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Title 50 —Wildlife and Fisheries
Chapter I —United States Fish and Wildlife Service, Department of the Interior
Subchapter B —Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants
Part 17 —Endangered and Threatened Wildlife and Plants
Subpart D —Threatened Wildlife

Authority: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

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§ 17.40 Species-specific rules—mammals.

(a) Mazama pocket gophers (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis, glacialis, tumuli,* and *yelmensis*)—

(1) ***Which populations of the Mazama pocket gopher are covered by this special rule?*** This special rule covers the four Thurston/Pierce subspecies of the Mazama pocket gopher (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis, glacialis, tumuli,* and *yelmensis*) wherever they occur.

(2) ***What activities are prohibited?*** Except as noted in paragraphs (a)(3) through (7) of this section, all prohibitions of § 17.31 apply to the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers.

(3) ***What activities are allowed on civilian airports?*** Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from non-Federal routine maintenance activities in or adjacent to Mazama pocket gopher habitat and associated with airport operations on civilian airports. Routine maintenance activities include the following:

(i) Routine management, repair, and maintenance of runways, roads, and taxiways (does not include upgrades, or construction of new runways, roads, or taxiways, or new development at airports);

(ii) Hazing of hazardous wildlife;

(iii) Management of forage, water, and shelter to reduce the attractiveness of the area around airports for hazardous wildlife; and

(iv) Control or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning. Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.

(4) ***What agricultural activities are allowed on non-Federal lands?*** Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from agricultural or horticultural (farming) practices implemented on such lands consistent with State laws on non-Federal lands. For the purposes of this special rule, farm

means any facility, including land, buildings, watercourses, and appurtenances, used in the commercial production of crops, nursery or orchard stock, the propagation and raising of nursery or orchard stock, livestock or poultry, or livestock or poultry products.

(i) For the purposes of this special rule, an agricultural (farming) practice means a mode of operation on a farm that:

(A) Is or may be used on a farm of a similar nature;

(B) Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money;

(C) Is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use;

(D) Complies with applicable State laws;

(E) Is done in a reasonable and prudent manner.

(ii) Accepted agricultural or horticultural (farming) practices include:

(A) Grazing;

(B) Routine installation, management, and maintenance of stock water facilities such as stock ponds, berms, troughs, and tanks, pipelines and watering systems to maintain water supplies;

(C) Routine maintenance or construction of fencing;

(D) Planting, harvest, fertilization, harrowing, tilling, or rotation of crops (Disturbance to the soils shall not exceed a 12-inch (30.5-cm) depth. All activities that do not disturb the soil surface are also allowed, such as haying, baling, some orchard and berry plant management activities, etc.);

(E) Maintenance of livestock management facilities such as corrals, sheds, and other ranch outbuildings;

(F) Repair and maintenance of unimproved agricultural roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(G) Placement of mineral supplements, plant nutrients, or soil amendments;

(H) Harvest, control, or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning (Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.); and

(I) Deep tillage (usually at depths of 18-36 inches (45.7-91.4 cm), for compaction reduction purposes) occurring between September 1 and February 28, no more often than once in 10 years.

(5) ***What noncommercial activities are allowed on single-family residential private land?*** Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from noncommercial activities that occur in or adjacent to Mazama pocket gopher habitat on existing single-family residential properties. These activities include the following:

(i) Harvest, control, or other management of noxious weeds and invasive plants through mowing, herbicide and fungicide application, fumigation, or burning. Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable;

(ii) Construction and placement of fencing, garden plots, or play equipment; and

(iii) Construction and placement of dog kennels, carports, or storage sheds less than 120 ft^2 (11.15 m^2) in size.

(6) ***What noxious weed and invasive plant control activities are allowed on non-Federal lands?*** Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from routine removal or other management of noxious weeds and invasive plants. Routine removal or other management of noxious weeds and invasive plants are limited to the following, and must be conducted in a way that impacts to nontarget plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Discing;

(iii) Herbicide and fungicide application;

(iv) Fumigation; and

(v) Burning.

(7) ***What roadside right-of-way maintenance activities are allowed on Federal and non-Federal lands?*** Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from routine maintenance of roadside rights-of-way on Federal and non-Federal lands. Routine maintenance activities of roadside rights-of-way of highways and roads are limited to the following, and must be conducted in a way that impacts to nontarget plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Mechanical removal of noxious weeds or invasive plants;

(iii) Selective application of herbicides for removal of noxious weeds or invasive plants; and

(iv) Repair or maintenance of fences.

(b) Grizzly bear (*Ursus arctos horribilis*)—

(1) ***Prohibitions.*** The following prohibitions apply to the grizzly bear:

(i) ***Taking.***

(A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported by the individual who has taken the bear or his designee within 5 days of occurrence to the Resident Agent in Charge, Office of Law Enforcement, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Suite 301, Billings, MT 59101 (406-247-7355), if occurring in Montana or Wyoming, or the Special Agent in Charge, Office of Law

Enforcement, U.S. Fish and Wildlife Service, P.O. Box 9, Sherwood, OR 97140 (503-521-5300), if occurring in Idaho or Washington, and to appropriate State and Tribal authorities. Grizzly bears taken in self-defense or in defense of others, including the parts of such bears, shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) ***Removal of nuisance bears.*** A grizzly bear consituting a demonstrable but non immediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(*1*) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(*2*) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(*3*) The taking is reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) ***Federal, State, or Tribal scientific or research activities.*** Federal, State, or Tribal authorities may take grizzly bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) [Reserved]

(F) ***National Parks.*** The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

(ii) ***Unlawfully taken grizzly bears.***

(A) Except as provided in paragraphs (b)(1)(ii)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any unlawful taking of a grizzly bear shall be reported within 5 days of occurrence to the appropriate U.S. Fish and Wildlife Service law enforcement office, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(B) Authorized Federal, State, or Tribal employees, when acting in the course of their official duties, may, for scientific or research purposes, possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzly bears.

(iii) ***Import or export.*** Except as provided in paragraphs (b)(1)(iii) (A) and (B) and (iv) of this section, no person shall import any grizzly bear into the United States.

(A) ***Federal, State, or Tribal scientific or research activities.*** Federal, State, or Tribal authorities may import grizzly bears into the United States for scientific or research purposes.

(B) ***Public zoological institution.*** Public zoological institutions (see 50 CFR 10.12) may import grizzly bears into the United States.

(iv) ***Commercial transactions.***

(A) Except as provided in paragraph (b)(1)(iv)(B) of this section, no person shall, in the course of commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any grizzly bear.

(B) A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce.

(v) ***Other violations.*** No person shall attempt to commit, cause to be committed, or solicit another to commit any act prohibited by paragraph (b)(1) of this section.

(2) ***Definitions.*** As used in paragraph (b) of this section:

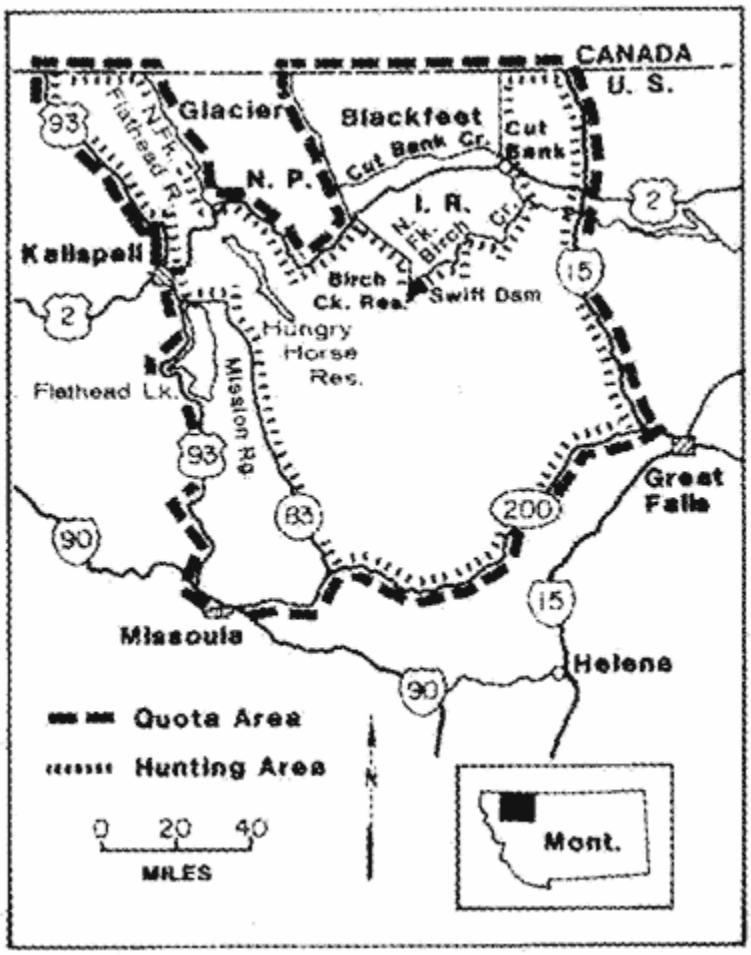
Grizzly bear means any member of the species *Ursus arctos horribilis* of the 48 conterminous States of the United States, including any part, offspring, dead body, part of a dead body, or product of such species.

Grizzly bear accompanied by young means any grizzly bear having offspring, including one or more cubs, yearlings, or 2-year-olds, in its immediate vicinity.

Identified means permanently marked or documented so as to be identifiable by law enforcement officials at a subsequent date.

State, Federal or Tribal authority means an employee of State, Federal, or Indian Tribal government who, as part of his/her official duties, normally handles grizzly bears.

Young grizzly bear means a cub, yearling, or 2-year-old grizzly bear.



(c) ***Primates.***

(1) Except as noted in paragraph (c)(2) of this section, all provisions of § 17.31 apply to the lesser slow loris *(Nycticebus pygmaeus);* Philippine tarsier *(Tarsius syrichta);* white-footed tamarin *(Saguinus leucopus*); black howler monkey *(Alouatta pigra);* stump-tailed macaque *(Macaca arctoides);* gelada baboon *(Theropithecus gelada);* Formosan rock macaque *(Macaca cyclopis);* Japanese macaque (*Macaca fuscata);* Toque macaque (*Macaca sinica);* long-tailed langur *(Presbytis potenziani);* and purple-faced langur *(Presbytis senex)*.

(2) The prohibitions referred to above do not apply to any live member of such species held in captivity in the United States on the effective date of the final rulemaking, or to the progeny of such animals, or to the progeny of animals legally imported into the United States after the effective date of the final rulemaking, *Provided,* That the person wishing to engage in any activity which would otherwise be prohibited must be able to show satisfactory documentary or other evidence as to the captive status of the particular member of the species on the effective date of this rulemaking or that the particular member of the species was born in captivity in the United States after the effective date of this rulemaking. Identification of the particular member to a record in the International Species Inventory System (ISIS), or to a Federal, State or local government permit, shall be deemed to be satisfactory evidence. Records in the form of studbooks or inventories, kept in the normal course of business, shall be acceptable as evidence, provided that a notarized statement is inserted in such record to the effect that:

(i) The records were kept in the normal course of business prior to November 18, 1976, and accurately identify (by use of markers, tags, or other acceptable marking devices) individual animals; or

(ii) That the individual animal identified by the records was born in captivity on ____(Date).

The notarized statement in paragraph (c)(2)(i) of this section, shall be acceptable only if the notarization is dated on or before January 3, 1977. The notarized statement in paragraph (c)(2)(ii), of this section, shall be acceptable only if the notarization is dated within 15 days of the date of birth of the animal.

(d) Gray wolf (*Canis lupus*) in Minnesota.

(1) ***Zones.*** For purposes of these regulations, the State of Minnesota is divided into the following five zones:

(i) Zone 1—4,488 square miles. Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27, and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis Counties line to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE\1/4\, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Sections 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermilion River; thence southerly along the Vermilion River to Vermilion Lake; thence along the Superior National Forest boundary in a southeasterly direction through Vermilion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodoo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence westerly along the Canadian Border to the point of beginning in Rainy Lake.

(ii) Zone 2—1,856 square miles. Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwesterly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwesterly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwesterly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence

in a westerly direction along Forest Road 122 to the junction with the Duluth, Missabe and Iron Range Railroad; thence in a southwesterly direction along the said railroad tracks to the junction with County Route 14; thence in a northwesterly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

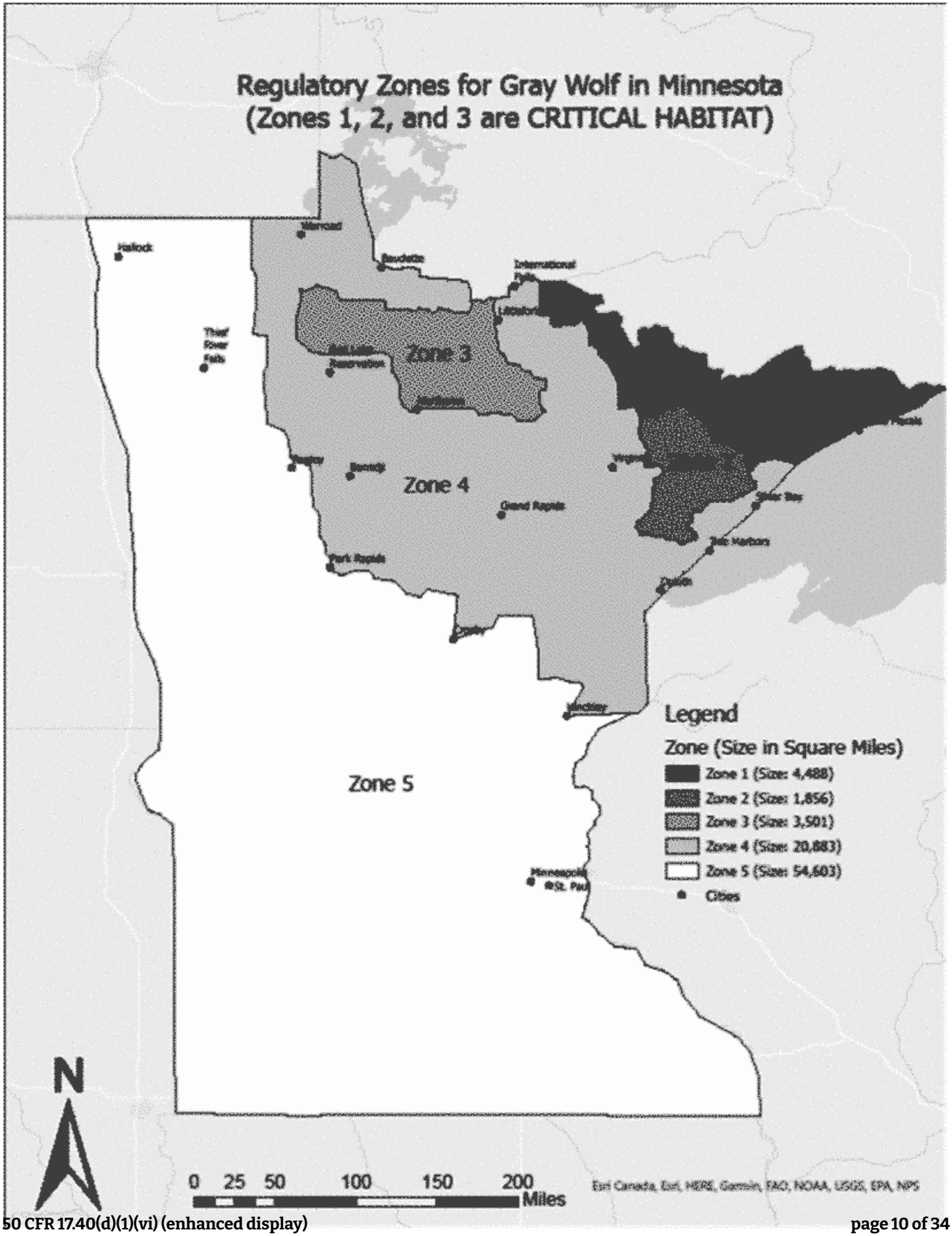
(iii) Zone 3—3,501 square miles. Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95: thence westerly along SFR 95 and continuing west through the southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89, thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63: thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158 North, Range 30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County

Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

(iv) Zone 4—20,883 square miles. Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the State; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I-35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Truck Highway 310 to the Canadian border.

(v) Zone 5—54,603 square miles. All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

(vi) Map of regulatory zones follows:


Regulatory Zones for Gray Wolf in Minnesota
(Zones 1, 2, and 3 are CRITICAL HABITAT)
Zone 3
Zone 4
Zone 5
Legend
Zone (Size in Square Miles)
Zone 1 (Size: 4,488)
Zone 2 (Size: 1,856)
Zone 3 (Size: 3,501)
Zone 4 (Size: 20,883)
Zone 5 (Size: 54,603)
Cities
N
0 25 50 100 150 200
Miles
Esri Canada, Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS

(2) ***Prohibitions.*** The following prohibitions apply to the gray wolf in Minnesota.

(i) ***Taking.*** Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(*1*) Aid a sick, injured, or orphaned specimen; or

(*2*) Dispose of a dead specimen; or

(*3*) Salvage a dead specimen which may be useful for scientific study.

(C) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(l) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: Provided, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: And provided further, that any young of the year taken on or before August 1 of that year must be released.

(D) Any taking pursuant to paragraph (d)(2)(i)(A), (d)(2)(i)(B), or (d)(2)(i)(C) of this section must be reported by email to the Twin Cities Ecological Service Field Office at *twincities@fws.gov* within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(E) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) ***Export and commercial transactions.*** Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) ***Unlawfully taken wolves.*** No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) ***Permits.*** All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

(e) African elephant (*Loxodonta africana*). This paragraph (e) applies to any specimen of the species *Loxodonta africana* whether live or dead, including any part or product thereof. The African Elephant Conservation Act (16 U.S.C. 4201 *et. seq.*), and any moratorium under that act, also applies. Except as provided in paragraphs (e)(2) through (11) of this section, all of the prohibitions and exceptions in §§ 17.31 and 17.32 apply to the African elephant. Persons seeking to benefit from the exceptions provided in this paragraph (e) must demonstrate that they meet the criteria to qualify for the exceptions.

(1) ***Definitions.*** In this paragraph (e), the following terms have these meanings:

Antique means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)).

Ivory means any African elephant tusk and any piece of an African elephant tusk.

Range country means a country that exercises jurisdiction over part of the natural geographic range of the African elephant including the following: Angola; Benin; Botswana; Burkina Faso; Cameroon; Central African Republic; Chad; Congo, Republic of the; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Malawi; Mali; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Sierra Leone; Somalia; South Africa; South Sudan; Tanzania, United Republic of; Togo; Uganda; Zambia; and Zimbabwe.

Raw ivory means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

Worked ivory means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) ***Parts and products other than ivory and sport-hunted trophies.*** African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

(3) ***Interstate and foreign commerce of ivory.*** Except for antiques and certain manufactured or handcrafted items containing *de minimis* quantities of ivory, sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity is prohibited. Except as provided in paragraphs (e)(5)(iii) and (e)(6) through (8) of this section, manufactured or handcrafted items containing *de minimis* quantities of ivory may be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided they meet all of the following criteria:

(i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;

(ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;

(iii) The ivory is a fixed or integral component or components of a larger manufactured or handcrafted item and is not in its current form the primary source of the value of the item, that is, the ivory does not account for more than 50 percent of the value of the item;

(iv) The ivory is not raw;

(v) The manufactured or handcrafted item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50 percent of the item by volume;

(vi) The total weight of the ivory component or components is less than 200 grams; and

(vii) The item was manufactured or handcrafted before July 6, 2016.

(4) ***Import/export of raw ivory.*** Except as provided in paragraphs (e)(6) through (9) of this section, raw ivory may not be imported into or exported from the United States.

(5) ***Import/export of worked ivory.*** Except as provided in paragraphs (e)(6) through (9) of this section, worked ivory may not be imported into or exported from the United States unless it is contained in a musical instrument, or is part of a traveling exhibition, household move, or inheritance, and meets the following criteria:

(i) ***Musical instrument.*** Musical instruments that contain worked ivory may be imported into and exported from the United States without a threatened species permit issued under § 17.32 of this part provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The instrument containing worked ivory is accompanied by a valid CITES musical instrument certificate or equivalent CITES document;

(C) The instrument is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the musical instrument in question; and

(D) The instrument is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(ii) ***Traveling exhibition.*** Worked ivory that is part of a traveling exhibition may be imported into and exported from the United States without a threatened species permit issued under § 17.32 provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The item containing worked ivory is accompanied by a valid CITES traveling exhibition certificate (see the requirements for traveling exhibition certificates at 50 CFR 23.49) or equivalent CITES document;

(C) The item containing ivory is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the item in question; and

(D) The item containing worked ivory is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(iii) ***Household move or inheritance.*** Worked ivory may be imported into or exported from the United States without a threatened species permit issued under § 17.32 for personal use as part of a household move or as part of an inheritance if the ivory was legally acquired prior to February 26, 1976, and the item is accompanied by a valid CITES pre-Convention certificate. It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory imported into the United States as part of a household move or inheritance. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to items imported or exported under this paragraph (e)(5)(iii) as part of a household move or inheritance.

(6) ***Sport-hunted trophies.***

(i) African elephant sport-hunted trophies may be imported into the United States provided:

(A) The trophy was legally taken in an African elephant range country that declared an ivory export quota to the CITES Secretariat for the year in which the trophy animal was killed;

(B) A determination is made that the killing of the trophy animal will enhance the survival of the species and the trophy is accompanied by a threatened species permit issued under § 17.32;

(C) The trophy is legibly marked in accordance with 50 CFR part 23;

(D) The requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met; and

(E) No more than two African elephant sport-hunted trophies are imported by any hunter in a calendar year.

(ii) For African elephant sport-hunted trophies taken on or after May 1, 2024, to make an enhancement determination under paragraph (e)(6)(i)(B) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is taken that:

(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain sport hunting at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations.

(G) Funds derived from the involved sport hunting are applied significantly toward African elephant conservation, including funds used for:

(*1*) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of elephants in their natural ecosystems and habitats, including corridors between protected areas;

(*2*) Improving the quality and carrying capacity of existing habitats;

(*3*) Helping range country governments to produce or strengthen regional and national elephant conservation strategies and laws;

(*4*) Developing capacity within the range country to survey, census, and monitor elephant populations;

(*5*) Conducting elephant population surveys;

(*6*) Supporting enforcement efforts to combat poaching of African elephants; and

(*7*) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human-elephant conflict.

(iii) It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(6) as part of a sport-hunted trophy.

(iv) Except as provided in paragraph (e)(9) of this section, raw ivory that was imported as part of a sport-hunted trophy may not be exported from the United States. Except as provided in paragraphs (e)(5), (e)(7), (e)(8), and (e)(9) of this section, worked ivory imported as a sport-hunted trophy may not be exported from the United States. Parts of a sport-hunted trophy other than ivory may be exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met.

(7) ***Import/export of ivory for law enforcement purposes.*** Raw or worked ivory may be imported into and worked ivory may be exported from the United States by an employee or agent of a Federal, State, or tribal government agency for law enforcement purposes, without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for law enforcement purposes. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(7) for law enforcement purposes.

(8) ***Import/export of ivory for genuine scientific purposes.***

(i) Raw or worked ivory may be imported into and worked ivory may be exported from the United States for genuine scientific purposes that will contribute to the conservation of the African elephant, provided:

(A) It is accompanied by a threatened species permit issued under § 17.32; and

(B) The requirements of 50 CFR parts 13, 14, and 23 have been met.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for genuine scientific purposes. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(8) for genuine scientific purposes.

(9) ***Antique ivory.*** Antiques (as defined in paragraph (e)(1) of this section) are not subject to the provisions of this rule. Antiques containing or consisting of ivory may, therefore, be imported into or exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. Nevertheless, nothing in this rule interprets or changes any provisions or prohibitions that may apply under the African Elephant Conservation Act (16 U.S.C. 4201 *et seq.*), regardless of the age of the item. Antiques that consist of or contain raw or worked ivory may similarly be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32.

(10) ***Live African elephants.***

(i) Live African elephants may be imported into the United States, provided the Service determines that the activity will enhance the survival of the species, the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), the animal is accompanied by a threatened species permit issued under § 17.32, and the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

(ii) To make an enhancement determination for the import of wild-sourced live African elephants under paragraph (e)(10)(i) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the elephant is removed from the wild that:

(A) African elephant populations in the range country are biologically sustainable, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable.

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant.

(H) Funds derived from the import are applied significantly toward African elephant conservation, including funds used for:

(*1*) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of African elephants in their natural ecosystems and habitats, including corridors between protected areas;

(*2*) Improving the quality and carrying capacity of existing habitats;

(*3*) Helping range country governments to produce or strengthen regional and national African elephant conservation strategies and laws;

(*4*) Developing capacity within the range country to survey, census, and monitor African elephant populations;

(*5*) Conducting African elephant population surveys;

(*6*) Supporting enforcement efforts to combat poaching of African elephants; and

(*7*) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human-elephant conflict.

(I) The government of the range country first considers any live elephants that it approves for export for both in situ conservation programs and for transportation to other locations to augment extant wild populations or reintroduce elephants to extirpated ranges.

(iii) Live African elephants may be sold or offered for sale in interstate commerce, and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity, provided the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), and a special purpose permit is issued under § 17.32 or a captive-bred wildlife registration is issued under § 17.21(g).

(iv) Each permit issued to authorize activity with a live African elephant under 50 CFR parts 17 or 23 must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person or location without a special purpose permit issued under § 17.32. Each special purpose permit for a live African elephant must also include the same condition. Each special purpose permit issued for a live African elephant will require a finding by the Service that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter).

(11) ***CITES National Legislation Project and African elephants.*** On or after January 1, 2026, live African elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies may not be imported into the United States under the exceptions for importation provided in § 17.32 or paragraphs (e)(2), (e)(6), or (e)(10) of this section except when:

(i) All trade in the specimen has been and is accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (see § 23.7 of this chapter and *http://www.cites.org*); or

(ii) When importation under paragraph (e)(2) of this section is for law enforcement purposes and meets the requirements as set forth at paragraph (e)(7) of this section for the import of ivory or is for genuine scientific purposes and meets the requirements as set forth at paragraph (e)(8) of this section for the import of ivory.

(f) Leopard (*Panthera pardus*)

(1) Except as noted in paragraph (f)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part shall apply to the leopard populations occurring in southern Africa to the south of a line running along the borders of the following countries: Gabon/Rio Muni; Gabon/Cameroon; Congo/Cameroon; Congo/Central African Republic; Zaire/Central African Republic; Zaire/Sudan; Uganda/Sudan; Kenya/Sudan; Kenya/Ethiopia; Kenya/Somalia.

(2) A sport-hunted leopard trophy legally taken after the effective date of this rulemaking, from the area south of the line delineated above, may be imported into the United States without a Threatened Species permit pursuant to § 17.32 of this part, provided that the applicable provisions of 50 CFR part 23 have been met.

(g) Utah prairie dog (*Cynomys parvidens*).

(1) Except as noted in paragraphs (g)(2) through (g)(6) of this section, all prohibitions of § 17.31(a) and (b) and exemptions of § 17.32 apply to the Utah prairie dog.

(2) A Utah prairie dog may be directly or intentionally taken as described in paragraphs (g)(3) and (4) of this section on agricultural lands, properties within 0.8 kilometers (km) (0.5 miles (mi)) of conservation lands, and areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites.

(3) ***Agricultural lands and properties near conservation lands.*** When permitted by the Utah Division of Wildlife Resources (UDWR), or other parties as authorized in writing by the Service, direct or intentional take is allowed on private properties that are located within 0.8 km (0.5 mi) of conservation land, and on agricultural land. Records on permitted take will be maintained by the State (or other parties as authorized in writing by the Service), and made available to the Service upon request.

(i) ***Agricultural land.***

(A) Take may be permitted only on agricultural land being physically or economically affected by Utah prairie dogs, and only when the spring count on the agricultural lands is seven or more individuals, and only during the period of June 15 to December 31; and

(B) The land must:

(*1*) Meet the general classification of irrigated, dryland, grazing land, orchard, or meadow;

(*2*) Be capable of producing crops or forage;

(*3*) Be at least 2 contiguous hectares (5 contiguous acres) in area (smaller parcels may qualify where devoted to agricultural use in conjunction with other eligible acreage under identical legal ownership);

(*4*) Be managed in such a way that there is a reasonable expectation of profit;

(*5*) Have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and

(*6*) Meet State average annual (per-acre) production requirements.

(ii) ***Private property near conservation land.***

(A) Take may be permitted on private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land during the period of June 15 to December 31.

(B) Conservation lands are defined as non-Federal areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands may include, but are not limited to, properties set aside as conservation banks, fee-title purchased properties, properties under conservation easements, and properties subject to a safe harbor agreement (see § 17.22). Conservation lands do not include Federal lands.

(iii) ***Amount of permitted take on agricultural lands and private property near conservation land.***

(A) The UDWR, or other parties as authorized in writing by the Service, will ensure that permitted take on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands does not exceed 10 percent of the estimated rangewide population annually.

(B) On agricultural lands, the UDWR, or other parties as authorized in writing by the Service, will limit permitted take to 7 percent of the estimated annual rangewide population and will limit within-colony take to one-half of a colony's estimated annual production. The UDWR, or other parties as authorized in writing by the Service, will spatially distribute the 7 percent allowed take on agricultural lands across the three Recovery Units, based on the distribution of the total annual population estimate within each Recovery Unit.

(C) In setting take limits on properties within 0.8 km (0.5 mi) of conservation lands, the UDWR, or other parties as authorized in writing by the Service, will consider the amount of take that occurs on agricultural lands. The State, or other parties as authorized in writing by the Service, will restrict the remaining permitted take (the amount that would bring the total take up to 10 percent of the estimated annual rangewide population) on properties within 0.8 km (0.5 mi) of conservation lands to animals in excess of the baseline population. The baseline population of these lands is determined in accordance with paragraph (g)(3)(iii)(D) of this section.

(D) Take on properties within 0.8 km (0.5 mi) of conservation lands is restricted to prairie dogs in excess of the baseline population. The baseline population is the highest estimated total (summer) population size on that property during the 5 years prior to the establishment of the conservation property, except that if no UDWR surveys to determine population size on a property were conducted during such 5-year period, the baseline population is the estimated total (summer) population size on that property as determined in the first survey conducted after the establishment of the conservation property. The baseline population will be established by the UDWR, or other parties as authorized in writing by the Service.

(E) Translocated Utah prairie dogs will count toward the take limits in paragraphs (g)(3)(iii)(A) through (D) of this section.

(iv) ***Methods of allowed direct take on agricultural lands and private properties near conservation land.*** Methods for controlling Utah prairie dogs on agricultural lands and properties within 0.8 km (0.5 mi) of conservation lands are limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended for lethal removal, and shooting. Actions intended to drown or poison Utah prairie dogs and the use of gas cartridges, anticoagulants, and explosive devices are prohibited.

(4) ***Human safety hazards and significant human cultural or human burial sites.***

(i) Nonlethal take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, if approved in writing by the Service. To reduce hazards, prairie dog burrows may be filled with dirt if they are directly creating human hazards or disturbing the sanctity of significant human cultural or human burial sites. Utah prairie dogs also may be translocated from these sites to approved translocation sites by properly trained personnel using Service-approved translocation protocols.

(ii) Direct or intentional lethal take is allowed where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, but only after all practicable measures to resolve the conflict are implemented, and only as approved in writing by the Service. A permit is not required to allow take under these conditions.

(A) All practicable measures means, with respect to these situations:

(*1*) Construction of prairie-dog-proof fence, above and below grade to specifications approved by the Service, around the area in which there is concern.

(*2*) Translocation of Utah prairie dogs out of the fenced area in which there is a concern must be conducted prior to allowing lethal take. Lethal take is allowed only to remove prairie dogs that remain in these areas after the measures to fence and translocate are successfully carried out.

(*3*) Continued maintenance or modification of the fence as needed to preclude Utah prairie dogs from entering the fenced sites.

(B) There are no restrictions on the amount, timing, or methods of lethal take allowed on lands where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites, as long as all qualifications in paragraphs (g)(4)(ii)(A)(1)through (3) of this section are met.

(C) The amount of take in areas where Utah prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites does not contribute to the upper permitted take limits described above for agricultural lands and private properties within 0.8 km (0.5 mi) of conservation lands.

(5) ***Incidental take associated with agriculture.*** Utah prairie dogs may be taken when take is incidental to otherwise-legal activities associated with legal and standard agricultural practices on legitimately operating agricultural lands. Acceptable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs. There is no numeric limit established for incidental take associated with standard agricultural practices. Incidental take is in addition to, and does not contribute to, the take limits described in paragraphs (g)(2) through (4) of this section. A permit is not required for incidental take associated with agricultural practices.

(6) If the Service receives evidence that take pursuant to paragraphs (g)(2) through (5) of this section is having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such take as appropriate for the conservation of the species. The Service will notify the permitting entities in writing if take restrictions are necessary.

(h) Mountain lion (*Felis concolor*).

(1) Except as allowed in paragraphs (h)(2), (h)(3), and (h)(4) of this section, no person shall take any free-living mountain lion (*Felis concolor*) in Florida.

(2) A mountain lion (*Felis concolor*) may be taken in this area under a valid threatened species permit issued pursuant to 50 CFR 17.52.

(3) A mountain lion (*Felis concolor*) may be taken in Florida by an employee or designated agent of the Service or the Florida Game and Fresh Water Fish Commission for taxonomic identification or other reasons consistent with the conservation of the endangered Florida panther (*Felis concolor coryi*). When it has been established by the Service, in consultation with the State, that an animal in question is not a Florida panther (*Felis concolor coryi*) or an eastern cougar (*Felis concolor couguar*), such animals may be removed from the wild. The disposition of animals so taken shall be at the discretion of the Florida Game and Fresh Water Fish Commission, with the concurrence of the Fish and Wildlife Service.

(4) Take for reasons of human safety is allowed as specified under 50 CFR 17.21(c)(2) and 17.21(c)(3)(iv).

(5) Any take pursuant to paragraph (h)(4) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 N. Fairfax Drive, LE-3000, Arlington, VA 22203, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(i) Columbian white-tailed deer (*Odocoileus virginianus leucurus*) (CWTD), the Columbia River distinct population segment.

(1) ***General requirements.*** Other than as expressly provided at paragraph (i)(3) of this section, the provisions of § 17.31(a) apply to the CWTD.

(2) ***Definitions.*** For the purposes of this entry:

(i) ***CWTD*** means the Columbia River distinct population segment (DPS) of Columbian white-tailed deer or individual specimens of CWTD.

(ii) ***Intentional harassment*** means an intentional act which 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 CWTD, or purposeful actions to deter CWTD.

(iii) ***Problem CWTD*** means an individual specimen of CWTD that has been identified in writing by a State conservation agency or the Service as meeting the following criteria:

(A) The CWTD is causing more than *de minimus* negative economic impact to a commercial crop;

(B) Previous efforts to alleviate the damage through nonlethal methods have been ineffective; and

(C) There is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented.

(iv) ***Commercial crop*** means commercially raised horticultural, agricultural, or forest products.

(v) ***State conservation agency*** means the State agency in Oregon or Washington operating a conservation program for CWTD pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Endangered Species Act.

(3) ***Allowable forms of take of CWTD.*** Take of CWTD resulting from the following legally conducted activities is allowed:

(i) Intentional harassment not likely to cause mortality. A State conservation agency may issue permits to landowners or their agents to harass CWTD on lands they own, rent, or lease if the State conservation agency determines in writing that such action is not likely to cause mortality of CWTD. The techniques employed in this harassment must occur only as specifically directed or restricted by the State permit in order to avoid causing CWTD mortality.

(ii) Take of problem CWTD resulting in mortality. Take of problem CWTD is authorized under the following circumstances:

(A) Any employee or agent of the Service or the State conservation agency, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take problem CWTD. This take must occur in compliance with all other applicable Federal, State, and local laws and regulations.

(B) The State conservation agency may issue a permit to landowners or their agents to take problem CWTD on lands they own, rent, or lease. Such take must be implemented only as directed and allowed in the permit obtained from the State conservation agency.

(iii) Accidental take of CWTD when carrying out State-permitted black-tailed deer damage control. Take of CWTD in the course of carrying out black-tailed deer damage control will be a violation of this rule unless the taking was accidental; reasonable care was practiced to avoid such taking; and the person causing the take was in possession of a valid black-tailed deer damage control permit from a State conservation agency. When issuing black-tailed deer damage control permits, the State conservation agency will provide education regarding identification of target species. The exercise of reasonable care includes, but is not limited to, the review of the educational material provided by the State conservation agency and identification of the target before shooting.

(iv) Accidental take of CWTD when carrying out State-permitted black-tailed deer hunting. Take of CWTD in the course of hunting black-tailed deer will be a violation of this rule unless the take was accidental; the take was in the course of hunting black-tailed deer under a lawful State permit; and reasonable due care was exercised to avoid such taking. The State conservation agency will provide educational material to hunters regarding identification of target species when issuing hunting permits. The exercise of reasonable care includes, but is not limited to, the review of the educational materials provided by the State conservation agency and identification of the target before shooting.

(4) ***Take limits.*** The amount of take of CWTD allowed for the activities in paragraphs (i)(3)(ii), (iii), and (iv) of this section will not exceed 5 percent of the CWTD population during any calendar year, as determined by the Service. By December 31 of each year, the Service will use the most current annual DPS population estimate to set the maximum allowable take for these activities for the following calendar year. If take exceeds 2 percent of the DPS population in a given calendar year, the Service will convene a meeting with the Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife to discuss CWTD management and strategies to minimize further take from these activities for the rest of the year. If take exceeds 5 percent of the CWTD population

in any given calendar year, no further take under paragraphs (i)(3)(ii), (iii), and (iv) will be allowed during that year and any further take that does occur may be subject to prosecution under the Endangered Species Act.

(5) ***Reporting and disposal requirements.*** Any injury or mortality of CWTD associated with the actions authorized under paragraphs (i)(3), (6), and (7) of this section must be reported to the Service 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 Law Enforcement Office at (503) 231-6125, or the Service's Oregon Fish and Wildlife Office at (503) 231-6179. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

(6) ***Additional taking authorizations for Tribal employees, State and local law enforcement officers, and State-licensed wildlife rehabilitation facilities.***

(i) Tribal employees and State and local government law enforcement officers. When acting in the course of their official duties, both Tribal employees designated by the Tribe for such purposes, and State and local government law enforcement officers working in the States of Oregon or Washington, may take CWTD for the following purposes:

(A) Aiding or euthanizing sick, injured, or orphaned CWTD;

(B) Disposing of a dead specimen; and

(C) Salvaging a dead specimen that may be used for scientific study.

(ii) Such take must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service.

(7) ***Wildlife rehabilitation facilities licensed by the States of Oregon or Washington.*** When acting in the course of their official duties, a State-licensed wildlife rehabilitation facility may take CWTD for the purpose of aiding or euthanizing sick, injured, or orphaned CWTD. Such take must be reported to the Service within 72 hours as required by paragraph (i)(5) of this section, and specimens may be retained and disposed of only in accordance with directions from the Service.

(8) ***Take authorized by permits.*** Any person with a valid permit issued by the Service under § 17.32 may take CWTD, pursuant to the special terms and conditions of the permit.

(j) Argali (*Ovis ammon*) in Kyrgyzstan, Mongolia, and Tajikistan.

(1) Except as noted in paragraph (j)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part shall apply to this species in Kyrgyzstan, Mongolia, and Tajikistan

(Note. In all other parts of its range the argali is classified as endangered and covered by § 17.21).

(2) Upon receiving from the governments of Kyrgyzstan, Mongolia, and Tajikistan properly documented and verifiable certification that

(i) argali populations in those countries are sufficiently large to sustain sport hunting,

(ii) regulating authorities have the capacity to obtain sound data on these populations,

(iii) regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them as such,

(iv) the habitat of these populations is secure,

(v) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations, and

(vi) funds derived from the involved sport hunting are applied primarily to argali conservation, the Director may, consistent with the purposes of the Act, authorize by publication of a notice in the FEDERAL REGISTER the importation of personal sport-hunted argali trophies, taken legally in Kyrgyzstan, Mongolia, and Tajikistan after the date of such notice, without a Threatened Species permit pursuant to § 17.32 of this part, provided that the applicable provisions of 50 CFR part 23 have been met.

(k) Canada lynx (*Lynx canadensis*).

(1) ***What lynx does this special rule apply to?*** The regulations in this paragraph (k) apply to all wild and captive lynx in the contiguous United States.

(2) ***What activities are prohibited for wild lynx?*** All prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to wild lynx found in the contiguous United States.

(3) ***What is considered a captive lynx?***

(i) For purposes of this paragraph (k), captive lynx means lynx, whether alive or dead, and any part or product, if the specimen was in captivity at the time of the listing, born in captivity, or lawfully imported or transported into the contiguous United States.

(ii) Lynx that were either born or held in captivity and then released into the wild are considered wild.

(4) ***What activities are allowed for captive lynx?***

(i) ***Take.*** You may take lawfully obtained captive lynx without a permit.

(ii) ***Import and export.*** You may export captive live lynx, parts or products of captive lynx provided the specimens are tagged with Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export tags and/or accompanied by a valid CITES export permit. You may import lawfully obtained lynx that originated outside the United States when you follow the requirements of CITES.

(iii) ***Interstate commerce.*** You may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce captive lynx and captive lynx parts and products in accordance with State or tribal laws and regulations. In addition, lynx pelts that are properly tagged with valid CITES export tags also qualify for this exemption on interstate commerce.

(5) ***Are any activities not allowed or restricted for captive lynx?*** You must comply with all applicable State and tribal laws and regulations. Violation of State or tribal law will also be a violation of the Act.

(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.

(vi) ***Noxious weed control.*** Preble's meadow jumping mice may be taken incidental to noxious weed control that is conducted in accordance with:

(A) Federal law, including Environmental Protection Agency label restrictions;

(B) Applicable State laws for noxious weed control;

(C) Applicable county bulletins;

(D) Herbicide application guidelines as prescribed by herbicide manufacturers; and

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

(vii) ***Ditch maintenance activities.*** Preble's meadow jumping mice may be taken incidental to normal and customary ditch maintenance activities only if the activities:

(A) Result in the annual loss of no more than $^{1}/_{4}$ mile of riparian shrub habitat per linear mile of ditch, including burning of ditches that results in the annual loss of no more than $^{1}/_{4}$ mile of riparian shrub habitat per linear mile of ditch.

(B) Are performed within the historic footprint of the surface disturbance associated with ditches and related infrastructure, and

(C) Follow the Best Management Practices described in paragraphs (l)(2)(vii)(C)(*1*) through (*3*) of this section.

(*1*) Persons engaged in ditch maintenance activities shall avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if accessing the ditch for maintenance or repair activities from an area containing no shrubs is possible, then damage to adjacent shrub vegetation shall be avoided.

(*2*) Persons engaged in placement or sidecasting of silt and debris removed during ditch cleaning, vegetation or mulch from mowing or cutting, and other material from ditch maintenance shall, to the maximum extent practicable, avoid shrub habitat and at no time disturb more than $^{1}/_{4}$ mile of riparian shrub habitat per linear mile of ditch within any calendar year.

(*3*) To the maximum extent practicable, all ditch maintenance activities should be carried out during the Preble's hibernation season, November through April.

(D) All ditch maintenance activities carried out during the Preble's active season, May through October, should be conducted during daylight hours only.

(E) Ditch maintenance activities that would result in permanent or long-term loss of potential habitat that would not be considered normal or customary include replacement of existing infrastructure with components of substantially different materials and design, such as replacement of open ditches with pipeline or concrete-lined ditches, replacement of an existing gravel access road with a permanently paved road, or replacement of an earthen diversion structure with a rip-rap and concrete structure, and construction of new infrastructure or the movement of existing infrastructure to new locations, such as realignment of a ditch, building a new access road, or installation of new diversion works where none previously existed.

(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) ***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.

(m) Vicuña (*Vicugna vicugna*)—

(1) ***What activities involving vicuña are prohibited by this rule?***

(i) ***Appendix I populations.*** All provisions of § 17.31 (a) and (b) and § 17.32 apply to vicuña and vicuña parts and products originating from populations currently listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

(ii) ***Import, export, and re-export.*** Except as provided in paragraph (m)(2) of this section, it is unlawful to import, export, or re-export, or present for export or re-export without valid permits as required under parts 17 and 23 of this subchapter, any vicuña or vicuña parts and products. For import of embryos, blood, other tissue samples, or live vicuña, permits required under § 17.32 and part 23 will be issued only for bona fide scientific research contributing to the conservation of the species in the wild.

(iii) ***Other activities.*** Except as provided in paragraph (m)(2) of this section, it is unlawful to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any vicuña or vicuña parts and products.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (m)(1)(ii)-(iii) of this section.

(2) ***What activities involving vicuña are allowed by this rule?*** You may import, export, or re-export, or conduct interstate or foreign commerce in raw wool sheared from live vicuñas, cloth made from such wool, or manufactured or handicraft products and articles made from or consisting of such wool or cloth without a threatened species permit issued according to § 17.32 only when the following provisions have been met:

(i) The specimens originated from a population listed in CITES Appendix II.

(ii) The provisions in parts 13, 14, and 23 of this subchapter are met, including the specific labeling provisions in part 23.

(iii) ***Personal and household effects.*** Under the provisions of this special rule, raw wool sheared from live vicuñas, cloth made from such wool, or manufactured or handicraft products and articles made from or consisting of such wool or cloth are not granted the personal or household effects exemption described in part 23 of this subchapter. In addition to the provisions of this paragraph (m)(2), such specimens may only be imported, exported, or re-exported when accompanied by a valid CITES document.

(iv) ***Labeling of wool sheared from live vicuñas.*** Any shipment of raw wool sheared from live vicuñas must be sealed with a tamper-proof seal and have the following:

(A) An identification tag with a code identifying the country of origin of the raw vicuña wool and the CITES export permit number; and

(B) The vicuña logotype as defined in 50 CFR part 23 and the words “VICUÑA—COUNTRY OF ORIGIN”, where country of origin is the name of the country from which the raw vicuña wool was first exported.

(v) At the time of import, the country of origin and each country of re-export involved in the trade of a particular shipment have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country from which Parties should not accept permits.

(3) ***When and how will the Service inform the public of additional restrictions in trade of vicuña?*** Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, we will issue a public bulletin that identifies a restriction on trade in specimens of vicuña addressed in this paragraph (m) if any of the following criteria are met:

(i) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked not to accept shipments of specimens of any CITES-listed species from the country in question.

(ii) The Service's Division of Scientific Authority administratively determines that the conservation or management status of threatened vicuña populations in a range country has changed, such that continued recovery of the vicuña population in that country may be compromised, as a result of one or more of the following factors:

(A) A change in range country laws or regulations that lessens protection for vicuña;

(B) A change in range country management programs that lessens protection for vicuña;

(C) A documented decline in wild vicuña population numbers;

(D) A documented increase in poaching of vicuña;

(E) A documented decline in vicuña habitat quality or quantity; or

(F) Other natural or man-made factors affecting the species' recovery.

(4) ***What must vicuña range countries do in order to be authorized under the special rule to export to the United States?*** —

(i) ***Annual Report.*** Range country governments (Argentina, Bolivia, Chile, and Peru) wishing to export specimens of vicuña to the United States will need to provide an annual report containing the most recent information available on the status of the species, following the information guidelines specified below. The first submission of a status report will be required as of July 1, 2003, and every year thereafter on the anniversary of that date. For each range country, the following information should be provided in the annual report:

(A) A description of any revisions to the management program, especially any changes in management approaches or emphasis;

(B) New information obtained in the last year on vicuña distribution, population status, or population trends, for the country as a whole or for specific protected areas, and a detailed description of the methodology used to obtain such information;

(C) Results of any research projects concluded in the last year on the biology of vicuña in the wild, particularly its population biology, habitat use, and genetics, and a description of any new research projects undertaken on the biology of vicuña in the wild, particularly its population biology, habitat use, and genetics;

(D) A description of any changes to national and/or provincial laws and programs relating to vicuña conservation, in particular those laws and regulations related to harvest and use of the vicuña, and export of vicuña parts and products;

(E) A description of any changes in the number or size of natural reserves or national parks that provide protected habitat for the vicuña;

(F) A summary of law enforcement activities undertaken in the last year, and a description of any changes in programs to prevent poaching, smuggling, and illegal commercialization of the vicuña;

(G) A description of the current management and harvest (or "sustainable use") programs for wild populations of the vicuña, including: any changes in the location and population size of wild populations being managed for sustainable use; any changes in the harvest management practices being used for each population; any changes in current harvest quotas for wild populations, if any; any changes in protocols for translocations undertaken as part of the use program; a summary of the specific financial costs of and revenues generated by the sustainable use program over the last year; and a summary of documented conservation benefits resulting from the sustainable use program over the last year;

(H) A description of current management and harvest (or "sustainable use") programs for captive and so-called "semi-captive" populations of the vicuña, including: any changes in the number and location of all captive and "semi-captive" populations; any changes in the size (ha) of each captive enclosure and the number of vicuña maintained therein; any changes in protocols for translocations undertaken as part of the use program; a summary of the financial costs of and revenues generated by the sustainable use program over the last year; and documented conservation benefits resulting from the sustainable use program over the last year (information on captive and "semi-captive" populations must be separate from that provided for wild populations); and

(I) Export data for the last year.

(ii) The Service's Division of Scientific Authority will conduct a review every 2 years, using information in the annual reports, to determine whether range country management programs are effectively achieving conservation benefits for the vicuña. Failure to submit an annual report could result in a restriction on trade in specimens of vicuña as addressed in paragraph (m)(3) of this section. Based on information contained in the annual reports and any other pertinent information it has available, the Service may restrict trade from a range country, as addressed in paragraph (m)(3) of this section, if it determines that the conservation or management status of threatened vicuña populations in a range country has changed, such that continued recovery of the vicuña population in that country may be compromised. Trade restrictions may result from one or more of the following factors:

(A) A change in range country laws or regulations that lessens protection for vicuña;

(B) A change in range country management programs that lessens protection for vicuña;

(C) A documented decline in wild vicuña population numbers;

(D) A documented increase in poaching of vicuña;

(E) A documented decline in vicuña habitat quality or quantity; or

(F) Other natural or man-made factors affecting the species' recovery.

(n) Straight-horned markhor (*Capra falconeri megaceros*).

(1) ***General requirements.*** Except as noted in paragraph (n)(2) of this section, all prohibitions of § 17.31 and exemptions of § 17.32 apply to this subspecies.

(2) ***What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under § 17.32?*** The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the FEDERAL REGISTER the importation, without a threatened species permit issued under § 17.32, of personal sport-hunted straight-horned markhor from an established conservation program that meets the following criteria:

(i) The markhor was taken legally from the established program after the date of the FEDERAL REGISTER notice;

(ii) The applicable provisions of 50 CFR parts 13, 14, 17, and 23 have been met; and

(iii) The Director has received the following information regarding the established conservation program for straight-horned markhor:

(A) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing.

(B) Regulatory authorities have the capacity to obtain sound data on populations.

(C) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species.

(D) Regulatory authorities have the legal and practical capacity to provide for the long-term survival of the populations.

(E) Regulatory authorities can determine that the sport-hunted trophies have in fact been legally taken from the populations under an established conservation program.

(o) [Reserved]

(p) Northern sea otter (*Enhydra lutris kenyoni*).

(1) ***To what population of sea otter does this special rule apply?*** The regulations in paragraph (p) of this section apply to the southwest Alaska distinct population segment (DPS) of the northern sea otter as set forth at § 17.11(h) of this part.

(2) ***What provisions apply to this DPS?*** Except as noted in paragraph (p)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the southwest Alaska DPS of the northern sea otter.

(3) ***What additional activities are allowed for this DPS?*** In addition to the activities authorized under paragraph (p)(2) of this section, you may conduct any activity authorized or exempted under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) with a part or product of a southwest Alaska DPS northern sea otter, provided that:

(i) The product qualifies as an authentic native article of handicrafts or clothing as defined in § 17.3 of this part; and

(A) It was created by an Indian, Aleut, or Eskimo who is an Alaskan Native, and

(B) It is not being exported or imported for commercial purposes; or

(ii) The part or product is owned by an Indian, Aleut, or Eskimo who is an Alaskan Native and resides in Alaska, or by a Native inhabitant of Russia, Canada, or Greenland, and is part of a cultural exchange; or

(iii) The product is owned by a Native inhabitant of Russia, Canada, or Greenland, and is in conjunction with travel for noncommercial purposes; or

(iv) The part or product has been received or acquired by a person registered as an agent or tannery under § 18.23 of this subchapter.

(4) ***What other wildlife regulations may apply?*** All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(q) Polar bear (*Ursus maritimus*).

(1) Except as noted in paragraphs (q)(2) and (4) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the polar bear.

(2) None of the prohibitions in § 17.31 of this part apply to any activity that is authorized or exempted under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), or both, provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

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

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

(r) Lion (*Panthera leo melanochaita*).

(1) ***General requirements.*** All prohibitions and provisions of §§ 17.31 and 17.32 apply to this subspecies.

(2) The import exemption found in § 17.8 for threatened wildlife listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) does not apply to this subspecies. A threatened species import permit under § 17.32 is required for the importation of all specimens of *Panthera leo melanochaita*.

(3) All applicable provisions of 50 CFR parts 13, 14, 17, and 23 must be met.

(s) Pacific marten (*Martes caurina*), Coastal DPS.

(1) ***Prohibitions.*** Except as provided in paragraph (s)(2) of this section, all prohibitions and provisions of section 9(a)(1) of the Act apply to the Coastal DPS of the Pacific marten.

(2) ***Exceptions from prohibitions.*** In regard to the Coastal DPS of the Pacific marten ("coastal marten"), 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) Conduct forest management activities for the purposes of reducing the risk or severity of wildfire, which include fuels reduction projects, firebreaks, and wildfire firefighting activities. More specifically, forest management practices such as those that treat vertical and horizontal (ladder) fuels in an effort to reduce continuity between understory and the overstory vegetation and the potential for crown fires, remove fuels within 150 feet of legally permitted structures and within 300 feet of habitable structures, or implement Fuelbreak/Defensible Space Prescriptions that allow for removal of trees or other vegetation to create a shaded fuelbreak along roads or other natural features, or create defensible space.

(v) Conduct forestry management activities included in a plan or agreement for lands covered by a Natural Communities Conservation Plan or State Safe Harbor Agreement that addresses and authorizes State take of coastal marten as a covered species and is approved by the California Department of Fish and Wildlife under the authority of the California Endangered Species Act.

(vi) Conduct forestry management activities consistent with the conservation needs of the coastal marten (e.g., activities that promote, retain, or restore suitable coastal marten habitat that increase percent canopy cover, percent ericaceous shrub cover, and denning and resting structures). These include activities consistent with finalized conservation plans or strategies, such as plans and documents that include coastal marten conservation prescriptions or compliance, and for which the Service has determined that meeting such plans or strategies, or portions thereof, would be consistent with conservation strategies for coastal marten.

(vii) Conduct activities to remove toxicants and other chemicals consistent with conservation strategies for coastal marten. Such activities include management or cleanup activities that remove toxicants and other chemicals from forested areas, for which the Service has determined that such activities to remove toxicants and other chemicals would be consistent with conservation strategies for coastal marten. Cleanup of these sites may involve activities that may cause localized, short-term disturbance to coastal 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.

(u) North American wolverine (*Gulo gulo luscus*), contiguous U.S. DPS.

(1) ***Prohibitions.*** The following prohibitions that apply to endangered wildlife also apply to the contiguous U.S. distinct population segment (DPS) of the North American wolverine. Except as provided under paragraph (u)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this DPS:

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

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

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

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

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

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

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

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

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

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

(v) Take caused by scientific or research activities for wolverine undertaken by a biologist from a Federal agency other than the U.S. Fish and Wildlife Service, or a federally recognized Tribe, when acting in the course of their official duties, provided that such taking does not result in the death or permanent injury to the wolverine(s) involved and that the taking is reported to the nearest U.S. Fish and Wildlife Service law enforcement office and to the appropriate State wildlife agency or Tribal wildlife authorities. Activities associated with scientific research may include capture, anesthesia, collaring, tracking, genetic sampling, the use and baiting of camera and DNA traps, den monitoring, and aerial surveying.

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

(A) Forest vegetation management activities for the purpose of reducing the risk or severity of wildfire.

(B) Trapping of species other than wolverine, provided that the trapping is conducted in accordance with State or Tribal trapping laws and regulations, the trapping is conducted in a manner that uses best practices to minimize the potential for capture and mortality of wolverines, and any take of wolverine is reported to the nearest U.S. Fish and Wildlife Service law enforcement office and to the appropriate State wildlife agency or Tribal wildlife authorities within 5 days of occurrence. Unharmed individuals are to be released immediately.

[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*.