

§ 17.41

50 CFR Ch. I (10–1–23 Edition)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Conduct the following wildfire suppression activities:

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

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

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

(C) Maintenance of existing fuel breaks.

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

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

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

[40 FR 44415, Sept. 26, 1975]

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

§ 17.41 Special rules—birds.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Hazing of hazardous wildlife;

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

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

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

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

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

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

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

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

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

(iv) Hazing of geese or predators; and

(v) Maintenance of irrigation and drainage systems.

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

(1) Mowing;

(2) Herbicide and fungicide application;

(3) Fumigation; and

(4) Burning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Authorization provided under §17.32.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Disposing of a dead specimen; or

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Incidental take resulting from the following activities:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Exceptions from prohibitions.*

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

(ii) Any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program for the eastern black rail pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take eastern black rails.

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

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

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

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

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

U.S. Fish and Wildlife Serv., Interior

§ 17.41

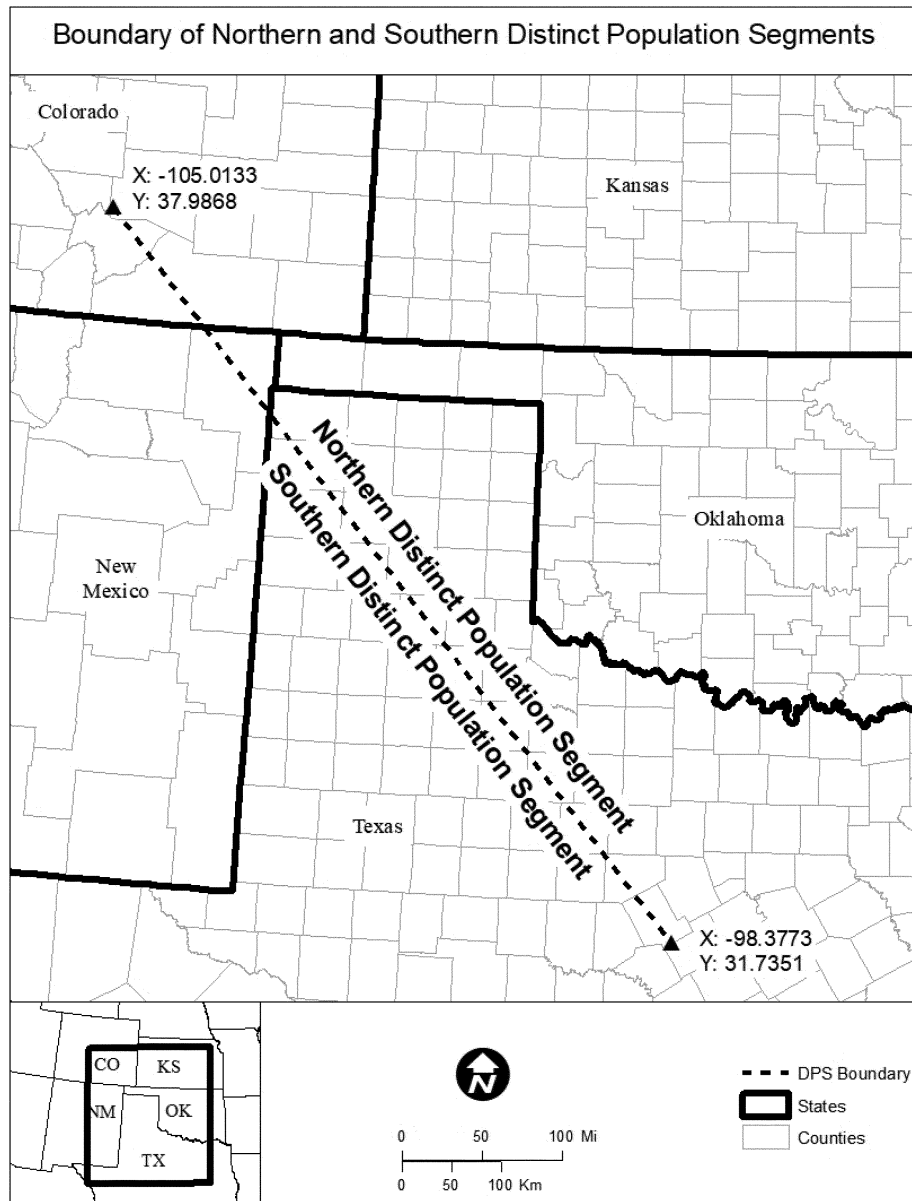
example, to protect wildlands or man-made infrastructure) and new fence lines is allowed.

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

(g)–(j) [Reserved]

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

Figure 1 to paragraph (k)



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Construction and maintenance of fuel breaks;

(2) Planning needed for application of prescribed fire;

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

(4) Any necessary monitoring and followup actions.

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

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

(2) Trampling of lesser prairie-chicken nests;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Preserving the genetic diversity of wild populations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 17.42 Special rules—reptiles.

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

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

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

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

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

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