The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334. 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Mitchell, Channel 257A.

3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 248C1 at Elko and adding Lovelock, Channel 292C1.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–4171 Filed 2–22–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AE40**

## Endangered and Threatened Wildlife and Plants; Final Rule to List the Riparian Brush Rabbit and the Riparian, or San Joaquin Valley, Woodrat as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian or San Joaquin Valley woodrat (*Neotoma fuscipes riparia*). Only a single population of each subspecies has been confirmed, in Caswell Memorial State Park (Park), San Joaquin County, California. These two subspecies are threatened primarily by flooding, wildfire, disease, predation, competition, clearing of riparian vegetation, use of rodenticide, and loss of genetic variability. Naturally occurring random events increase the risk to the single, small population of each subspecies. This rule implements the Federal protection and recovery provisions afforded by the Act for these two subspecies.

**EFFECTIVE DATE:** This final rule is effective March 24, 2000.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2606, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** Heather Bell, staff biologist, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section), telephone 916/414–6464; facsimile 916/414–6486.

**SUPPLEMENTARY INFORMATION:**

### Background

Even though riparian brush rabbit (*Sylvilagus bachmani riparius*) specimen records and sightings were known from along the San Joaquin River near the boundary of San Joaquin and Stanislaus Counties, Orr (1935, in Orr 1940) believed, based on the presence of suitable habitat, that the species' historical range extended along the Sacramento and San Joaquin river systems, from Stanislaus County to the Delta region. Historical records for the riparian woodrat (*Neotoma fuscipes riparia*) are similarly distributed along the San Joaquin, Stanislaus, and Tuolumne Rivers, and Corral Hollow, in San Joaquin, Stanislaus, and Merced Counties (Hooper 1938; Williams 1986). Thus, prior to the statewide reduction of riparian communities by nearly 90 percent (Katibah 1984), the riparian brush rabbit and riparian woodrat probably ranged throughout the extensive riparian forests along major streams flowing onto the floor of the northern San Joaquin Valley.

Today only one extant population of each of these subspecies is known. The remnant population of each subspecies is in a 104.5 hectare (ha) (258 acre (ac)) fragment of riparian forest on the Stanislaus River at the Park (Williams 1993) situated on the border of San Joaquin and Stanislaus Counties, northwest of Modesto, in the northern San Joaquin Valley, California. Upstream and downstream of the Park, some original riparian habitat remains on private property. However, the fragments are small, isolated, and unlikely to be inhabited by either riparian brush rabbits or riparian woodrats. In January of 1997, the Park flooded, submerging most of the habitat of these two subspecies. Evidence of only three riparian brush rabbits and six riparian woodrats was seen immediately following this flooding episode (Daniel F. Williams, California State University, Stanislaus, *in litt.* 1997). In 1998, only one riparian brush rabbit and nine riparian woodrats were live-trapped (D. Williams, *in litt.* 1998). Other potential threats include wildfire, disease, predation, competition, rodenticide use, clearing of riparian vegetation, and the loss of genetic variability. Naturally occurring events, such as drought and flooding, also increase the risk to the single, small population of each subspecies. This rule extends the protective provisions under the Act (16 U.S.C. 1531 *et seq.*) to these animals.

### Discussion of the Two Subspecies

*Riparian Brush Rabbit*

The riparian brush rabbit was described as a distinct subspecies by Orr (1935, in Orr 1940) and is one of 13 subspecies of *Sylvilagus bachmani* (Hall 1981), 8 of which occur in California. The specimen from which the subspecies designation was described was collected from the west side of the San Joaquin River west of Modesto in Stanislaus County, California, less than 10 kilometers (km) (6 miles (mi)) from the Park. *S. bachmani* belongs to the order Lagomorpha and family Leporidae. The riparian brush rabbit is a medium to small cottontail (total length 300 to 375 millimeters (mm) (11.8 to 14.8 inches (in)), mass 500 to 800 grams (g) (1.1 to 1.8 pounds (lb)) and is unique in that the sides of the rostrum (nasal/upper jaw region of the skull), when viewed from above, are noticeably convex instead of straight or concave as in other races of *S. bachmani* (Orr 1940). The color varies from dark brown to gray above to white underneath. The subspecies is visually similar to the desert cottontail (*S. audubonii*), which also occurs in riparian habitats within the historical distribution of the riparian brush rabbit. The riparian brush rabbit can be distinguished from the desert cottontail by a smaller, more inconspicuous tail and uniformly colored ears (no black tip). However, in-hand identification is needed to separate juveniles of these subspecies definitively (Williams 1993).

Breeding of the riparian brush rabbits is restricted to the period of female receptivity, approximately January to

May, putting this subspecies at a competitive disadvantage to the desert cottontails outside the Park that breed all year (Mossman 1955; Service 1997). After a gestation period of 26 to 30 days, the young are born in nest cavities lined mainly with fur and covered with a grass plug (Davis 1936; Orr 1940). The young are born naked, blind, and helpless and open their eyes in 10 days (Orr 1940). The young rabbits remain in the nest about 2 weeks before venturing out, and the female will continue to suckle her young 2 to 3 weeks after their birth. Orr (1940) reported a mean litter size of 3 to 4, with extremes of 2 to 5, while Mossman (1955) reported an average of 4, with a range of 2 to 6. Riparian brush rabbits take 4 to 5 months to reach adult size but do not reach sexual maturity until the winter following birth. Females give birth to about 5 litters per season, averaging an estimated 9 to 16 young per breeding season (Basey 1990). The percentage of females active during the breeding season is unknown, but in one study, 9 of 25 female adults examined showed no signs of reproductive activity (Basey 1990). Brush rabbits have relatively small home ranges that usually conform to the size and shape of available brushy habitat (Basey 1990). In general, the home ranges of males are larger than those of females but do not overlap the primary activity centers within female territories (Basey 1990). Population estimates from the Park have varied from 88 to 452 individuals (Williams 1988), 320 to 540 individuals (Basey 1990), and 170 to 608 individuals over 81 ha (200.1 ac) (Williams 1993), but recent flooding in 1997 and 1998 reduced numbers severely. In 1997, no riparian brush rabbits were live-trapped, one was sighted, and pellets from two others were seen; in 1998, one rabbit was live trapped.

Habitat for the riparian brush rabbit consists of riparian forests with a dense understory shrub layer. Forests with a closed canopy, however, generally lack sufficient understory of shrubs to meet riparian brush rabbits' needs. Brush rabbits frequent small clearings where they bask in the sun and feed on a variety of herbaceous vegetation, including grasses, sedges, clover, forbs, shoots, and leaves. Where mats of low-growing *Rosa californica* (California wild rose) and *Rubus vitifolius* (Pacific blackberry) occur, the brush rabbits live in tunnels that run through the vines and shrubs. Other common plants in this riparian forest community are *Vitis californica* (wild grape), *Baccharis douglasii* (Douglas' coyote bush), and grasses (Basey 1990; Williams 1988). Presence of more surface litter and lack of willows in the understory signify areas of higher ground that are not flooded regularly or heavily (Williams and Basey 1986).

Brush rabbits are closely tied to cover and usually remain for several seconds to minutes just inside dense, brushy cover before venturing into the open. They seldom move more than a meter from cover. When pursued, they leap back into the cover of shrubs instead of heading into open ground (Chapman 1974, in Service 1997). They will not cross large, open areas and, therefore, are unable to disperse beyond the dense brush of the riparian forest at the Park (Williams 1988). The riparian brush rabbit can climb into bushes and trees, though its climbing is awkward and limited. This trait probably has significant survival value, given that riparian forests are subject to inundation by periodic flooding. During periods of heavy flooding, when virtually no suitable habitat remains available as refugia, the population has dropped dramatically.

During the flooding of 1976, Park personnel used boats to rescue rabbits from bushes. During the flood of 1986, which was short lived, it was estimated that all but 10–25 rabbits at the Park were lost (D. Williams, *in litt.* 1997). The population rebounded to 213–312 individuals by 1993 (Williams 1993), and the Park was considered at carrying capacity (the maximum population that a particular environment can sustain) under prevailing environmental conditions (following 7 years of drought). Surveys were conducted in May 1997, after extensive winter flooding at the Park, but no riparian brush rabbits were live-trapped. One brush rabbit was live-trapped in February 1998, following a heavy and continuous rainfall.

Such extraordinarily low population levels subject this subspecies to increased genetic risks and naturally occurring random events (see discussion in Factor E of the Summary of Factors Affecting the Species section of this final rule). Surveys conducted in all potential habitat along the Merced, San Joaquin, Stanislaus, and Tuolumne rivers during 1985 and 1986 failed to locate any additional populations of riparian brush rabbits (Williams 1988).

Because the subspecies was not described until after it is believed to have been extirpated from most of its historical range, definitive information on its former distribution is lacking. It apparently has been extirpated from the Sacramento-San Joaquin River Delta, as well as most of the lower San Joaquin River and its tributaries, and the Stanislaus, Tuolumne, and Merced rivers (Williams 1986). The range of the subspecies probably extended farther upstream than the Merced River, assuming that suitable habitat historically occurred along the length of the San Joaquin River system (Williams and Basey 1986).

*Riparian Woodrat*

The riparian woodrat (*Neotoma fuscipes riparia*) was first described by Hooper (1938), and is one of 11 subspecies of *N. fuscipes* in the family Muridae (order Rodentia). The specimens from which the subspecies designation was described were collected about 3 km (2 mi) northeast of Vernalis, west of Modesto in Stanislaus County, California, approximately 10 km (6 mi) from the Park. Although some taxonomic studies of the genus *Neotoma* have been completed in recent years, no further systematic revisions of *N. fuscipes* have been published since Hooper's 1938 report (Hall 1981; Williams 1986; Williams 1993). The genetic structure of selected populations of *N. fuscipes,* including *N. fuscipes riparia,* is currently being examined (James Patton, University of California, Berkeley, *in litt.* 1998). The riparian woodrat is a medium-sized rodent, averaging 443 mm (17.4 in) in total length, including its 217 mm (8.5 in.) furred tail (Hooper 1938), and ranges from 200 to 400 g (7.05 to 14.11 ounces (oz)) in weight, with marked seasonal variation (Williams *et al.* 1992; Service 1997). *Neotoma fuscipes riparia* differs from other, adjacent subspecies of woodrats by being larger, lighter, and more grayish in color, with white hind feet instead of dusky on their upper surfaces, and a tail more distinctly bicolored (lighter below and darker on top). In addition, skull measurements and skull characteristics differ (Hooper 1938).

The following information is taken from a number of studies on *Neotoma fuscipes,* including *N. f. riparia* and related subspecies. The dusky-footed woodrat lives in loosely cooperative societies and has a matrilineal (mother-offspring) social structure. Males are highly territorial and aggressive, especially during the breeding season when they will mate with more than one female (Kelly 1990, in Service 1997). Females have 1 to 5 litters per year with 3 to 4 young in each litter. Reproduction occurs in all months, with the fewest pregnancies in December and the most in February. Numbers of juveniles appearing outside the nest is greatest in July and least in January and February (Williams *et al.* 1992). The young are born in stick nest houses, or

lodges, on the ground, which measure 0.6 to 0.9 meters (m) (2 to 3 feet (ft)) high and 1.2 to 1.8 m (4 to 6 ft) in diameter. Most houses are positioned over or against logs (Cook 1992). Unoccupied houses can persist 20–30 years (Linsdale and Tevis 1951, in Service 1998) if not destroyed by flooding (D. Williams, pers. comm. 1998). Unlike other subspecies, the riparian woodrat occasionally builds nests in cavities in trees and in artificial wood duck nest boxes (Williams 1986). Nest houses typically are occupied by an individual adult. Unlike males, females remain in or near natal areas (birthplace) throughout their life (Williams *et al.* 1992). At the Park, Williams (1993) reported a mean density of 8.32 houses per hectare (ha) (20.55 houses per acre (ac)), or 757 houses on 91 ha (225 ac) of suitable habitat; occupancy was not verified. In a study of another subspecies of *N. fuscipes,* Linsdale and Tevis (1951, in Service 1998) found that 70 percent of the population survived less than 1 year, 27 percent survived 2 years, and 3 percent survived 3 years or more. Williams *et al.* (1992) also cited a number of studies that indicated woodrats are highly responsive to habitat alteration, with populations fluctuating widely in response to a variety of natural or manmade factors, such as fire, flood, drought, habitat modification, and browsing and trampling by ungulates. Cook (1992) estimated the Park population at 637 woodrats over 102 ha (252 ac) of habitat. Williams (1993) estimated a peak population at Caswell of 437 animals, based on mean density of 4.8 woodrats per ha on 91 ha (225 ac) of suitable habitat. A woodrat population was reported from the early 1970s near the type locality at Vernalis, but the current status of the population is unknown (Williams 1986). Between April 1, 1997, and March 20, 1998, 15 riparian woodrats were live-trapped at the Park (D. Williams *in litt.* 1998).

Riparian woodrats are common where there are deciduous valley oaks but few live oaks. Riparian woodrats are most numerous where shrub cover is dense and least abundant in open areas. In riparian areas, highest densities of woodrats and their houses are often encountered in willow thickets with an oak overstory (Linsdale and Tevis 1951, in Service 1998). Mostly active at night, the woodrat's diet is diverse and principally herbivorous, with leaves, fruits, terminal shoots of twigs, flowers, nuts, and fungi comprising the bulk of ingested material (Williams *et al.* 1992).

The range of the riparian woodrat is far more restricted today than it was in 1938 (Williams 1986). The only verified population is restricted to about 102 ha (252 ac) of riparian forest at the Park on the Stanislaus River. Loss, fragmentation, and degradation of habitat are the principal reasons for the decline of the riparian woodrat (Service 1997). The most immediate threats include flooding of Park lands and wildfires. Because the riparian woodrat is able to climb trees more easily than the brush rabbit, the woodrat may not be directly affected by flooding to the degree the riparian brush rabbit is. Woodrat houses, which are essential to survival, can, however, be severely impacted by flooding, thus affecting the viability of the population. Wildfires are of concern because of the potential for severe degradation of habitat and the loss of individuals unable to escape the fire. In addition to the threat of random natural events such as flooding and fire, the riparian woodrat is also prone to the effects of ongoing threats such as disease, predation, and potential competition with the exotic black rat (*Rattus rattus*) (D. Williams, *in litt.* 1998; D. Williams, pers. comm. 1998). No specific conservation measures for the riparian woodrat are in place, but the species does receive some protection through the management plan for the riparian brush rabbit at the Park. The California Department of Parks and Recreation has supported some general small-mammal studies and woodrat population studies at the Park (Cook 1992; Williams 1993).

Today, riparian communities of the lower San Joaquin River and its tributaries outside the Park have virtually been eliminated. The remaining habitat patches are small, narrow fragments confined within levees. The placement of these levees has eliminated the natural floodplain of the Stanislaus River, increasing the severity of the flooding that occurs within the confines of the levees. Therefore, the Park, which is on the river side of the levees, is prone to flood completely during major storms or heavy flow releases from New Melones dam (D. Williams, pers. comm. 1998). Because remaining riparian forests are small, isolated, and vulnerable to major flood events (Williams and Basey 1986), whether they can support viable populations of these subspecies over the long-term is questionable. Historical habitat and refugia from flooding in surrounding lands are now unsuitable for these subspecies, as these lands consist primarily of cultivated fields, orchards, and vineyards (Williams and Basey 1986). Wildfire, flooding, brush clearing, predation, competition, disease, and use of rodenticides imperil the continued existence of these two subspecies in their last known population center.

**Previous Federal Action**

Federal action on these two subspecies began on September 18, 1985, when we published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the riparian brush rabbit and riparian woodrat as category 2 candidate species. Category 2 candidates, a designation discontinued in a Notice of Review published by us on February 28, 1996 (61 FR 7596), were taxa for which we had information in our possession indicating that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available. In the January 6, 1989, Animal Notice of Review (54 FR 554), we elevated the riparian brush rabbit to a category 1 candidate species as a result of more intensive field work by Williams and Basey (1986) that identified only a single remaining population of this subspecies. Category 1 taxa were those for which we had substantial information on biological vulnerability and threats to support preparation of listing proposals. We retained the riparian brush rabbit as a category 1 candidate and elevated the status of the riparian woodrat to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804). This change was based on a re-evaluation of the information contained in the study conducted by Williams and Basey (1986). The November 15, 1994, Animal Notice of Review (59 FR 58987) included both subspecies in category 1. Upon publication of the February 28, 1996 combined Animal and Plant Notice of Review (61 FR 7596), we ceased using category designations and included both subspecies as candidates. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for these animals was continued in the September 19, 1997, Notice of Review (62 FR 49398).

Based on the decline in numbers of both these subspecies as identified during the live-trapping surveys of 1997 (D. Williams, *in litt.* 1997) and the threats to their continued existence, the riparian brush rabbit and riparian woodrat were proposed for listing as endangered on November 21, 1997 (62 FR 62276).

The processing of this final rule conforms with our Listing Priority

Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule. This additional information did not alter our decision to list the two subspecies.

**Summary of Comments and Recommendations**

In the proposed rule published November 21, 1997 (62 FR 62276), we requested that all interested parties submit factual reports or information that might contribute to the development of a final rule for the riparian brush rabbit and the riparian woodrat. The public comment period closed on January 21, 1998. We contacted appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties and requested comments. We published a newspaper notice in The Modesto Bee on January 20, 1998, which invited general public comment. Given the flood events of 1997 and 1998, on April 13, 1998, the public comment period was reopened (63 FR 17981) to consider any new survey information or other new information prior to making the final status determinations. This comment period ended May 28, 1998.

We received 11 comments concerning the proposed rule during the comment period, from a total of 10 commenters. Some commenters submitted more than one comment to us. Six commenters supported the listing; four commenters were neutral. No commenters opposed the proposed listing. Several commenters provided additional information that, along with other clarifications, has been incorporated into the "'Background'" or "'Summary of Factors Affecting the Species'" sections of this final rule. Comments have been organized into specific issues. These issues and our responses are summarized as follows:

*Issue 1:* Two commenters expressed concern that the area around the Park should be protected from further urban development.

*Our Response:* Habitat protection afforded by the Act (under section 7) to species listed as threatened or endangered requires Federal agencies to consult with us on any action that is funded, authorized, or carried out by a Federal agency. The concerns for the subspecies will be addressed and measures may be implemented to ensure that the proposed action will not jeopardize the continued existence of either the riparian brush rabbit or the riparian woodrat. For detailed discussions of the section 7 consultation process, see the Available Conservation Measures section of this final rule. In addition, once the subspecies are listed, a recovery plan (or plans) is drafted (for a discussion of the recovery planning process, see the Available Conservation Measures section of this final rule).

*Issue 2:* The Department of Parks and Recreation, which owns and manages the Park, was concerned about restrictions the listing of these two subspecies may have on the recreational and maintenance activities at the Park.

*Our Response:* We recognize these concerns and anticipate continuing to work closely with the Department of Parks and Recreation and staff at the Park in furthering protective measures, many of which have already been voluntarily implemented. We are confident that the protection and recovery of these two subspecies will be compatible with recreational and maintenance activities at the Park.

*Peer Review*

In accordance with our Interagency Cooperative Policy for Peer Review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four independent and appropriate specialists regarding review of pertinent scientific or commercial data and issues relating to the taxonomy, population models, and supportive biological and ecological information for the riparian brush rabbit and the riparian woodrat.

We received comments from two of the four requested peer reviewers. Both reviewers stated that the proposed rule contained an accurate summary of the natural history, current status, and current threats to survival of the two subspecies and that listing was warranted. One reviewer was concerned that the listing may be too late to prevent extinction by natural factors alone. The other reviewer suggested clarifications or changes within the text. The reviewer suggests that (1) low population numbers of the brush rabbit clearly make it extremely vulnerable to detrimental genetic processes and random events, while the proposed rule suggested such populations may be only somewhat vulnerable; (2) decreased survivorship of young is the best known of the effects of inbreeding (deleterious genes). Inbreeding actually reduces all of the following: fecundity, juvenile survivorship, and adult lifespan; and (3) the reviewer provided a reference to a new study by Saccheri *et al.* (1998) that states "* * * inbreeding can contribute significantly to the extinction of wild populations' (Katherine Ralls, Smithsonian Institution, *in litt.* 1998). Information and suggestions provided by the reviewers have been taken into consideration during the development of this final rule and incorporated where appropriate.

**Summary of Factors Affecting the Species**

Section 4 of the Act and regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. We determine if a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and how we applied them to the riparian brush rabbit and to the riparian woodrat are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range*

*Sylvilagus bachmani riparius and Neotoma fuscipes riparia* inhabit riparian forest communities, and both apparently have been extirpated from their entire historical range except for a single known population of each along the Stanislaus River. Katibah (1984) estimated that only 41,300 ha (102,052 ac) remain of an estimated 373,000 ha (921,170 ac) of presettlement riparian forest in California's Central Valley, a reduction of 89 percent. He attributed the loss and modification of riparian forests along valley floor river systems to urban, commercial, and agricultural development; wood cutting; reclamation and flood control activities; groundwater pumping; river channelization; dam construction; and water diversions (Katibah 1984).

Several land use practices and related human activities contributed to the decline of the riparian brush rabbit and riparian woodrat throughout their historical ranges. During the past 10 to 20 years, cultivation has expanded along the floodplain of the main tributaries of the lower San Joaquin River system (Basey 1990). Increased habitat conversion to agricultural uses has resulted from the recent construction of the following dams on tributaries that individually and collectively have altered the timing, frequency, duration, and intensity of flooding—Exchequer Dam on the Merced River, New Melones Dam on the Stanislaus River, and New Don Pedro Dam on the Tuolumne River. Before these dams and flood control projects (levees) were constructed, much of the natural floodplain was used as pasture land for livestock grazing (Basey 1990). Uneven topography in these areas, before the dams were constructed, provided escape cover because some land remained above typical flood levels and contained patches of shrubs and trees for cover. Such sites likely provided refuge from flooding for these subspecies. Williams and Basey (1986) state that ''* * * virtually all areas outside of flood control levees now have been cleared, leveled, and planted to orchards, vineyards, or annual row crops.'' Conversion from pasture to cultivated fields also eliminated hedgerows and other residual patches of cover that provided travel corridors and refuge sites for the two subspecies. The severity of flooding likely increased as the habitat for these two subspecies was incorporated by flood control levees. The effects of catastrophic flooding are discussed further under Factor E of this section.

Although brush clearing adversely affected the habitat of the riparian brush rabbit and the riparian woodrat populations at the Park in the mid-1980s (Williams 1986), these populations are no longer directly threatened by brush clearing, tree cutting, or the conversion of land to agricultural uses. Because the only known populations of these subspecies occur within the boundaries of the Park, such activities outside of Park boundaries do not currently pose a direct threat to either subspecies. Such activities continue, however, to eliminate and fragment patches of remnant habitat within the historical range of these subspecies.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization is not known to be a threat to either subspecies. However, the very small population at the remaining site makes the riparian brush rabbit vulnerable to extinction from unauthorized recreational hunting and collection for scientific or other purposes. The brush rabbit (*Sylvilagus bachmani*) is designated as a resident small game species in California and is hunted from July 1 through January 30 with a daily bag limit of five animals (Williams and Basey 1986). Hunting regulations set by the California Fish and Game Commission do not distinguish the riparian brush rabbit from other subspecies of *S. bachmani.* Therefore, riparian brush rabbits that disperse beyond the boundaries of the Park (as they may, especially during times of flooding) face the potential threat of being hunted.

*C. Disease or Predation*

Like most rabbits, the riparian brush rabbit is subject to a variety of common diseases, including tularemia, plague, encephalitis, and brucellosis. These contagious, and generally fatal, diseases could be transmitted easily to riparian brush rabbits from neighboring populations of desert cottontails (Williams 1988). A suspected outbreak of plague in 1966–67 decimated woodrat populations in foothills of the southern Sierra Nevada, the Tehachapi Mountains, and the Coast Range (Murray and Barnes 1969, in Williams *et al.* 1992). The small population size and restricted distribution of both the riparian brush rabbit and riparian woodrat increase their vulnerability to epidemic diseases. However, the significance of the threat of disease to the riparian brush rabbit and riparian woodrat is not known.

Coyotes (*Canis latrans*), gray foxes (*Vulpes cinereoargenteus*), long-tailed weasels (*Mustela frenata*), raccoons (*Procyon lotor*), feral domestic cats (*Felis catus*) and dogs (*Canis familiaris*), hawks (*Accipitridae*), and owls (*Strigidae*) are known predators of brush rabbits and woodrats (Orr 1940; Williams 1988). At currently depleted population levels, any predation could substantially affect the survival of these two subspecies.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Section 404 of the Clean Water Act (CWA) is a Federal law that potentially affords some attention and protection for these subspecies. However, brush clearing, tree cutting, and the conversion of riparian habitat to agricultural uses, all of which adversely affect both subspecies, are generally unregulated, and this law does not provide protection from these activities. For example, pursuant to 33 CFR 323.4, the U.S. Army Corps of Engineers (Corps) has promulgated regulations that exempt some farming, forestry, and maintenance activities from the regulatory requirements of section 404. Although the Corps administers flowage (flooding) and restoration easements along the lower reaches of the Stanislaus River, the difficulty of enforcing the conditions of the easements and inadequate funding for restoration impedes appropriate habitat restoration activities.

The California Department of Parks and Recreation developed a riparian brush rabbit management plan for the Park (Williams 1988). This management plan provides some measure of protection to the riparian brush rabbit population and incidental protection for the riparian woodrat. Despite the existence of a management plan, both the riparian brush rabbit and riparian woodrat remain vulnerable to threats and hazards originating outside of the Park as well as threats that continue within the Park's boundaries (see Factor E below).

Under the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000–21177), full disclosure of the potential environmental impacts of proposed projects is required. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the guidelines that guide CEQA implementation requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. However, once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations, such as overriding social or economic considerations, make mitigation infeasible (CEQA § 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species, their habitat, or

their continued existence. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The California Endangered Species Act (CESA) affords the riparian brush rabbit some conservation benefits. The State of California listed the riparian brush rabbit as an endangered species in May 1994. Although the CESA provides a measure of protection to the subspecies, resulting in the formulation of mitigation measures to reduce or offset impacts for any projects proposed in riparian brush rabbit habitat, this law has not adequately prevented the ongoing loss of riparian forest. Riparian forests outside of the Park are important for recovery implementation to succeed, as neither the riparian brush rabbit nor the riparian woodrat can be recovered on Park lands alone (Service 1997).

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

Small, isolated populations are especially at risk from random events as there is little or no possibility of recolonization if the random event, whether natural or manmade, affects the entire population. Random events that may be catastrophic to the riparian brush rabbit or the riparian woodrat include the threat of wildfire, severe flooding, and prolonged drought. Although the Park initiated a fire management plan to reduce fuel load and create firebreaks in an effort to protect habitat, the threat of fires originating outside of the Park boundaries and accidentally within the Park boundaries from recreational activities still exists. Wildfire exposes the riparian brush rabbit and the riparian woodrat to habitat destruction and death (Basey 1990). The brushy areas most vulnerable to fire also are important areas of habitat for riparian brush rabbits and riparian woodrats (Basey 1990). Between 1975 and 1987, 10 wildfires were reported within the Park. After 0.2 ha (0.5 ac) were burned in 1981, no evidence of brush rabbits was found in the area (Basey 1990). Fire is known to kill other species of woodrats, such as the closely related dusky-footed woodrat (*Neotoma fuscipes*), and thus presumably poses the same threat to the riparian woodrat. After a fire burned a canyon bottom dominated by oaks and sycamores in south-coastal California, Chew *et al.* (1959, in Williams *et al.* 1992) found 16 dead dusky-footed woodrats per acre.

Although flooding of low-lying riparian forests is a naturally occurring event, the changes to the river systems which began around the 1940s have altered natural flooding and its frequency, timing, and severity, due to manmade levees, dams, and water diversions. The Stanislaus River, for example, has manmade levees built to keep high flows channelized and dams upstream for flood control and water storage. The riparian habitat at the Park is confined entirely within levees, offering little protection from flooding during periods of high stream flow that routinely occur during the wet winter season. Major flooding likely drowns riparian brush rabbits and riparian woodrats, eliminates foraging habitat and shelter for prolonged periods, and exposes brush rabbits and woodrats to increased predation by stranding them in trees or on high ground where there is little or no cover (Nolan 1984, in Service 1997). Ironically the levees themselves now function as high ground during flooding events.

Surveys have confirmed that after major flooding events the numbers of riparian brush rabbits and riparian woodrats decrease, sometimes dramatically. Basey (1990) concluded, based on visual sightings and pellet surveys, that the riparian brush rabbit population may have been reduced to fewer than 15 to 20 individuals during flooding in 1983. Only about 3.6 ha (9 ac) in five small areas of the 104.5 ha (258 ac) Park showed regular use by brush rabbits in the summer of 1986 after floods in February and March of that year (Williams 1988). Williams (1986) found that riparian brush rabbits sometimes gain temporary shelter from floods by climbing trees, but he estimated that only 10 or fewer individual rabbits survived the severe winter flooding in 1985–86 (Williams 1988).

The floods of January 1997 left about 85 percent of the Park under 0.6–3.0 m (2–10 ft) or more of water in most areas for at least 2 weeks and, in lower areas, for as long as 7 weeks. Efforts in January to locate and potentially rescue stranded riparian brush rabbits resulted in the observation of only a single rabbit pellet (D. Williams, *in litt.* 1997). In areas of the Park searched visually in March 1997, no rabbits or pellets were found, although searchers did find two mounds containing fresh grass. Such mounds or ''forms'' are typically made by rabbits. In April 1997, searchers documented two rabbit fecal pellets but found no other sign of rabbits or woodrat activity. Trapping surveys were initiated in early May, well after floodwaters had receded, in hopes that any surviving rabbits would be located. During 22 nights of trapping, no rabbits were caught, one rabbit was visually sighted, and at another location, fresh rabbit tracks were found (D. Williams, *in litt.* 1997).

The riparian woodrat also is vulnerable to flooding events, although its ability to nest in trees and wood duck nest boxes (Williams 1993) suggests some ability to avoid the negative effects of flooding. Nonetheless, the large majority of woodrat nests occur on the ground (Williams 1993). After the January 1997 floods inundated the Park for 2 to 7 weeks, trapping and survey efforts in May 1997 resulted in the capture of only eight woodrats (D. Williams, *in litt.* 1997). Trapping efforts of similar intensity in 1993 resulted in the capture of 57 woodrats (D. Williams, *in litt.* 1997). Severe flooding could eliminate the Park populations of both the riparian brush rabbit and the riparian woodrat and result in the extinction of these subspecies. Flooding is also likely to increase competition between riparian brush rabbits and desert cottontails, a subspecies that occurs in a wider range of habitats, including riparian zones, within the same geographic area (Basey 1990). Riparian brush rabbits cannot return to their home areas if displaced more than about 340 m (1,115.5 ft) (Chapman 1971, in Basey 1990). Desert cottontails, in contrast, may return home when displaced as much as 4.8 km (3 mi) (Bowers 1954, in Basey 1990). Therefore, if displaced by flooding more than about 340 m (1,115.5 ft) from their home areas, riparian brush rabbits may be stranded in habitats where desert cottontails have a competitive advantage.

Drought may decrease the carrying capacity of riparian forest habitat for the riparian brush rabbit and the riparian woodrat. By 1993, following seven years of drought, riparian forest habitat at the Park was considered to be at carrying capacity for the riparian brush rabbit (Williams 1993). Depressed population densities of woodrats have been reported due to drought (Linsdale and Tevis 1951, in Service 1998). Because riparian forest habitat at the Park is an isolated area of habitat, decreased carrying capacity may affect the populations of riparian brush rabbits and riparian woodrats because more individuals compete for the same resources, such as food and shelter. In some mammals, long periods of drought and increased competition among individuals can affect individual survivorship and reproductive success (Service 1997). Surveys to determine the effects of prolonged drought on the carrying capacity of Park habitat for the riparian woodrat, however, have not been conducted.

Other factors that are a concern are the use of rodenticides in areas outside of the Park (rodenticides are no longer applied in Park habitat) and competition from exotic or invading species, such as the desert cottontail or the black rat, which may compete with the riparian brush rabbit or the riparian woodrat, respectively (Service 1997). Additionally, the extent to which recreational activities such as vehicular and pedestrian traffic and predation by domestic dogs and cats may affect these subspecies has not been studied. With severely low populations of both subspecies, these activities may have a significant effect on their survival.

The population numbers of both subspecies are now sufficiently low that the effects of inbreeding are highly likely to result in the expression of deleterious genes in the population (*i.e.,* inbreeding depression) (Gilpin 1987; K. Ralls, *in litt.* 1998). Such deleterious genes can reduce individual fitness in various ways, including decreased survivorship of young, reduced fecundity (reproductive capacity), and reduced adult lifespan (K. Ralls, *in litt.* 1998). Small populations are also at greater risk from the effects of genetic drift, a decrease in genetic variability due to random changes in gene frequency from one generation to the next. This reduction of variability within a population limits the ability of that population to respond to environmental changes.

Presently, a multispecies habitat conservation plan (HCP) is being developed for San Joaquin County, California. The riparian brush rabbit and riparian woodrat will be considered in this HCP, and some conservation measures that will likely minimize adverse impacts and/or benefit these two subspecies. A draft HCP will be available for public review in the future. Until the HCP is released for public comment, we cannot determine how the HCP will affect these two subspecies.

In developing this final rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these subspecies. Based on this evaluation, the preferred action is to list the riparian brush rabbit and the riparian woodrat as endangered. The small population size and single locality of these two subspecies render them extremely vulnerable to a wide array of threats. These subspecies currently face immediate threats from wildfire, flooding events, and drought. In addition, they face threats from habitat destruction, competition, predation, and the use of rodenticides. The riparian forest is reduced along the San Joaquin River system to the point that the few remaining habitat remnants outside of the Park are small and isolated and cannot support viable populations of these subspecies that can persist over time. Thus, even in the event that the few remaining unsurveyed fragments of habitat do support these subspecies, the recommended listing status of the riparian brush rabbit and riparian woodrat would not change and their listing as endangered would be warranted. Projected increases in human population within the San Joaquin Valley and pressures associated with urban development, as well as the inadequacy of existing regulatory mechanisms, suggest action is needed to successfully recover the riparian brush rabbit and the riparian woodrat. Threatened status is not appropriate for either subspecies, considering the extent of loss and degradation of their habitat and the vulnerability of the remaining population.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the riparian brush rabbit and riparian woodrat because we believed it would not provide any additional benefit beyond that provided through listing as endangered since the species are only found within the State park.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for the riparian brush rabbit and riparian woodrat would be prudent.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for the riparian brush rabbit and riparian woodrat.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the riparian brush rabbit and riparian woodrat will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the riparian brush rabbit and riparian woodrat without further delay. However, because we have successfully

reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for these species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the riparian brush rabbit and riparian woodrat as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. As part of our outreach efforts, we will notify the Corps and U.S. Bureau of Reclamation (BOR), as well as affected landowners, to ensure they are aware of the species' presence and clarify their obligations in protecting both species under the Act.

Federal actions that may require conference or consultation with us include activities by the Corps that fund or authorize levee and channel maintenance projects along the lower San Joaquin River and its tributaries, the operation of upstream water storage facilities and dams by the Corps and BOR, and oversight of flowage (flood) and restoration easements by the Corps over riparian lands downstream from these dams. Additionally, the Federal Emergency Management Agency may be required to consult if an emergency action affected either of these subspecies.

Listing the riparian brush rabbit and riparian woodrat as endangered triggers the development of a recovery plan. Such a plan establishes a conservation framework for State, Federal, and local governmental planning. The plan sets recovery priorities and estimates costs of various tasks necessary to accomplish them. The plan also would describe site-specific management actions necessary to achieve conservation and survival of these subspecies. The riparian brush rabbit and the riparian woodrat are both included in the final ''Recovery Plan for Upland Species of the San Joaquin Valley, California'' (Service 1998), and thus the recovery planning process is already under way.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), 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 listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

We may be able to issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Under some circumstances, we can issue permits for a specified period for species in trade in order to relieve undue economic hardship that would be suffered if such relief were not available.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within the species' range and to assist the public in identifying measures needed to protect the species. We believe that, based on the best available information, the following actions would not likely result in a violation of section 9:

(1) Possession of legally acquired riparian brush rabbits and riparian woodrats;

(2) Light to moderate livestock grazing that prevents or minimizes the encroachment of invasive plant species;

(3) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or alteration of surface or ground water into or out of riparian areas (*i.e.,* due to roads, impoundments, discharge pipes, storm water detention basins, etc.), or wildlife habitat restoration, when such activity is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act;

(4) Ongoing activities at the Park that are compatible with sustaining a viable population of both subspecies. These activities include camping and recreational activities such as picnicking, swimming, hiking, and fishing, as well as routine operations such as wildfire management, mowing, trail clearing, repairing water and sewer lines, removing hazardous trees, and the application of insecticides and herbicides rodenticides consistent with label instructions and restrictions.

Activities that we believe could potentially harm the riparian brush rabbit and the riparian woodrat and

result in a violation of section 9 include, but are not limited to, the following:

(1) Unauthorized collecting, handling, or holding in captivity of either of these subspecies;

(2) Unauthorized destruction/alteration of the subspecies habitat through the discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or the alteration of surface or ground water flow into or out of a riparian area (*i.e.,* due to roads, impoundments, discharge pipes, storm water detention basins, etc.);

(3) Violation of discharge permits;

(4) Burning, cutting, or mowing of riparian vegetation, repairing water and sewer lines, and the spraying of insecticides or herbicides, if conducted in an untimely or inappropriate manner (*e.g.,* when individuals of these subspecies would be killed or injured, when reproductive efforts would be disrupted);

(5) Rodenticide applications if conducted in an untimely or inappropriate manner, or in violation of label restrictions;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, and gasoline) onto land supporting these subspecies; and

(7) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed wildlife and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

## National Environmental Policy Act

We have determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## Required Determinations

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered species, see 50 CFR 17.22.

## References Cited

A complete list of all references we cited, as well as others, is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary authors of this final rule are Heather Bell and Diane Windham, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section), telephone 916/414–6600.

## List of Subjects in 50 CFR Part 17

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

## Final Regulation Promulgation

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

## PART 17—[AMENDED]

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

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

2. Amend section 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

### § 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | | * |
| Rabbit, riparian brush. | *Sylvilagus bachmani riparius.* | U.S.A. (CA) | Entire | E | 687 | NA | NA |
| * | * | * | * | * | * | | * |
| Woodrat, riparian (San Joaquin Valley). | *Neotoma fuscipes riparia.* | U.S.A. (CA) | Entire | E | 687 | NA | NA |
| * | * | * | * | * | * | | * |

Dated: January 31, 2000.

**Jamie Rappaport Clark,**

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

[FR Doc. 00–4207 Filed 2–22–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 981221311–9096–02; I.D. 021400F]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to Required Observer Coverage

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

**ACTION:** Inseason adjustment; request for comments.

**SUMMARY:** NMFS issues an inseason adjustment to reduce certain observer coverage requirements for some catcher vessels and shoreside processors participating in the Western Alaska Community Development Quota (CDQ) fisheries. This action is necessary to increase the availability of experienced and trained observers to effectively manage the CDQ fisheries in the Bering Sea and Aleutian Islands Area. It is intended to increase the flexibility of observer contractors in deploying CDQ observers and to decrease costs to the vessels and processors participating in the CDQ fisheries.

**DATES:** Effective March 6, 2000, through December 31, 2000. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 9, 2000.

**ADDRESSES:** Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** Sally Bibb, 907–586–7389.

**SUPPLEMENTARY INFORMATION:** NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

On June 4, 1998 (63 FR 30381), NMFS published a final rule implementing catch monitoring and observer coverage requirements for all vessels and processors participating in the multispecies (MS) CDQ fisheries. On April 26, 1999 (64 FR 20210), NMFS extended these requirements to vessels equal to or greater than 60 ft (18.3 m) length overall (LOA) that participate in the halibut CDQ fishery. These regulations were implemented because in the CDQ fisheries, all groundfish and prohibited species catch by vessels fishing for CDQ groups accrue against the CDQ groups' individual allocations. Because individual vessels, processors, and CDQ groups are accountable for the catch of groundfish and prohibited species, the catch monitoring standards must be more stringent than in many other fisheries. These final rules also implemented experience and training requirements for observers that, in most cases, exceeded the requirements in the non-CDQ fisheries.

Table 1 summarizes the current observer coverage requirements for the CDQ fisheries at 50 CFR 679.50(c) and (d). Table 2 summarizes the experience requirements necessary for a CDQ observer and a lead CDQ observer at 50 CFR 679.50(h).

Table 1. Current Observer Coverage Requirements for the CDQ Fisheries.

| Category | CDQ Observer Requirements |
|---|---|
| Catcher vessel, < 60 ft | none |
| Catcher vessel, ≧ 60 ft | 1 lead CDQ observer (obs.) |
| Catcher/processor, mothership | 2 total (1 lead CDQ obs., 1 CDQ obs.) |
| Shoreside processor | 1 lead CDQ obs. for each CDQ delivery, except deliveries from catcher vessels < 60 ft LOA fishing halibut CDQ |

Table 2. Requirements for CDQ Observer and ''Lead'' CDQ Observer in 50 CFR 679.50

| CDQ Observer Classification | Experience Requirements |
|---|---|
| All CDQ observers | Prior experience as an observer with 60 days observer data collection,<br>- Minimum evaluation rating of 1 or 2,<br>- Successfully complete CDQ observer training course |
| ADDITIONAL REQUIREMENTS FOR ''LEAD'' CDQ OBSERVERS | |
| Lead observer on a factory trawler or a mothership | At least 2 cruises (contracts) and sampled at least 100 hauls on a factory trawler or a mothership. |
| Lead on catcher vessel using trawl gear | At least 2 cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear. |
| Lead on vessel using nontrawl gear | At least 2 cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear. |
| Lead in shoreside plant | Observed at least 30 days in a shoreside processing plant. |

At the time of initial implementation of the MS CDQ Program, lead CDQ observers were required on all vessels and in the shoreside processing plants because NMFS believed that the CDQ observers needed prior experience on a vessel using the same gear type or in a shoreside plant in order to collect the data needed to manage the CDQ fisheries. However, after reviewing the first year of the MS CDQ fisheries in December 1999, NMFS believes that reductions in some CDQ observer coverage requirements could be made without reducing the quality or quantity