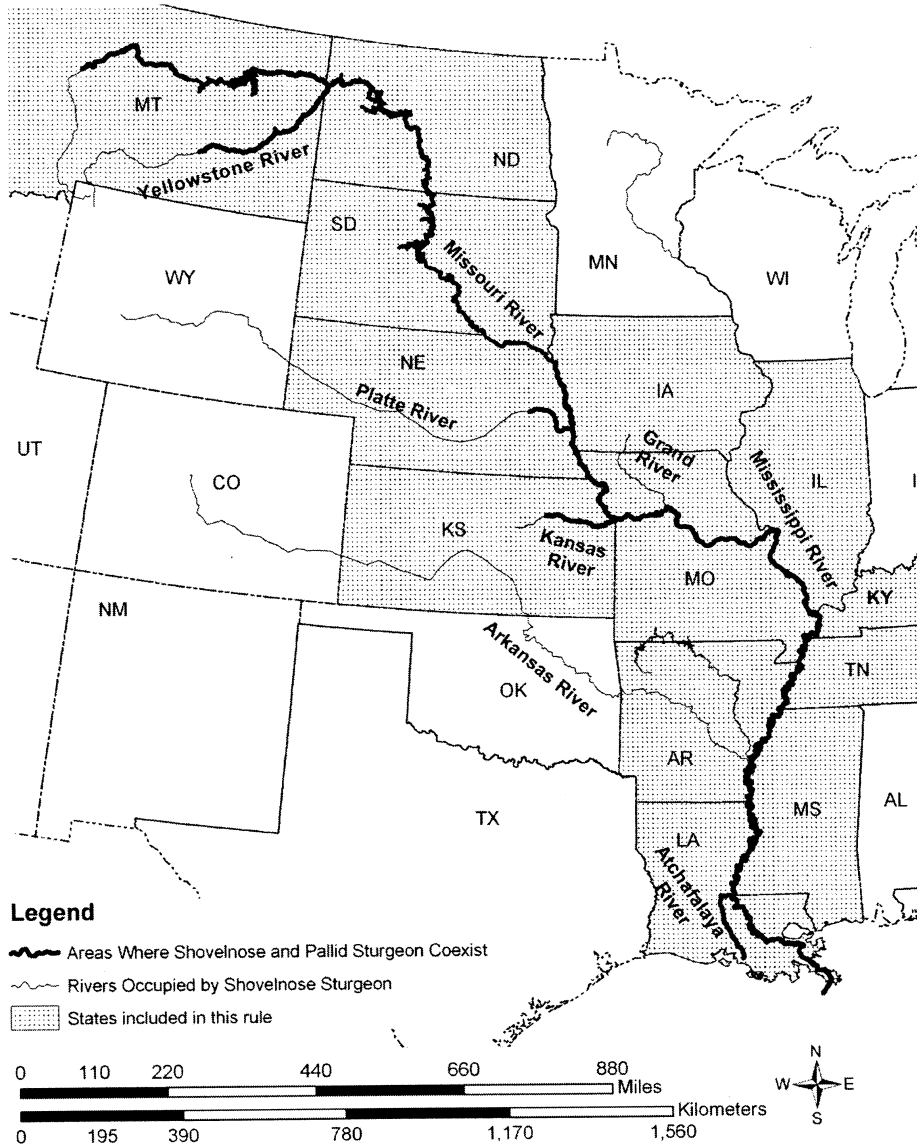
(iv) The portion of the Kansas River downstream from the Bowersock Dam in Kansas;

(v) The Yellowstone River downstream of the Bighorn River confluence in North Dakota and Montana; and

(vi) The Atchafalaya River in Louisiana.

(3) A map showing the area covered by this special rule (the area of shared habitat between shovelnose and pallid sturgeon) follows:

Figure 1: Areas Where Pallid and Shovelnose Sturgeon Commonly Coexist in the Missouri and Mississippi River Basins



(bb) [Reserved]

(cc) June sucker (*Chasmistes liorus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the June sucker. Ex-

cept as provided under paragraph (cc)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United

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

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

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

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

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

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

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

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

(ii) Conduct activities as authorized by a permit issued prior to February 3, 2021 under §17.22 for the duration of the permit.

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

(iv) Take, as set forth at §17.31(b).

(v) Take June suckers while carrying out the following legally conducted activities in accordance with this paragraph (cc)(2)(iv):

(A) *Definitions.* For the purposes of this paragraph (cc)(2)(iv):

(1) *Qualified biologist* means a full-time fish biologist or aquatic resources manager employed by Utah Division of Wildlife Resources, a Department of the Interior agency, or fish biologist or aquatic resource manager employed by a private consulting firm that has been approved by the Service in writing (by letter or email), the designated recovery program (e.g., June Sucker Recovery Implementation Program), or the Utah Division of Wildlife Resources.

(2) *Reasonable care* means limiting the impacts to June sucker individuals and populations by complying with all applicable Federal, State, and Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; procuring and implementing technical assistance from a qualified biologist on projects

regarding all methods prior to the implementation of those methods; ensuring the number of individuals removed or sampled minimally impacts the existing wild population; ensuring no disease or parasites are introduced into the existing June sucker population; and preserving the genetic diversity of wild populations.

(B) *Allowable forms of take of June suckers.* Take of June suckers as a result of the following legally conducted activities is allowed, provided that the activity is approved by the Service in writing (by letter or email), in coordination with any existing designated recovery program, for the purpose of the conservation or recovery of the June sucker, and that reasonable care is practiced to minimize the impact of such activities.

(1) *Nonnative fish removal.* Take of June suckers as a result of any action with the primary or secondary purpose of removing from Utah Lake and its tributaries nonnative fish that compete with, predate upon, or degrade the habitat of the June sucker is allowed. Allowable methods of removal may include, but are not limited to, mechanical removal, chemical treatments, or biological controls. Whenever possible, June suckers that are caught alive as part of nonnative fish removal should be returned to their source as quickly as possible.

(2) *Habitat restoration and improvement of instream flows.* Take of June suckers as a result of any action with the primary or secondary purpose of improving habitat conditions in Utah Lake and its tributaries or improving water delivery and available in-stream flows in spawning tributaries is allowed.

(3) *Monitoring.* Take of June suckers as a result of any method that is used to detect June suckers in the wild to better understand population numbers, trends, or response to stressors, and that is not intended to be destructive but that may unintentionally cause harm or death, is allowed.

(4) *Recreational fisheries management.* Take of June suckers as a result of any activity by the State, or its designated agent, that is necessary to manage or monitor recreational fisheries in Utah Lake and its tributaries is allowed, provided the management practices do



## § 17.44

not contradict June sucker recovery objectives and that the activities are not intended to cause harm or death to June suckers.

(5) *Research.* Take of June suckers as a result of any activity undertaken for the purposes of increasing scientific understanding of June sucker biology, ecology, or recovery needs under the auspices of the designated recovery program, a recognized academic institution, or a qualified scientific contractor is allowed. Incidental and direct take resulting from such approved research to benefit the June sucker is allowed.

(6) *Education and outreach.* Take of June suckers as a result of any activity undertaken under the auspices of the designated recovery program for the purposes of increasing public awareness of June sucker biology, ecology, or recovery needs and June sucker recovery benefits for Utah Lake, its tributaries, and the surrounding communities is allowed. Incidental and direct take resulting from such educational or outreach efforts to benefit the June sucker is allowed.

(7) *Refuges and stocking.* Take of June suckers as a result of activities undertaken for the long-term maintenance of June suckers at Service-approved facilities outside of Utah Lake and its tributaries or for the production of June suckers for stocking in Utah Lake is allowed.

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

(dd) Humpback chub (*Gila cypha*). (1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to humpback chub. Except as provided under paragraphs (dd)(2) and (3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

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

(ii) Take, unless excepted as outlined in paragraphs (dd)(2)(i) through (v) of this section.

(iii) Possession and other acts with unlawfully taken specimens, as set

## 50 CFR Ch. I (10–1–23 Edition)

forth at § 17.21(d)(1) for endangered wildlife.

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

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

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

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

(ii) Conduct activities as authorized by a permit issued prior to November 17, 2021 under § 17.22 for the duration of the permit.

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

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

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

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take humpback chub while carrying out the following legally conducted activities in accordance with this paragraph (dd)(3):

(i) *Definitions.* For the purposes of this paragraph (dd)(3):

(A) *Qualified person* means a full-time fish biologist or aquatic resources manager employed by any of the Colorado River Basin State wildlife agencies, Native American Tribes, the Department of the Interior bureaus and offices located within the Colorado River basin, or fish biologist or aquatic resource manager employed by a private consulting firm, provided the firm has received a scientific collecting permit from the appropriate State agency.

(B) *The six core populations* means the following populations of the humpback chub: Desolation and Gray Canyons (Green River, Utah), Dinosaur National Monument (Green and Yampa Rivers, Colorado and Utah), Black Rocks (Colorado River, Colorado), Westwater Canyon (Colorado River, Utah), Cataract Canyon (Colorado River, Utah), and Grand Canyon (Colorado and Little Colorado Rivers, Arizona).

(C) *Reasonable care* means limiting the impacts to humpback chub individuals and populations by complying with all applicable Federal, State, and

Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; and protecting existing extant wild populations of humpback chub by ensuring minimal impacts from the removal or sampling of individuals, preventing the introduction of disease or parasites, and preserving genetic diversity.

(ii) *Creation and maintenance of refuge populations.* A qualified person may take humpback chub in order to create or maintain a captive or wild refuge population that protects the long-term genetic diversity of humpback chub, provided that reasonable care is practiced to minimize the effects of that taking.

(A) Methods of allowable take under this paragraph (dd)(3)(ii) include, but are not limited to:

(1) Removing wild individuals via electrofishing, nets, and seines from the six core populations;

(2) Managing captive populations, including handling, rearing, and spawning of captive fish;

(3) Sacrificing individuals for hatchery management, such as parasite and disease certification; and

(4) Eliminating wild refuge populations if conditions are deemed inadequate for conservation of the species or are deemed detrimental to the six core populations.

(B) Before the establishment of any captive or wild refuge population, the Service must approve, in writing, the designation of the refuge population, and any removal of humpback chub individuals from wild populations. Subsequent to a written approval for the establishment of a refuge population, take associated with the maintenance of the refuge population would not be prohibited under the Act.

(iii) *Translocation and stocking of humpback chub.* A qualified person may take humpback chub in order to introduce individuals into areas outside of the six core populations. Humpback chub individuals may be introduced to new areas by translocating wild individuals to additional locations or by stocking individuals from captivity. All translocations of wild individuals

and stocking of individuals from captivity must involve reasonable care to minimize the effects of that taking. Translocations of wild individuals and stocking of individuals from captivity must be undertaken to expand the range of humpback chub or to supplement existing populations.

(A) Methods of allowable take under this paragraph (dd)(3)(iii) include, but are not limited to:

(1) Removing wild individuals via electrofishing, nets, and seines;

(2) Managing captive populations, including handling, rearing, and spawning;

(3) Sacrificing individuals for hatchery management, such as parasite and disease certification; and

(4) Removing or eliminating all humpback chub from failed introduction areas via mechanical or chemical methods.

(B) The Service must approve, in advance and in writing:

(1) Any translocation program; and

(2) Any stocking of humpback chub into any of the six core populations.

(iv) *Nonnative fish removal.* A qualified person may take humpback chub in order to perform nonnative fish removal for conservation purposes if reasonable care is practiced to minimize effects to humpback chub. For this paragraph (dd)(3)(iv), nonnative fish removal for conservation purposes means any action with the primary or secondary purpose of mechanically removing nonnative fishes that compete with, predate, or degrade the habitat of humpback chub.

(A) Methods of allowable take under this paragraph (dd)(3)(iv) include, but are not limited to:

(1) Mechanical removal of nonnative fish within occupied humpback chub habitats, including, but not limited to, electrofishing, seining, netting, and angling; and

(2) The use of other ecosystem modifications, such as altered flow regimes or habitat modifications.

(B) The Service and all applicable landowners must approve, in advance and in writing, any nonnative fish removal activities under this paragraph (dd)(3)(iv).

(v) *Catch-and-release angling of humpback chub.* States and Tribes may enact

Federal, State, and Tribal fishing regulations that address catch-and-release angling.

(A) In the six core populations, angling activities may include nontargeted (incidental) catch and release of humpback chub when targeting other species in accordance with Federal, State, and Tribal fishing regulations.

(B) In areas outside of the six core populations, angling activities may include targeted catch and release of humpback chub in accordance with Federal, State, and Tribal fishing regulations.

(C) Angling activities may cause take via:

(1) Handling of humpback chub caught via angling;

(2) Injury to humpback chub caught via angling; and

(3) Unintentional death to humpback chub caught via angling.

(D) Reasonable consideration by the Federal, State, and Tribal agencies for incidental catch and release of humpback chub in the six core populations include:

(1) Regulating tactics to minimize potential injury and death to humpback chub if caught;

(2) Communicating the potential for catching humpback chub in these areas; and

(3) Promoting the importance of the six core populations.

(E) Reasonable consideration for establishing new recreational angling locations for humpback chub include, but are not limited to:

(1) Evaluating each water body's ability to support humpback chub and sustain angling;

(2) Ensuring the recreational fishing population does not detrimentally impact the six core populations of humpback chub through such factors as disease or genetic drift; and

(3) Monitoring to ensure there are no detrimental effects to the humpback chub population from angling.

(F) The Service and all applicable State, Federal, and Tribal landowners must approve, in advance and in writing, any new recreational fishery for humpback chub.

(vi) *Chemical treatments to support humpback chub.* A qualified person may take humpback chub by performing a

chemical treatment in accordance with Federal, State, and Tribal regulations that would support the conservation and recovery of humpback chub, provided that reasonable care is practiced to minimize the effects of such taking.

(A) For treatments upstream of occupied humpback chub habitat:

(1) Service approval is not required; and

(2) Care should be taken to limit the potential for fish toxicants and piscicides traveling beyond treatment boundaries and impacting humpback chub.

(B) For treatments in known or potentially occupied humpback chub habitat:

(1) The Service must approve, in advance and in writing, any treatment;

(2) Care should be taken to perform robust salvage efforts to remove any humpback chub that may occur in the treatment area before the treatment is conducted; and

(C) Whenever possible, humpback chub that are salvaged should be moved to a location that supports recovery of the species.

(vii) *Reporting and disposal requirements.* Any mortality of humpback chub associated with the actions authorized under the regulations in this paragraph (dd)(3) must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports in the upper basin (upstream of Glen Canyon Dam) must be made to the Service's Mountain-Prairie Region Law Enforcement Office, or the Service's Upper Colorado River Endangered Fish Recovery Office. Reports in the lower basin (downstream Glen Canyon Dam) must be made to the Service's Southwest Region Law Enforcement Office, or the Service's Arizona Fish and Wildlife Conservation Office. Contact information for the Service's regional offices is set forth at 50 CFR 2.2, and the phone numbers of Law Enforcement offices are at 50 CFR 10.22. The Service may allow additional reasonable time for reporting if access to these offices is limited due to office closure or if the activity was conducted in an area without sufficient communication access.

(ee) Sickie darter (*Percina williamsi*).

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

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

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

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

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

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

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

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

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

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

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

(3) *Exceptions from prohibitions for specific types of incidental take.* You may take sickie darter while carrying out the following legally conducted activities in accordance with this paragraph (ee)(3):

(i) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) and that take place between April 1 and January 31. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil,

rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(ii) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species and that take place between April 1 and January 31. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the region and habitat conditions. These methods will not include the sole use of quarried rock (riprap) or the use of rock baskets or gabion structures.

(iii) Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of sickie darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species and that take place between April 1 and January 31.

(iv) Transportation projects that provide for fish passage at stream crossings and that take place between April 1 and January 31.

(v) Silvicultural practices and forest management activities that implement State-approved best management practices. In order for this exception to apply to forestry-related activities, these best management practices must achieve all of the following:

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

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

§ 17.44

50 CFR Ch. I (10–1–23 Edition)

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

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

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

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

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

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

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

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

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

(I) Prohibit discharge of any solid waste, petroleum, pesticide, fertilizer, or other chemical into the waterway.

(ff) Upper Coosa River DPS of the frecklebelly madtom (*Noturus munitus*).

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

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

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

(iii) Possession and other acts with unlawfully taken specimens, as set

forth at §17.21(d)(1) for endangered wildlife.

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

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

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

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

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

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

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

(A) Channel restoration projects that create natural, physically stable, ecologically functioning streams. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with geomorphically stable stream channels that maintain the appropriate lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation and include stable riffle-run-pool complexes that consist of silt-free gravel, coarse sand, cobble, boulders, woody structure, and river weed (*Podostemum* spp.).

(B) Streambank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with natively vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the DPS. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Projects carried out in the DPS's range under the Working Lands for

Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, or similar projects conducted by the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program or the Environmental Protection Agency's 319 Grant Program, that are implemented with a primary objective of improving environmental conditions to support the native, aquatic biodiversity of flowing water habitats.

(D) Silviculture practices and forest management activities that implement State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

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

[40 FR 44415, Sept. 26, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §17.44, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

EFFECTIVE DATE NOTE: At 88 FR 66295, Sept. 27, 2023, §17.44 was amended by adding paragraphs (gg) and (hh), effective Oct. 27, 2023. For the convenience of the user, the added text is set forth as follows:

**§ 17.44 Special rules—fishes.**

\* \* \* \* \*

(gg) [Reserved]

(hh) Relict darter (*Etheostoma chienense*).

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

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

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

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

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

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

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

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

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

(iii) Take as set forth at §17.31(b).

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

(A) Channel restoration or improvement projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers and, if the projects involve known relict darter spawning habitat, that take place between June 30 and March 1. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(B) Streambank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species and, if the projects involve known relict darter spawning habitat, that take place between June 30 and March 1. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of relict darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species, if completed between June 30 and March 1.

(D) Transportation projects that follow best management practices that eliminate sedimentation, do not block stream flow, do not channelize streams, and provide for fish passage under a wide range of hydrologic conditions at stream crossings and that are done between June 30 and March 1.

## § 17.45

(E) Projects carried out in the species' range by the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(1) Do not alter habitats known to be used by the relict darter beyond the fish's tolerances; and

(2) Are performed between June 30 and March 1 to avoid the time period when the relict darter will be found within its spawning habitat, if such habitat is affected by the activity.

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

### § 17.45 Special rules—snails and clams.

(a) Atlantic pigtoe (*Fusconaia masoni*)—(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Atlantic pigtoe. Except as provided under paragraphs (a)(2) and (3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

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

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

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

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

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

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

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

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

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

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

(3) *Exceptions from prohibitions for specific types of incidental take*. The following entities and activities that cause take that is incidental to an oth-

## 50 CFR Ch. I (10–1–23 Edition)

erwise lawful activity are not in violation of the prohibitions:

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

(ii) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. Streams reconstructed in this way would offer suitable habitats for the Atlantic pigtoe and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species and its host fish for spawning, rearing, growth, feeding, migration, and other normal behaviors. Prior to restoration action, surveys to determine presence of Atlantic pigtoe must be performed, and if located, mussels must be relocated prior to project implementation.

(iii) Bank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush