

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket ID FWS-R6-ES-2011-0062; 92220-1113-0000; ABC Code: C6]

RIN 1018-AX93

**Endangered and Threatened Wildlife and Plants; Reinstatement of Listing Protections for the Preble's Meadow Jumping Mouse**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that vacates our most recent rule and reinstates the regulatory protections under the Endangered Species Act of 1973, as amended (Act), for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) in Wyoming. The United States District Court for the District of Colorado, by order dated July 7, 2011, vacated and remanded the 2008 Final Rule to Amend the Listing for the Preble's Meadow Jumping Mouse To Specify Over What Portion of Its Range the Subspecies is Threatened (2008 Amended Listing Decision) and reinstated the 1998 Final Rule Listing the Preble's Meadow Jumping Mouse as Threatened Throughout Its Range, effective August 6, 2011. This rule reinstates the listing of Preble's in Wyoming. It also reinstates the special rule that exempts activities related to rodent control, ongoing agricultural activities, landscape maintenance, existing uses of water, noxious weed control, and ongoing ditch maintenance activities from the take provisions of the Act throughout the entire range of the Preble's.

**DATES:** This action is effective August 6, 2011.

**ADDRESSES:** This final rule and the U.S. District Court decision is available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2011-0062.

**FOR FURTHER INFORMATION CONTACT:** Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Office, 134 Union Boulevard, Suite 670, Lakewood, CO 80225; telephone: 303-236-4773; facsimile: 303-236-4005. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877-8337 for TTY.

**SUPPLEMENTARY INFORMATION:****Background**

On July 10, 2008, we published a final rule amending the listing determination for the Preble's to remove protections for the mouse in Wyoming (73 FR 39790). In that rule, we determined that the Preble's was not threatened throughout all of its range, but the portion of its range located in Colorado represented a significant portion of the range where the Preble's should retain its threatened status. The 2008 Amended Listing Decision relied on a March 2007 Memorandum Opinion from the Department of the Interior's Office of the Solicitor (Opinion M-37013) and applied Opinion M-37013's interpretation of the Act's term "significant portion of the range" (SPR) to determine that a difference in status was warranted between the Wyoming and Colorado portions of the range.

On June 23, 2009, a petition for review of the 2008 amended listing decision was filed in the United States District Court for the District of Colorado. Petitioners challenged, among other things, our interpretation of SPR as applied to the Preble's decision. In the time since that lawsuit was filed, two courts vacated final listing decisions that relied on the same statutory interpretation contained in Opinion M-37013 and applied in the Preble's 2008 Amended Listing Decision. On May 4, 2011, after careful review of the statutory interpretation contained in Opinion M-37013 and those two court decisions, the Solicitor of the Department of the Interior issued a memorandum ("M-37024") withdrawing Opinion M-37013, and the Service announced its intent to propose in the near future, for notice and comment, a joint policy with the National Marine Fisheries Service ("NMFS") regarding the interpretation and implementation of the Act's statutory phrase "in danger of extinction throughout all or a significant portion of its range" ("SPR Language"). This announcement is available at: [http://www.fws.gov/home/feature/2011/pdf/Wolf\\_Actions\\_FAQs.pdf](http://www.fws.gov/home/feature/2011/pdf/Wolf_Actions_FAQs.pdf).

The Service determined it necessary to reconsider the Preble's status in light of recent court decisions and the subsequent withdrawal of Opinion M-37013. Accordingly, the Service filed a motion for voluntary remand and vacatur of the Preble's 2008 Amended Listing Decision, and requested that the special rule promulgated pursuant to Section 4(d) of the Act and published in the **Federal Register** in 2001 (66 FR 28125, May 22, 2001), amended in 2002 (67 FR 61531, October 1, 2002), and extended indefinitely in 2004 (69 FR

29101, May 20, 2004), be reinstated throughout the species' range. On July 7, 2011, the United States District Court for the District of Colorado granted this motion and ordered the 2008 Amended Listing Decision vacated as of August 6, 2011 (*Center for Native Ecosystems, et al. v. Salazar, et al.*, 09-cv-01463-AP-JLK, 2011 U.S. Dist. LEXIS 72664 (D. Colo. July 7, 2011)).

This court ruling reinstates the 1998 Final Rule listing the Preble's as threatened throughout its range (63 FR 26517), effective August 6, 2011. Accordingly, Federal protections that were in place prior to our 2008 Amended Listing Decision are reinstated for the Preble's in Wyoming. Further, the special rule promulgated pursuant to section 4(d) of the Act and published in the **Federal Register** in 2001, amended in 2002, and extended indefinitely in 2004, is reinstated throughout the species' range (50 CFR 17.40(l)). The Service must complete its status review of the Preble's and publish a 12-month finding in the **Federal Register** for two petitions submitted by the State of Wyoming and Coloradans for Water Conservation and Development to delist the Preble's by the sooner of either 12 months after its formulation of the new joint policy with NMFS interpreting "significant portion of its range" language or June 1, 2013.

We published a statement on our Web site to notify the public of the ruling and its impact shortly after the order was released. We intend to notify the public again when this notice is published to ensure awareness of the ruling.

**Administrative Procedure**

This rulemaking is necessary to comply with the July 7, 2011, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective August 6, 2011.

**Effects of the Rule**

As of August 6, 2011, the Preble's is again listed as threatened in Wyoming (50 CFR 17.11(h)) and the section 4(d) rule is reinstated throughout the species' range (50 CFR 17.40(l)). Please see the above-cited **Federal Register** publications for more detailed information regarding the Preble's listing and the special rule.

This rule will not affect the status of the Preble's under State laws or suspend

any other legal protections provided by State law.

**Lists of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, in order to comply with the court orders discussed above, we

amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

**PART 17—[AMENDED]**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11 by revising the entry in the table at paragraph (h) for “Mouse, Preble’s meadow jumping” to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* Mouse, Preble’s meadow jumping.	* <i>Zapus hudsonius preblei.</i>	* U.S.A. (CO, WY)	* Entire .....	T	* 636	* 17.95(a)	* 17.40(l)
*	*	*	*		*	*	*

■ 3. In § 17.40, revise paragraphs (l)(2)(vi)(E) and (l)(4) to read as follows:

**§ 17.40 Special rules—mammals.**

\* \* \* \* \*  
(l) \* \* \*  
(2) \* \* \*  
(vi) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

Dated: July 27, 2011.

**James J. Slack,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–19895 Filed 8–4–11; 8:45 am]

**BILLING CODE 4310–55–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 101029427–0609–02]

**RIN 0648–XA555**

**Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2011 Winter II Quota**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS adjusts the 2011 Winter II commercial scup quota. This action complies with Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

**DATES:** Effective August 5, 2011 through December 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Carly Knoell, Fishery Management Specialist, (978) 281–9224.

**SUPPLEMENTARY INFORMATION:** NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period (January 1 through April 30) to be added to the quota for the Winter II period (November 1 through December 31), and to allow adjustment of the commercial possession limit for the Winter II period commensurate with the amount of quota rolled over from the Winter I period.

For 2011, the initial Winter II quota is 3,245,500 lb (1,472 mt), and the best available landings information indicates that 3,366,913 lb (1,527 mt) remain of the Winter I quota of 9,184,725 lb (4,166 mt). Consistent with the intent of Framework 3, the full amount of unused

2011 Winter I quota is transferred to Winter II, resulting in a revised 2011 Winter II quota of 6,612,413 lb (2,999 mt). Because the amount transferred is greater than 2,000,000 lb (907 mt), the possession limit per trip will increase to 8,000 lb (3,629 kg) during the Winter II quota period, consistent with the final rule Winter I to Winter II possession limit increase table (table 3) published in the 2011 final scup specifications (75 FR 81498, December 28, 2010).

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this in-season adjustment because it is impracticable and contrary to the public interest. The landings data upon which this action is based are not available on a real-time basis and were compiled only a short time before the determination was made that this action is warranted. If implementation of this in-season action is delayed to solicit prior public comment, the objective of the fishery management plan to achieve the optimum yield from the fishery could be compromised; deteriorating weather conditions during the later part of the fishery year will reduce fishing effort and could result in the annual quota from being fully harvested. This would conflict with the agency’s legal obligation under the Magnuson-Stevens Fishery Conservation and Management