specified. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. 255 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, 47 CFR 6.3, 6.5 of this chapter. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service,

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions.

(iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer,

(iv) The subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available,

(v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze.

(vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and

(vii) The toll-free customer service telephone number of the acquiring carrier.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AF30

Endangered and Threatened Wildlife and Plants; Final Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) was listed as a threatened species under the Endangered Species Act (Act) of 1973, as amended, on May 13, 1998 (63 FR 26517). At the time the Preble's was listed, a special rule for the conservation of the Preble's was not promulgated; therefore, virtually all of the restrictions under section 9 of the Act became applicable to the species. A proposed special rule was published in the **Federal Register** on December 3, 1998 (63 FR 66777). This special rule is finalized in a modified form that includes some but not all of the provisions previously proposed. The rule establishes protective regulations pursuant to section 9 of the Act. Its duration is 36 months, during which time more comprehensive recovery approaches will be pursued.

DATES: This rule is effective May 22, 2001 through May 22, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: In Colorado—contact LeRoy Carlson, at the above address or telephone 303/275–2370. In Wyoming—contact Mike Long, Field Supervisor, Cheyenne, Wyoming, at telephone 307/772–2374.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a subspecies of the meadow jumping mouse (*Zapus hudsonius*), occurs only along the Rocky Mountain-Great Plains Interface (the Front Range) of eastern Colorado and Southeastern Wyoming. The final rule listing the Preble's as a threatened species under the Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Act (16 U.S.C. 1533 (d)) provides that, whenever a species is listed as a threatened species, the Secretary of the Department of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This is done in either of two ways.

First, the Act authorizes imposition of take prohibitions to endangered species. We, the Fish and Wildlife Service, have issued regulations (50 CFR 17.31) that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act (16 U.S.C. 1538) establishes with respect to endangered wildlife. These universal prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' any listed wildlife species, i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct (16 U.S.C. 1532 (19)).

Second, our regulations for threatened wildlife also provide that a ''special rule'' under section 4(d) of the Act can be tailored for a particular threatened species. In that case the general regulations applying most section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions (and exemptions) necessary and appropriate to conserve that species.

At the time the Preble's was listed, we did not promulgate a special section 4(d) rule; therefore, the section 9 prohibitions, including the take prohibitions, became applicable to the species. On December 3, 1998, a proposed special rule identifying specific circumstances under which section 9 prohibitions would not apply to the Preble's was published in the **Federal Register** (63 FR 66777). This proposal initiated a 60-day public comment period, which closed February 1, 1999. The public comment period was extended for an additional 45 days through March 5, 1999 (64 FR 4607), and was reopened from March 16 through April 30, 1999 (64 FR 12924).

Briefly, the proposed special rule provided exemptions from section 9 prohibitions for—(1) all activities outside of specified Mouse Protection Areas (areas where Preble's had been documented) and Potential Mouse Protection Areas (areas judged to have high potential to support Preble's); (2) rodent control, ongoing agriculture, maintenance and replacement of existing landscaping, and existing uses of water anywhere within the Preble's range; and (3) under specified standards, alteration of up to 4 percent of Mouse Protection Areas and Potential Mouse Protection Areas as approved by State or local government. After review of comments received, this proposed special rule has been finalized in a modified form, adopting only the second exemption listed above for rodent control, ongoing agriculture, maintenance and replacement of existing landscaping, and existing uses of water anywhere within the Preble's range.

We anticipate that this rule will prohibit actions that threaten the Preble's to the extent necessary to provide for the conservation of the

Preble's. The rule also provides flexibility to private landowners for ongoing activities that will not impede the conservation of the species. We also believe that this rule will garner support of State and local governments, private landowners, and other interested parties and contribute to a lasting, cooperative approach for the long-term conservation of the species.

This rule is best understood in the context of other regulations and actions, already in place or in development, to provide for conservation of the Preble's. First, it is important to understand that an activity prohibited under the general regulations might still be allowed under section 10 of the Act. That section provides for a person to obtain from us, in appropriate circumstances, a permit allowing the ''incidental'' taking of Preble's. One of the purposes of this rule is to make, in advance, general decisions that certain types of activities are consistent with the conservation of the Preble's, without requiring people to seek additional section 10 permits authorizing those activities. Additional activities that result in take of Preble's that are not exempted by this special rule still can be permitted by the Service under section 10 of the Act.

Currently, the State of Colorado, the Service, and various local governments in Colorado and Wyoming are working together to develop plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of Habitat Conservation Plans and applications to the Service for incidental take permits under section 10 of the Act. These Habitat Conservation Plans will provide an important component of a lasting, effective, and efficient conservation and recovery program for the Preble's.

We are committed to development of a recovery plan for the Preble's that achieves long-term conservation and development solutions. We believe that a recovery program that integrates both biological as well as social factors will have the highest chance of success. One of the purposes of this special rule is to foster cooperation among the Service, the States, local governments, and the private sector in pursuing recovery of the Preble's.

The second important component of the context for this special rule is that Federal agencies are required under section 7 of the Act to utilize their authorities to conserve listed species and to consult with the Service to ensure that their actions are not likely to jeopardize the Preble's. For consultations that involve the use of Federal land, we expect that those lands will be managed in furtherance of the conservation of the species to the maximum extent possible. Other types of section 7 consultations involve actions that are similar to those that are considered under the section 10 process. For example, many of the activities likely to affect Preble's undertaken outside of Federal land, but wholly or partly in wetlands, will be subject to permitting requirements of the Clean Water Act, such as section 404 permits issued by the Army Corps of Engineers.

Third, a variety of Federal, State, and local programs are available to help preserve the Preble's through the acquisition, preservation, and management of its habitat. These include the Service's Partners for Fish and Wildlife Program, the Natural Resource Conservation Service's wetland/riparian habitat protection programs, grant programs administered by Great Outdoors Colorado, city and county open space programs, and activities of local land trusts. In particular, our Partners for Fish and Wildlife Program has proven to be an especially effective approach for wildlife conservation on agricultural lands by providing funding for restoration of wetlands and riparian habitats.

Summary of Comments and Recommendations

In the December 3, 1998, proposed 4(d) rule and associated notifications, and in subsequent notices to extend or reopen the public comment period, we asked all interested parties to submit comments on the proposed rule. We held two public meetings on December 16, 1998, in Lakewood, Colorado. The proposed rule was explained, followed by a question and answer session. Attendance at the afternoon session totaled 104 individuals, while attendance at the evening session totaled 24. We received 614 comment letters in response to the proposed 4(d) rule, including comments from 23 municipal and county governments, 14 environmental organizations, and 60 development, irrigation, and ranching-related organizations. Comments also were received from a member of the Wyoming congressional delegation and from the Governors of Wyoming and Colorado. Almost half of all letters received were associated with various letter-writing campaigns that reflected the same or very similar content.

Written comments, and oral statements presented in the public meetings or received during the comment periods, that are specific to the proposed rule are addressed in the following summary. Comments of a similar nature are grouped under a number of general issues.

Issues and Discussion

Issue 1—The proposed duration of this temporary rule, 18 months, may not provide enough time to develop Habitat Conservation Plans and other long-term strategies to conserve the Preble's.

Response—Based on the progress of ongoing efforts to develop Habitat Conservation Plans, we lengthened the duration of the rule to 36 months. This should provide time not only for completion of Habitat Conservation Plans but for completion of a recovery plan and other conservation efforts for the Preble's. The level of take anticipated to occur from this rule within either an 18-month or 36-month period is not considered to be biologically significant to recovery of the Preble's.

Issue 2—Refinement is needed in mapping Mouse Protection Areas and Potential Mouse Protection Areas that were developed in support of the proposed exemption for activities outside of likely Preble's habitat. Survey data that serve as a basis for the maps are scant, especially on private lands. Preble's use of habitat across its range has not been thoroughly studied. Proposed limits of the exemption as measured outward from occupied or potentially occupied streams and wetlands may be excessive or may be inadequate to include Preble's habitat. Designation of Mouse Protection Areas and Potential Mouse Protection Areas has been characterized by some as de facto designation of critical habitat.

Response—Because of these and other issues, the proposed designation of Mouse Protection Areas and Potential Mouse Protection Areas and the proposed exemption for incidental take outside of such areas have been dropped from the final rule. We will continue to use the best science available to determine distribution, presence, and habitat requirements of the Preble's. We will make such information available through our Colorado and Wyoming Field Offices and our web page. Determinations of Preble's presence and potential for human activities to impact Preble's will continue to occur on a site-by-site basis. Detailed local information on Preble's may be further developed to support Habitat Conservation Plans.

Issue 3—The proposed exemption to allow up to 4 percent of a Mouse Protection Area to be altered under a system of local review is considered by some as arbitrary and without firm scientific support. In addition, local government may not have the funds, expertise, or enforcement authority to

take on this responsibility. Local government also may assume increased liability under this exemption.

Response—Because of these and other issues, this proposed exemption from take was dropped from the final rule.

Issue 4—The proposed exemption for rodent control may be used as a means to eliminate Preble's from an area.

Response—As with all exemptions in this rule, only incidental take of Preble's that meets the specific provisions of the rule is exempted. Purposeful take of Preble's would still be prohibited.

Issue 5—Agriculture is often beneficial to the Preble's, and farmers and ranchers are good stewards of land. Flexibility to change agricultural practices within Preble's habitat is needed by farmers and ranchers, yet the proposed exemption would cover only established, ongoing activities.

Response—The exemption for ongoing agriculture recognizes that certain agricultural practices have proven compatible with survival of Preble's. Changes in agricultural practices that are positive or neutral to the Preble's are unlikely to result in take. Recognizing that continuation of existing agricultural activities is likely to result in minimal levels of take, this rule exempts ongoing agricultural activities from take. New agricultural activities could significantly expand the area or degree of take, potentially having larger impacts to the species; therefore, take from new or expanded agricultural activities is not exempted in this rule. Under the appropriate circumstances, section 10 permits can be obtained to allow take of Preble's due to new or expanded agricultural activities.

Issue 6—Exempted agricultural practices need to be better defined. A list of what is not exempted would be useful.

Response—This rule exempts incidental take of Preble's that may result from ongoing agricultural activities. Ongoing agricultural activities would be considered those activities in place at the time of the 1998 listing of the Preble's. We provide this exemption because lands that are currently under agricultural production are believed to have minimal habitat for the Preble's, and because agricultural activities are being conducted in a manner that causes minimal take of Preble's. We are not providing exemption in situations where larger amounts of take may occur. Therefore, this exemption applies to practices customary and necessary for the continuation of existing agricultural production. It does not apply to new activities or to expansion of activities that change the existing activity footprint in size or location. New or expanded activities may remove or significantly alter habitat that is currently occupied by Preble's and, therefore, are not included in this exemption. Questions regarding application of this exemption to specific practices in Colorado may be addressed to our Colorado Field Office, and in Wyoming questions may be addressed to our Wyoming Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections).

Issue 7—Practices such as crop rotation should be covered under the exemption for ongoing agriculture.

Response—Actions that reflect regular past uses are considered ongoing. Crop rotation consistent with a past pattern would be exempted from take. The ability to document past use may be important if any changes result in take of Preble's.

Issue 8—Exemptions from take should be provided when land enrolled in conservation reserve programs, that provides habitat for the subspecies, is later returned to agricultural production.

Response—This rule does not exempt take when lands maintained for conservation under various government programs are returned to agricultural production. Returning lands to agricultural production after the period of time in which the lands were enrolled in a conservation reserve program represents a change in use. It would not be considered an ''existing'' agricultural activity and, therefore, would not qualify for the exemption for ''existing'' agricultural uses. However, take associated with the return of lands from conservation reserve programs to agricultural production may still be authorized under the Habitat Conservation Plan provisions of section 10(a)(1)(B) of the Act.

Issue 9—The exemption from take for maintenance and replacement of existing landscaping also exempts maintenance and replacement of ''related structures and improvements.'' The intent of this exemption should be explained.

Response—Walkways, retaining walls, and other nonvegetative components of landscaping may be maintained and replaced as needed under this exemption. These structures do not normally provide habitat for the Preble's, and maintenance of such structures would likely result in minimal take, if any. ''Related structures and improvements'' should be viewed in the context of landscaping and not expanded to include houses, garages, or outbuildings. While maintenance or replacement of these larger structures would generally not result in take, on occasion such activity may entail a larger area and duration of disturbance, use of heavy machinery in the surrounding area, and staging of construction materials. In some circumstances, such activity could cause more than minimal take; therefore, while most of this type of activity would not result in any take, we have chosen not to exempt such activity due to those instances where take could be substantial.

Issue 10—The rule does not specify an exemption from take for maintenance of roadsides through mowing, which may occur in or near Preble's habitat. Such activity could result in take of Preble's.

Response—We agree that maintenance of roadsides could in some situations result in take, and if occupied habitat is removed as part of such activities, then the resulting take would probably be more than minimal. For this reason we have not included an exemption from take for roadside maintenance activities. As such activities are not usually undertaken by individuals, we encourage all jurisdictions that engage in maintenance mowing to modify such practices where Preble's may be present to avoid the likelihood of take, or to seek a section 10 permit when the potential for take cannot be avoided.

Issue 11—Water utilization was identified as a factor leading to listing of the Preble's, but is being exempted under this rule.

Response—Only take resulting from existing uses of water associated with perfected water rights is being exempted. Much as with agricultural activities, some existing patterns of water use appear compatible with maintenance of Preble's populations. In some locations, such as in water conveyance ditches, the Preble's exists only because of human manipulation of water flows. The relationship of water use and maintenance of the Preble's and its habitat is complex. During the period of this rule, existing patterns of water use will be exempted.

Issue 12—Some respondents requested clarification on our interpretation of ''existing water uses'' and ''perfected water rights.''

Response—An explanation has been added to the final rule which states that existing water uses refers to historical water use practices. In general, any change in water use practices that would require a change of water right or a change in a water use permit will not be exempted in the final rule.

Issue 13—Several respondents requested a broader exemption for any water use permitted or decreed by State

governments. Many Colorado municipalities and water suppliers requested exemption for transfers of perfected water rights and exercise of conditional water rights.

Response—We are not granting a range-wide exemption for water rights transfers, conditional water rights, and other water uses that are not considered ''perfected.'' These actions have a much higher potential to take Preble's than the exercise of perfected water rights. For example, exercise of conditional water rights could result in new flooding of Preble's habitat, and transfer of a historical irrigation right may result in abandonment of a ditch that supports Preble's habitat. We anticipate that exercise of most conditional water rights and transfers will not result in take of Preble's; therefore, in these cases no exemptions from take are needed. If take is likely from such changes, a process exists for pursuing a take permit under section 10 of the Act.

Issue 14—Many commentors requested exemption from take for maintenance of water supply ditches. Ongoing agriculture and use of perfected water rights are exempted from take. Logically, ditches must be maintained to convey water to support these activities (for example, from reservoirs to the agricultural fields). If water supply ditches that currently support Preble's are not maintained, they will ultimately cease to function. If abandoned, they will not convey water or support habitat of value to Preble's.

Response—We are considering proposing an amendment to this rule that provides an exemption from take for certain maintenance practices on water supply ditches.

Issue 15—An exemption from take for the control of noxious weeds may be appropriate. Currently, weed control programs in occupied or potential Preble's habitat are being curtailed for fear that they will be in violation of the Act. Ultimately, this may result in spread of noxious weeds that will, in turn, result in degradation of Preble's habitat.

Response—We are considering proposing an amendment to this rule to provide an exemption from take for certain activities relating to control of noxious weeds.

Issue 16—We received suggestions for additional range-wide exemptions from take covering a number of activities. A partial list includes exemptions for construction of trails, actions to promote public health and safety, construction and maintenance of infrastructure including utility lines and wastewater facilities, maintenance of roads and parking lots, and maintenance activities within waterways.

Response—These activities have the potential for more than minimal amounts of take; therefore, we believe that these additional exemptions are not appropriate or consistent with the conservation of the Preble's. Under appropriate circumstances, permits could be obtained to allow take that may result from these activities. Some of these activities may be addressed through future Habitat Conservation Plans or section 7 consultations.

Issue 17—Voluntary conservation efforts are sufficient to protect the Preble's on private lands.

Response—This rule does not require any conservation measures for the Preble's nor does it prevent individuals from undertaking voluntary conservation measures. We support any parties who wish to undertake voluntary conservation measures and welcome discussions with any party who wishes to consider developing a conservation agreement for the Preble's or its riparian habitat. If the species' status can be improved and threats reduced as a result of voluntary conservation measures, then we may be able to consider removing the Preble's from the list of endangered and threatened species under the Act.

Issue 18—The Service should provide updated maps of known Preble's locations and locations of unsuccessful trapping efforts on a web site accessible to the public.

Response—We are investigating various means to make this information more readily available to the public. In the meantime, the most recent information on known Preble's distribution is available from our Colorado and Wyoming Field Offices. (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections.)

Issue 19—The relationship of this rule to a future recovery plan for the Preble's should be explained.

Response—This temporary rule contributes to the conservation of the Preble's and does not compromise the development of a recovery plan. We anticipate developing a recovery plan prior to the termination of this rule.

Issue 20—The Service should provide for an accounting of take occurring under this rule.

Response—This rule provides exemptions from take for specific activities and under limited circumstances. In our best professional judgment, the exemptions provided are consistent with the conservation of the species. The proposed exemptions are not tied to a specific threshold of what would, without the rule, be considered take. We prepared a Biological Opinion under section 7 of the Act to address the likely effects of this rule on the Preble's.

Issue 21—The relationship of this rule to future Habitat Conservation Plans should be explained.

Response—Exemptions provided by this rule are independent of any Habitat Conservation Plan that may be submitted to us. Similar activities may or may not be addressed in a Habitat Conservation Plan at the discretion of the entity developing the plan. We anticipate that comprehensive Habitat Conservation Plans will be developed for the Preble's during the 36-month duration of this rule.

Issue 22—The relationship of this rule to review of Federal activities under section 7 of the Act should be explained.

Response—This rule does not alter Federal agency responsibilities under section 7 of the Act. Federal agencies would be exempt from section 9 prohibitions on take from the activities covered by this rule; however, Federal agencies would not be relieved of any section 7 responsibilities, even for activities exempted by this rule. Any Federal agency that funds, permits, or authorizes an activity that may affect Preble's would still be required to undergo section 7 consultation, even if take from that activity is covered by the exemption in this rule.

Provisions of the Rule

Term of the Rule

This rule will be effective for a period not to exceed 36 months from May 22, 2001. We expect that, during this time period, comprehensive Habitat Conservation Plans for the Preble's will be developed. Anytime during this 36 months, we could propose to extend this rule. Any proposal to extend the rule would be published in the **Federal Register** and would be made available for public review and comment.

Take Prohibitions

Virtually all of the prohibitions under section 9(a) of the Act that apply to endangered species continue to apply to the Preble's, to the same extent that they apply to other threatened species under our general regulations, except that certain activities would be exempted. Except for the exemptions below, it is illegal for any person subject to the jurisdiction of the United States to take any Preble's (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect a Preble's or to attempt any of those actions). It would still be illegal to import or export, ship in interstate commerce in the course of commercial

activity, or sell or offer for sale in interstate or foreign commerce any Preble's, or to possess, sell, deliver, carry, transport, or ship any Preble's that have been taken illegally.

Exempt Activities

The following activities are exempt from the general take provisions listed above, provided that the activities resulting in such take are conducted in accordance with the requirements identified in this special rule. These four exemptions apply anywhere within the Preble's range.

a. *Rodent control within 10 feet of or inside of any structure*—Preble's are generally not found in association with structures such as barns, houses, or other buildings. We believe that any Preble's mortality associated with trapping near these structures would be insignificant and that this exemption will promote public support for Preble's conservation efforts.

b. *Ongoing agricultural activities*—This exemption applies to ongoing agricultural practices but does not apply to new agricultural practices that increase impacts to, or further encroach upon, Preble's habitat. For example, a change from existing grazing practices that would adversely impact Preble's habitat, or a change in mowing practices such as mowing hay closer to a stream supporting Preble's, would not be exempted from take provisions by this rule.

Situations where Preble's populations coexist with ongoing agriculture may provide valuable insight into habitat conditions required by the Preble's and the specific types of grazing and farming practices that are compatible with the Preble's. We believe that the exemption for ongoing agricultural practices will provide a positive incentive for agricultural interests to engage in voluntary conservation activities and will remove some of the existing reluctance by private agricultural landowners to allow Preble's surveys on their lands. Surveys lead to a more complete understanding of the status and distribution of the species, especially within areas largely composed of privately owned farms and ranches. With this knowledge, our ability to develop an effective long-term recovery program will be enhanced.

c. *Maintenance and replacement of existing landscaping and related structures and improvements*—Some existing landscaping activities, such as lawn-mowing and gardening associated with residential or commercial development, golf courses, and parks, have disrupted Preble's habitat in certain areas. However, because take associated with continued landscaping of an area is expected to be minimal, exempting these activities from take provisions is not expected to adversely affect Preble's conservation and recovery efforts.

d. *Existing uses of water associated with the exercise of perfected water rights under State law and interstate compacts and decrees*—In Colorado, perfected water rights refers to uses of water that have been decreed as absolute water rights by any of the Colorado water courts. In Wyoming, perfected water rights refers to water uses that have been granted a permit and a final certificate of appropriation by the Office of the State Engineer. The cumulative effect of the development and exercise of water rights has impacted riparian communities and Preble's in some areas; however, the exercise of certain water rights and water development may benefit riparian communities and Preble's. Take associated with new water development is not exempted.

Existing uses of perfected water rights are exempt only to the extent that they do not exceed the historic amount of diversions and that they occur at the historic locations of use and at historic diversion points. For water rights or permits that have been exercised at less than the decreed or permitted diversion rate, only the historic water use practice will be considered exempt. Existing uses of water rights that are considered exempt include augmentation plans, replacement plans, and exchanges of water that have been recognized by decree or certificate of appropriation.

New actions that are not considered exempt include—any expansion of the existing use of water; changes in time, place, or amount; new exercise of conditional water rights and undecreed exchanges in Colorado; and new exercise of water use permits in Wyoming that have not yet been awarded a final certificate of appropriation. Under appropriate circumstances, permits may be obtained for take from non-exempted actions, including water uses that take Preble's.

Summary of Conservation Benefits

The standard for issuing a 4(d) rule as described in the Act is ''whenever any species is listed as a threatened species, the Secretary of the Interior will issue such regulations as he deems necessary and advisable to provide for the conservation of the species.'' This rule meets this standard, in that it is protective of the Preble's while providing flexibility in managing its conservation and recovery. The rule provides only those temporary exemptions to take provisions of the Act that neither jeopardize the Preble's nor detract from its future recovery.

The exemptions to take prohibitions under section 9 of the Act incorporated into this rule will support the development of meaningful conservation efforts for the Preble's by State and local governments, agricultural interests, and the general public. Exemptions regarding rodent control and landscaping will elicit support from landowners. Exemptions for ongoing agricultural practices and for the exercise of perfected water rights will provide a positive incentive for agricultural interests to engage in voluntary conservation activities, such as participation in the Partners for Fish and Wildlife program. In addition, such exemptions increase the likelihood that members of the agricultural community will support surveys to determine the status of the Preble's on their lands, thus advancing our understanding of the status, distribution, and ecology of this species and facilitating the development of conservation and recovery plans. Any increased access to private lands will provide opportunities to better define existing Preble's populations and to devise appropriate conservation and recovery plans for the mouse.

Prior to finalization, we have reviewed this rule pursuant to the requirements of section 7 of the Act and the National Environmental Policy Act and an Environmental Assessment has been prepared. We also have prepared a Record of Compliance with rule-making requirements, which has undergone public review. Because this rule is a Federal action that may adversely affect the Preble's, section 7 compliance is required and a biological opinion has been prepared. All documents are available from the Service's Colorado and Wyoming Field Offices.

In accordance with 5 U.S.C. 553 (d)(1), we are making this rule effective upon publication. This rule grants exemptions to the take prohibitions that went into effect upon publication of the final rule listing the Preble's meadow jumping mouse as a threatened species on May 13, 1998.

Required Determinations

1. Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, we believe that this rule is not a significant regulatory action.

(a) This rule reduces the regulatory burden of the listing of the Preble's, because it provides exemptions to the take prohibitions of section 9 of the Act

that currently apply throughout the range of the Preble's.

The exemptions to the take prohibitions of the Act provided by this rule will reduce economic costs of the listing. The economic effect of the rule is a benefit to landowners and the economy. Based on the analysis described in the Record of Compliance, the 4(d) rule, by itself, will not have an annual economic impact of more than $100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

(b) This rule will not create inconsistencies with other Federal agencies' actions.

Other Federal agency actions are mostly unaffected by this rule, with local government taking the lead in actions relating to the Preble's. The Service is encouraged by State and local governments' efforts to develop effective conservation plans for the Preble's.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Because the special rule exempts activities from take prohibitions, effects of the rule on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients would be positive.

(d) This rule will not raise novel legal or policy issues.

The Service has previously promulgated section 4(d) rules for other threatened species.

2. Regulatory Flexibility Act

Based on the analysis described in the Record of Compliance, we have determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule reduces the regulatory burden of the listing of the Preble's, because without this rule all take prohibitions of section 9 of the Act would continue to apply throughout the range of the Preble's. The rule exempts four types of activities—rodent control, ongoing agricultural activities, landscaping, and ongoing use of existing water rights—from the take prohibitions, avoiding costs that may be associated with modifying or abstaining from conducting these activities in order to avoid take of Preble's.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule reduces regulatory obligations as discussed in 1 above; therefore, based on the information included in the Record of Compliance, this rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

5. Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule reduces the likelihood of potential takings; therefore, a takings implication assessment is not required.

6. Federalism

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. Currently, the State of Colorado, the Service, and local governmental entities in Colorado and Wyoming are working together to develop plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of Habitat Conservation Plans and applications to the Service for incidental take permits under section 10 of the Act. One of the purposes of this special rule is to foster cooperation among the Service, the States, local governments, and the private sector.

7. Paperwork Reduction Act

The Service has examined this rule under the Paperwork Reduction Act of 1995 and found it contained no requests for additional information or increase in the collection requirements associated with the Preble's other than those already approved for Federal Fish and Wildlife license permits with Office of Management and Budget approval 1018–0094, which has an expiration date of February 28, 2001. For more information concerning these permits, see 50 CFR 17.32.

8. National Environmental Policy Act

The National Environmental Policy Act analysis has been conducted, and an Environmental Assessment has been prepared.

9. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951) and Part 512, Chapter 2 of the Departmental Manual of the U.S. Department of the Interior, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects, because no Indian trust resources occur within the range of this species.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend 50 CFR part 17, 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 § 17.40 by adding a new paragraph (l) to read as follows:

§ 17.40 Special rules-mammals.

* * * * *

(l) Preble's meadow jumping mouse (*Zapus hudsonius preblei*).

(1) *What is the definition of take?* To harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect; or attempt to engage in any such conduct. Incidental take is that which occurs when it is incidental to and not the purpose of an otherwise lawful activity. Any take that is not authorized by permit provided through section 7 or section 10 of the Act or that is not covered by the exemptions described below is considered illegal take.

(2) *When is take of Preble's meadow jumping mice allowed?* Take of Preble's meadow jumping mice resulting from the following legally conducted activities, in certain circumstances as described below, is allowed:

(i) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32 may take Preble's meadow jumping mice pursuant to the terms of the permit.

(ii) *Rodent control.* Preble's meadow jumping mice may be taken incidental to rodent control undertaken within 10 feet of or inside any structure. ''Rodent control'' includes control of mice and rats by trapping, capturing, or otherwise physically capturing or killing, or poisoning by any substance registered with the Environmental Protection Agency as required by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136) and applied consistent with its labeling. ''Structure'' includes but is not limited to any building, stable, grain silo, corral, barn, shed, water or sewage treatment equipment or facility, enclosed parking structure, shelter, gazebo, bandshell, or restroom complex.

(iii) *Established, ongoing agricultural activities.* Preble's meadow jumping mice may be taken incidental to agricultural activities, including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing, and harvesting, as long as these activities are established, ongoing activities and do not increase impacts to or further encroach upon the Preble's meadow jumping mouse or its habitat. New agricultural activities or those that expand the footprint or intensity of the activity are not considered to be established, ongoing activities.

(iv) *Maintenance and replacement of existing landscaping.* Preble's meadow jumping mice may be taken incidental to the maintenance and replacement of any landscaping and related structures and improvements, as long as they are currently in place and no increase in impervious surfaces would result from their maintenance and improvement. Construction of new structures or improvements or expansion of the landscaping in a manner that increases impervious surfaces would not be considered maintenance and replacement of existing landscaping.

(v) *Existing uses of water.* Preble's meadow jumping mice may be taken incidentally as a result of existing uses of water associated with the exercise of perfected water rights pursuant to State law and interstate compacts and decrees. (A ''perfected water right'' is a right that has been put to beneficial use and has been permitted, decreed, or adjudicated pursuant to State law.) Increasing the use or altering the location of use of an existing water right would not be considered an existing use of water.

(3) *When is take of Preble's not allowed?*

(i) Any manner of take not described under paragraph (l) (2) of this section.

(ii) No person may import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any Preble's meadow jumping mice.

(iii) No person, except for an authorized person may possess, sell, deliver, carry, transport, or ship any Preble's meadow jumping mice that have been taken illegally.

(4) *How long is this rule effective?* This rule is effective for a period of 36 months from May 22, 2001.

(5) *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: March 27, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–12792 Filed 5–21–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 010119022–1113–02; I.D. 120800A]

RIN 0648–AO89

Magnuson-Stevens Fishery Conservation and Management Act; Amendment of Foreign Fishing Fee Table

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the fee table for foreign vessels fishing in the U.S. Exclusive Economic Zone (EEZ). The intent of this action is to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which requires the establishment of a schedule of reasonable fees that apply non-discriminatorily to each foreign fishing nation.

DATES: Effective June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, 301–713–2276

SUPPLEMENTARY INFORMATION:

Regulations at 50 CFR part 600, subpart F govern foreign fishing under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The regulations provide for the application and issuance of foreign fishing permits under provisions of section 204 (b) of the Magnuson-Stevens Act. Under section 204 (b), foreign vessels may be permitted to catch, process, scout, support and transship in the EEZ.

Section 204 (b)(10) of the Magnuson-Stevens Act requires the establishment of a schedule of reasonable fees to apply non-discriminatorily to each foreign fishing nation. Regulations at 50 CFR 600.518 require, among other things, that foreign vessels authorized to directly harvest fish in the EEZ pay fees based on the number of metric tons of allocated species harvested. The species potentially available for foreign fishing and the fees associated with those species are found in the table at 50 CFR 600.518 (b)(1). In a proposed rule published on March 8, 2001, at 66 FR 13870, NMFS proposed to amend this table by removing species no longer available for allocation, clarifying listings for certain species appearing in the table, adding Atlantic herring as an allocable species, and establishing the fees to be paid for the resulting list of allocable species.

NMFS believes the fees and other changes to the table at 50 CFR 600.518 (b)(1) discussed in the proposed rule published on March 8, 2001, at 66 FR 13870, constitute, in accordance with section 204 (b)(10) of the Magnuson-Stevens Act, a schedule of reasonable fees to apply non-discriminatorily to each foreign fishing nation. The specific details of all the changes proposed for the table at 50 CFR 600.518 (b)(1) are discussed in the preamble to the proposed rule published on March 8, 2001, at 66 FR 13870, and are not repeated here. The fees and other changes are adopted as final. No comments were received regarding the proposed rule published on March 8, 2001, at 66 FR 13870.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.