

U.S. Fish and Wildlife Serv., Interior

§ 17.50

Okaloosa darters taken in violation of this section or in violation of applicable State fish and wildlife conservation laws or regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) The following activities, which may result in incidental take of the Okaloosa darter, are allowed on Eglin Air Force Base (AFB), provided that the activities occur in accordance with applicable Federal, State, and local laws, and are consistent with a Service-approved Integrated Natural Resources Management Plan by Eglin AFB and with Eglin AFB's Threatened and Endangered Species Component Plan:

(i) Prescribed fire for land management to promote a healthy ecosystem;

(ii) Instream habitat restoration;

(iii) Unpaved range road stabilization; and

(iv) Removal or replacement of culverts for the purpose of road decommissioning, improving fish passage, or enhancing stream habitat.

(3) Scientific research and monitoring activities that may result in incidental take of the Okaloosa darter are allowed, provided these activities are consistent with a Service-approved Okaloosa darter recovery plan, or otherwise approved by the Service, whether those activities occur on or off of Eglin AFB.

(4) Take caused by any activities not listed in paragraph (bb)(2) and (bb)(3) of this section is prohibited.

[40 FR 44415, Sept. 26, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations to §17.44, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 17.45 Special rules—snails and clams. [Reserved]

§ 17.46 Special rules—crustaceans.

(a) Madison Cave isopod (*Antrolana lira*). (1) All provisions of §17.31 (a) and (b) apply to this species except that it may be taken for scientific purposes without Federal permits issued pursuant to these regulations: *Provided*, that all other Federal, State, or local laws,

regulations, ordinances or other restrictions or limitations have been complied with.

(b) [Reserved]

[47 FR 43701, Oct. 4, 1982]

§ 17.47 Special rules—insects.

(a) Cassius blue butterfly (*Leptotes cassius theonus*), Ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and Nickerbean blue butterfly (*Cyclargus ammon*).

(1) All provisions of §17.31 apply to these species (cassius blue butterfly, ceraunus blue butterfly, nickerbean blue butterfly), regardless of whether in the wild or in captivity, and also apply to the progeny of any such butterfly.

(2) Any violation of State law will also be a violation of the Act.

(3) Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, will not apply to the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly.

(b) [Reserved]

EFFECTIVE DATE NOTE: At 76 FR 49567, Aug. 10, 2011, §17.47 was added, effective Aug. 10, 2011 to Apr. 6, 2012.

§ 17.48 Special rules—common sponges and other forms. [Reserved]

Subpart E—Similarity of Appearance

SOURCE: 42 FR 32377, June 24, 1977, unless otherwise noted.

§ 17.50 General.

(a) Whenever a species which is not Endangered or Threatened closely resembles an Endangered or Threatened species, such species may be treated as either Endangered or Threatened if the director makes such determination in accordance with section 4(e) of the Act and the criteria of paragraph (b) of this section. After the Director has made such determination in accordance with the notification procedures specified in the Act, such species shall appear in the list in §17.11 (Wildlife) or §17.12 (Plants) with the notation “(S/A)” (similarity of appearance) in the “Status” column, following either a letter

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“E” or a letter “T” to indicate whether the species is being treated as Endangered or Threatened.

(b) In determining whether to treat a species as Endangered or Threatened due to similarity of appearance, the Director shall consider the criteria in section 4(e) of the Act, as indicated below:

(1) The degree of difficulty enforcement personnel would have in distinguishing the species, at the point in question, from an Endangered or Threatened species (including those cases where the criteria for recognition of a species are based on geographical boundaries);

(2) The additional threat posed to the Endangered or Threatened species by the loss of control occasioned because of the similarity of appearance; and

(3) The probability that so designating a similar species will substantially facilitate enforcement and further the purposes and policy of the Act.

Example 1. The ABC sparrow is Endangered wildlife. The ABD sparrow is a subspecies that is so similar to the ABC sparrow that when found outside their normal habitat, the two cannot readily be distinguished by law enforcement personnel. The ABD sparrow is listed in §17.11, after following the proper procedures as follows:

SPECIES AND RANGE

Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
ABC sparrow	ABCus	NA	North America	Entire	E	7	NA
ABD sparrow	ABDus	NA .....	.....do	NA	E(S/A)	7	NA

Example 2. Suppose the ABC sparrow is listed as Endangered in only a portion of its range. Within the meaning of the Act, the ABC sparrow as defined by geographic boundaries is a species. The ABC sparrow

which occurs beyond those boundaries is a different species, even though it is identical, except in location, to the listed species. If the criteria of this section were met, the two species would be listed as follows:

SPECIES AND RANGE

Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
ABC sparrow	ABCus	Idaho	Idaho	Entire	E	7	NA
Do .....	.....do	NA	United States	NA	E(S/A)	7	NA

Example 3. The XY cactus has been determined to be an Endangered species. The XZ cactus so closely resembles the XY cactus that enforcement personnel cannot distinguish between the two. The Endangered XY cactus could be illegally sold as the non-en-

dangered XZ species, thus posing an additional threat to the Endangered species. After following the proper procedures, the XZ cactus would be placed on the list and treated as though it was an Endangered species. This entry would appear as follows:

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Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
XYum	XY cactus	Arizona	Entire .....	.....	E	7	NA
XZum .....	.....do	Arizona and Mexico.	NA .....	.....	E(S/A)	8	NA