

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Threatened Status for the Louisiana Black Bear and Related Rules**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines the Louisiana black bear (*Ursus americanus luteolus*) to be a threatened species within its historic range. The historic range of the Louisiana black bear includes southern Mississippi, Louisiana, and east Texas. The Service designates other free-living bears of the species *U. americanus* within the Louisiana black bear's historic range as threatened due to similarity of appearance under the authority of the Endangered Species Act (Act) of 1973, as amended. This rule includes a special rule allowing normal forest management practices in occupied bear habitat, with certain limitations. The bear is vulnerable to habitat loss and illegal killing. This action implements protection of the Act.

EFFECTIVE DATE: February 6, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell A. Neal, at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:**Background**

The American black bear (*Ursus americanus*) was formerly widespread in North America, from northern Alaska and northern Canada, including Newfoundland, south to central northern Mexico (Lowery 1981). Hall (1981) lists sixteen subspecies of *U. americanus*. The black bear is a huge, bulky mammal with long black hair, with brownish or cinnamon color phases often found in western parts of its range. The tail on the black bear is short and well haired. The facial profile is rather blunt, the eyes small and the nose pad broad with large nostrils. The muzzle is yellowish brown and a white patch is sometimes present on the lower throat and chest. There are five toes on the front and hind feet with short curved claws. Large

males may weigh more than 600 pounds, although weight varies considerably throughout their range.

In 1821, Edward Griffith, in his work "Carnivora," called the bear from Louisiana, the "yellow bear," according to it a full species rank, i.e., *U. luteolus*. The first formal citation of the Louisiana black bear as a subspecies (*U. a. luteolus*) was by Miller and Kellog (1955) cited by Lowery (1981). In 1893, C.H. Merriam described the Louisiana black bear using five skulls from a Mer Rouge locality in Morehouse Parish in northeastern Louisiana. The distinctiveness of these skulls (Nowak 1986), when contrasted with other black bears, is that they are relatively long, narrow, and flat, and have proportionately large molar teeth (Nowak 1986). According to Hall (1981), *U. a. luteolus* once occurred throughout southern Mississippi, all of Louisiana and eastern Texas. The historic range according to Hall (1981) included all Texas counties east of and including Cass, Marion, Harrison, Upshur, Rusk, Cherokee, Anderson, Leon, Robertson, Burleson, Washington, Lavaca, Victoria, Refugio, and Aransas; all of Louisiana, and the southern Mississippi counties south of and including Washington, Humphreys, Holmes, Attala, Neshoba, and Lauderdale. While Hall (1981) included the southernmost counties in Arkansas as part of the range, there were no Arkansas specimens to support doing so. Accordingly, Arkansas is not considered as part of the historic range.

The Louisiana black bear was included as a category 2 species in the notice of review published on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554). Category 2 includes taxa that are being considered for possible addition to the Federal list of Endangered and Threatened Wildlife, but for which available data are judged insufficient to support a proposed rule.

The Service was petitioned on March 6, 1987, under section 4(b)(3)(A) of the Act to list the Louisiana black bear as an endangered species. The Service made two 12-month findings (August 19, 1988, 53 FR 31723, and August 10, 1989, 54 FR 32833), indicating that the action requested (listing) had been determined to be warranted but precluded by other actions to amend the lists.

In 1988 the Service undertook a study in cooperation with the Louisiana Department of Wildlife and Fisheries to clarify taxonomic concerns relating to possible introgression of non-native genetic material. The results of these investigations, which included blood protein electrophoresis, mitochondrial DNA and skull measurements, were

received by the Service on July 21, 1989 (Pelton 1989).

A peer review of this report generated a variety of comments, which allow general conclusions on genetics and morphology. Although circumstantial evidence remains that native bears have interbred with introduced Minnesota bears, a morphological distinctiveness remains. There was disagreement on the taxon *U. a. luteolus* as being validated by the multicharacter morphological approach. However, the Service concludes that, notwithstanding conflicting opinions about accepted mammalian taxonomic criteria, available evidence, while not overwhelming, does support validity of the taxon. As a subspecies, *U. a. luteolus* qualifies for listing consideration under the Act. This action presupposes bears within the historic range of *U. a. luteolus* possess those cranial features characterizing *U. a. luteolus*. Accordingly, threats to this population of bears threatens the taxon and thereby any unique genetic material possibly possessed by the taxon.

On June 21, 1990, the Service published in the Federal Register (55 FR 25341) a proposal to list the Louisiana black bear as a threatened species and to designate as threatened due to similarity of appearance all other bears of the species *Ursus americanus* within the historical range of *U. a. luteolus*. A notice of public hearing and reopening of the comment period was published in the Federal Register (55 FR 37723) on September 13, 1990, and a public hearing was held on October 11, 1990.

On September 20, 1991, the Service published in the Federal Register (56 FR 47732) a notice extending the deadline for taking final action on the proposal to list the Louisiana black bear, as provided in section 4(b)(6)(B)(i) of the Act, in order to examine questions regarding the taxonomy of the subspecies and reopened the public comment period. To assist the Service in making an informed decision on the listing of the Louisiana black bear, further assessment of morphometric data compiled in the course of the Pelton study (1989) was commissioned to further evaluate the systematic relationship of the Louisiana black bear (*U. a. luteolus*) and the Florida bear (*U. a. floridanus*). In addition to the existing data, additional skulls were located and the measurements included in the assessment. The conclusion from this review supports the current subspecific classifications of the Louisiana and Florida black bears. Assessment of the taxonomic relationship of black bears of

the southeastern region of the United States is ongoing.

Summary of Comments and Recommendations

In the June 21, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period was reopened and extended until October 21, 1990, to accommodate a request for a public hearing. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the "Baton Rouge Advocate" (Baton Rouge, Louisiana) on June 30, 1990, in the "Longview Journal" (Longview, Texas) on July 1, 1990, in the "Clarion Ledger" (Jackson, Mississippi) on July 6, 1990, in the "Lafayette Advertiser" (Lafayette, Louisiana) on July 9, 1990, and in the "Times Picayune" (New Orleans, Louisiana) on July 25, 1990.

A total of 86 comments were received on the proposed rule. One Federal agency commented but neither supported nor opposed the proposal. Two Louisiana State agencies provided three comments, one agency supporting the proposal, the other opposing it. Fifty-six individuals commented on the proposal. Of these, 33 supported it, 20 opposed it, and 3 were neutral. One wildlife research organization opposed the proposal. One economic development organization opposed it. Eight conservation organizations commented, seven supporting it and one being neutral. Sixteen timber companies and organizations representing either timber or landowner interests provided comments opposing the proposed rule.

A public hearing was requested by Joseph M. Haas, Luther F. Holloway, and the Mississippi Forestry Association. The hearing was held in the Louisiana Room of the Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, Baton Rouge, Louisiana on October 11, 1990, with 87 attendees. Seventeen comments were received during the hearing. Ten comments were in opposition, five were supportive and two were neutral. A question and answer session resulted in ten questions regarding the proposal.

Fourteen written comments were received during the comment period following the notice extending the deadline for a final listing decision. Seven comments were received from individuals with four favoring listing and three opposing. Three timber

companies commented, all opposing the listing. Four organizations commented with one supporting, one neutral and two opposing.

Written comments and oral statements presented at the public hearing and received during the three comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each, are discussed below.

*Issue 1: The subspecies *U. a. luteolus* is invalid because genetic differences among subspecies sampled were not conclusively different, and the basis for the subspecies designation was relatively minor morphologic differences.* *Response:* The validity of the taxon does not depend on genetic differences. The subspecies designation is based on morphologic differences that distinguish Louisiana bears from other subspecies and is generally recognized as such by the scientific community. Morphological distinction, regardless of any known presence or absence of genetic differences, is sufficient to support a taxonomic entity.

Issue 2: Forced isolation through Federal listing could ultimately be the most damaging influence on the genetic composition of the Louisiana black bear. *Response:* The listing would not isolate any one group of bears. Gene flow between populations of the same species would be encouraged, not discouraged.

Issue 3: Because population data on the black bear are inconclusive, the bear should not be listed. *Response:* The Service agrees that population data for much of the Louisiana black bear's occupied range is not very useful. However, the Act requires the Service to make its proposals on the basis of the best available scientific and commercial data, which need not be statistically valid population estimates or counts.

*Issue 4: Hybridization from *U. americanus* introduced from Minnesota in the mid-1960's is a serious threat to the Louisiana black bear, which today remains in pure form both in the Tensas and lower Atchafalaya River basins.* *Response:* Discussion of this threat is found under factor E of this rule.

Issue 5: Listing the Louisiana black bear will place restrictions on the use of private lands. *Response:* While it is true that under section 7 of the Act private land management actions dependent on a Federal action, i.e., funding, licensing, permitting, etc., may require consultation between the Federal action agency and the Fish and Wildlife Service to insure the Federal action is not likely to jeopardize the continued

existence of the Louisiana black bear, such consultation would not necessarily result in land use restrictions. Although there have been instances of effects on management of privately owned lands through section 9 of the Act (enforcement of taking prohibitions) based on adverse alteration of habitat for other species, a similar instance with a wide ranging species such as the Louisiana black bear is conjectural. The Louisiana black bear utilizes a diversity of habitats. Normal forest management activities that support a sustained yield of timber products and wildlife habitats are considered compatible with Louisiana black bear needs. Therefore, insofar as habitat alteration of occupied black bear habitat may be construed as a violation of section 9 of the Act, the Service issues herein a special rule which specifically exempts normal forest management activities as defined in the rule. This is in response to concerns expressed during the comment periods and is consistent with the Service's position that normal forest management activities are not considered a threat to the Louisiana black bear.

Issue 6: The Louisiana black bear should be listed as an endangered species rather than a threatened species. *Response:* The rationale for threatened status is described at the conclusion of the Summary of Factors Affecting the Species section.

Issue 7: Critical habitat for the Louisiana black bear should be designated. *Response:* This issue is addressed under the section entitled "Critical Habitat" in this rule.

Issue 8: Listing the Louisiana black bear will result in a transfer of management responsibility from the States to the Fish and Wildlife Service. *Response:* In the only known occupied habitat of the Louisiana black bear (Louisiana and Mississippi), there are existing cooperative agreements allowing the Service and the States to share Federal aid funds and responsibility in research and management actions directed toward recovery. Enforcement of section 9 of the Act also will be a cooperative endeavor between Federal and State conservation enforcement officers. The conduct of section 7 consultation, however, will be solely a Federal agency responsibility.

Issue 9: Given the opportunity for free movement of black bear from adjoining States into the range of the Louisiana black bear, it should not be concluded that black bear in Louisiana are a unique geographic isolate worthy of listing under the Endangered Species

Act. *Response:* The Service is listing a recognized subspecies and does not consider the Louisiana black bear to be a geographic isolate.

Issue 10: Arkansas is within the historic range but is not included within the designated range in the proposal.

Response: The range of *U. a. luteolus* as depicted by Hall (1981) included a small area of south Arkansas; however, no specimens from Arkansas were used as a basis for placement of the line. Accordingly, Arkansas is not considered as part of the historic range for purposes of this rule.

Issue 11: The figures on rate of loss of bottomland hardwoods published in the proposed rule have leveled off and are no longer accurate, and in some cases there has been a reversal of losses because of the cropland reserve program. *Response:* The Service agrees there has been a leveling off of the clearing rates cited in the proposed rule. The Service also recognizes the efforts of private groups and governmental programs, and agrees there have been some reversals of the past trend. As noted in comments received during the last comment period, this leveling off of timberland loss is confirmed by the recent U.S. Forest Service survey data for the North Delta and South Delta regions of Louisiana (Rosson, Miller,

and Vissage 1991), which indicated a slight increase in forested acreage for the North Delta region and a slight decrease in the South Delta region. However, based on history and present activities relative to interpretation and enforcement of the Food Security Act and the Clean Water Act, the Service remains unable to conclude that protection of these privately owned habitats is assured.

Issue 12: Listing of the Louisiana black bear may be an unnecessary legal encumbrance, and as such actually may cause more harm to the bear than not listing. *Response:* The Service makes listing decisions on the basis of the best available scientific and commercial data, and following a listing, the protective measures of the Act are made available to the species (See Available Conservation Measures elsewhere in this rule). The Service does not agree that listing may cause more harm to the bear than not listing.

Issue 13: The option of opening and closing of bear hunting seasons, as well as the setting of harvest limits as a management tool would be eliminated in Louisiana, and would be greatly complicated in Texas and Mississippi.

Response: Under certain conditions, the Act allows taking of threatened species, which could include hunting. The Service agrees that administration of

hunting seasons would be complicated by the listing.

Issue 14: State agencies will bear a disproportionate share of the economic burden for compliance. *Response:* Compliance with section 7 of the Act is strictly a Federal responsibility. States will share in the responsibility for enforcement and recovery actions, and they may be assisted through available Federal funds.

Issue 15: Delisting a species that was incorrectly or prematurely listed is much more difficult than the original listing. *Response:* The process for delisting, reclassification, or listing a species is the same.

Issue 16: The discriminant function analysis by Kennedy on skull morphology was flawed because the individuals used to define the functions were subsequently classified into groups using the same functions. The use of jackknifing or independent data sets should be used to test validity of the discriminant functions. *Response:* Had the discriminant function analysis not compared well with the principal component analysis, there may have been cause for concern. Since the two were corroborative, it was felt that a different approach would have added little to the conclusions.

Issue 17: The "look alike" provisions of the Act (threatened due to similarity of appearance) would discourage legitimate hunters from possessing black bears legally taken outside the described range. *Response:* The threatened due to similarity of appearance designation provides additional protection to free-living bears within the historic range of the Louisiana black bear, but it should not be construed to discourage hunters from engaging in legal black bear hunting opportunities provided elsewhere.

Issue 18: The proposed rule makes no distinction between bottomland hardwood and cypress-tupelo forest types, when in fact much of the Atchafalaya basin consists of flooded swamps not suitable for black bear. *Response:* The Service agrees that those permanently flooded acreages are not optimum bear habitat. Bears use intermittently flooded cypress-tupelo forest.

Issue 19: Any form of life should not be listed as threatened or endangered unless there is real provable evidence that such action will engender a better chance of survival and its continued existence as a viable component of its ecosystem. To list a form to have it "hang on" is scientifically irresponsible and obfuscates the real purposes of the proposal. *Response:* In accordance with the Act, the Service lists species on the

basis of available scientific and commercial data, without regard to recoverability of the species in question.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Louisiana black bear should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Louisiana black bear (*U. a. luteolus*) are as follows:

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

The habitat of *U. a. luteolus* has suffered extensive modification with suitable habitat having been reduced by more than 80 percent as of 1980. The remaining habitat has been reduced in quality by fragmentation due to intrusion of man and his structures (e.g. proximity to man's disturbing activities, multi-lane highways, etc.), thereby stressing the remaining population of bears. According to Rieben (1980) as cited by Nowak (1986), the original 25,000,000 acres of bottomland forests of the lower Mississippi River Valley had been reduced to 5,000,000 acres, and through the early 1980's another 165,000 acres were being cleared annually. Some of the Mississippi River Delta counties in the lower Yazoo River Basin may have as little as 5 percent of the original bottomland hardwoods.

Presently occupied bear habitat in Louisiana consists of two core areas, the Tensas and Atchafalaya River Basins. Within the basins, only wooded areas (bottomland hardwoods) are considered as bear habitat, although marshes along the lower rim of the Atchafalaya Basin and agricultural lands (sugarcane, soybeans) in other areas are also used. The once extensive bottomland forests of the Tensas Basin no longer exist, with only 15 percent (about 100,000 acres) of the original stands remaining (Gosselink, Louisiana State University, *in litt.* 1986). Of this, about 65 percent is in public ownership or under plans for public acquisition.

The entire Atchafalaya Basin contained 718,500 acres of bottomland hardwoods as of 1975 (O'Neil *et al.* 1975). In the lower Atchafalaya River

The genetic analyses did not show significant differences between the subspecies (Pelton 1989).

Listing to preserve *U. a. luteolus*, as it presuppues a static condition which does not exist. Further, interbreeding between subspecies is a normal and expected occurrence simply based on opportunity. The mobile nature of bears, plus the fact there was a more or less continuous distribution in relatively recent times (in an evolutionary sense), suggested at the outset that little genetic difference would be found. It appears that in a biological sense, hybridization as a threat at this taxonomic level may not be a significant cause for concern, unless there are real genetic differences which were undetected. Hybridization as a threat has neither been discounted nor proven and remains unsettled. Since the genetic profile of a known *U. a. luteolus* is unavailable, the issue is unlikely to be settled. The greatest likelihood is that the bears inhabiting the Atchafalaya and Tensas River Basins are a mixture: that in a definitional sense, the population is probably intraspecifically hybridized. In a biological sense, *U. a. luteolus* is likely pretty much unchanged (genetically) because of the low probability of reproductive isolation which would be necessary for an extended period in time for the evolutionary process of genetic differentiation to operate.

However, to the extent the genetic investigations did not identify real differences, or to the extent a pure genetic heritage is a realistic concept when applied to subspecies not likely to be reproductively isolated, the threat may (have) exist(ed). Since *U. a. luteolus* and *U. a. americanus* are so similar as to be difficult to distinguish even by experts, the only practical means available for protecting any possibly remaining unique genetic material originally belonging to the native *U. a. luteolus* would be through listing and protecting the taxon now distinguished by cranial features as *U. a. luteolus*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service believes that the bear meets the criteria for protection under the Act on the basis of past habitat loss alone. The preferred action is to list the Louisiana black bear as threatened, defined as likely to become in danger of extinction in the foreseeable future throughout a significant portion of its range.

Although the Service recognizes that loss of occupied bear habitat has currently leveled off, the preferred action is chosen because of the continued exposure of privately owned occupied bear habitats to agricultural conversion, the Louisiana black bear's demonstrated past vulnerability to such loss, and the significance of these exposed habitats to the overall well-being and health of the subject bear populations. Endangered status is not chosen because the threats are not believed to place the Louisiana black bear in imminent danger of extinction. Because normal forest management practices in the range of the Louisiana black bear are considered by the Service to be compatible with black bear needs, a special rule is included herein exempting such practices from the take provisions of section 9 of the Act. For law enforcement purposes, all other free-living *U. americanus* within the historic range of *U. a. luteolus* are being classified as threatened due to similarity of appearance. Critical habitat is not being designated at this time as discussed below.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas containing the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. "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. Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is proposed to be endangered or threatened. Service regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

In the June 21, 1990, proposed rule to list the Louisiana black bear, the Service stated that designation of critical habitat

was not presently prudent. The basis for this determination was the interpretation that designation of critical habitat would not provide benefits over and above those available under section 7 by simply listing the species since all Federal and State agencies likely to be involved had been notified of the location and importance of protecting the species' habitat. Therefore, designation was deemed "not prudent" due to no net benefit. Consideration of this finding within the Service since the publication of the proposed rule has resulted in a determination that designation of critical habitat may be prudent in this case given the potential for further habitat loss as a result of Federal actions, but it is not now determinable. Section 4(b)(6)(C) provides that a concurrent critical habitat determination is not required and that the final decision on designation may be postponed for 1 additional year (i.e., 2 years from the date of publication of the proposed rule) if the Service finds that a prompt determination of endangered or threatened status is necessary to the conservation of the species. The Service believes that prompt determination of threatened status for the Louisiana black bear is necessary. This will afford the species the benefits of section 9 (prohibitions) and section 7 (interagency) cooperation.

The Louisiana black bear ranges over large areas of Louisiana and Mississippi. Although individual bears travel over great distances and are considered habitat "generalists" utilizing a diversity of habitats, they do require large areas of relatively undisturbed forest. In cooperation with the Black Bear Conservation Committee (BBCC), a coalition of State, Federal, academic and private interests committed to restoring the Louisiana black bear within its historic range, the Service is attempting to identify occupied and potential habitat and to ascertain the bear's biological needs. Studies are ongoing on the Tensas National Wildlife Refuge, in the lower Atchafalaya River basin and in Mississippi to delineate areas used by black bear and assess management needs, and maps are in preparation that will show occupied habitat, areas of occasional sightings, potential habitat and possible corridors. Development of a restoration plan has already been initiated by the BBCC. Once the maps are completed and a restoration plan or recovery plan is prepared, the Service will make a critical habitat determination and assess whether designation of critical habitat is prudent. In assessing critical habitat, the

Service will consider the bear's requirements for space, food, water, cover or shelter, reproduction and population growth, and other biological features that are essential to the conservation of the bear and that may require special management considerations or protection. In the interim, protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a 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 the Service. Possible Federal actions may include Corps of Engineers wetland permits, Soil Conservation Service watershed projects or the Service's activities on National Wildlife Refuges within the species' occupied habitat. Formal consultation and the resulting biological opinion issued by the Service may preclude or modify Federal actions depending on the nature and extent of the impact on listed species.

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, such regulations deemed necessary and advisable to provide for the conservation of the species may be issued. The Secretary

may by regulation prohibit any act prohibited for endangered species under section 9(a). These prohibitions, 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, 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 agents of the Service and State conservation agencies. The term "harm" as it applies to the take prohibition is defined in 50 CFR 17.3 to include "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." The implementing regulations for threatened wildlife (50 CFR 17.31) incorporate, for the most part, by reference the prohibitions for endangered wildlife (50 CFR 17.21) except when a special rule applies [50 CFR 17.31(c)]. The Service finds that the prohibitions for endangered species are necessary and advisable for conservation of the threatened Louisiana black bear. However, pursuant to the latitude for threatened species afforded by the Act and 50 CFR 17.31(c), the Service issues a special rule, discussed below, exempting certain forest management activities that could be construed by some, although not the Service, to constitute "harm" to the Louisiana black bear.

In order to avoid unnecessary permitting requirements, and in response to extensive comments regarding perceived impacts of the listing on timber interests, the Service is promulgating a special rule exempting normal forest management activities from section 9 take prohibitions. The Service continues to take the position that habitat needs of the Louisiana black bear are compatible with normal forest management activities as practiced in this bear's range. This position is based on recent studies in the Tensas River basin of Louisiana (Weaver et al. 1991) that affirm the value of habitat diversity attributable to a variety of silvicultural procedures.

The Louisiana black bear, like other members of the species *U. americanus*, is not an old growth species; nor can it survive in open cropland conditions. Weaver (1991) found that an abundance

of bear foods (e.g., fruits and soft mast) were produced following fairly severe timber harvests, and that bears also utilized these cutover areas for escape cover, and in some cases, actually used treetops remaining from logging operations as winter denning sites for birthing of cubs. This leads the Service to believe that maintaining occupied bear habitat in some form of timberland condition may be the single most critical factor in conserving this species, and that the principal threat to the bear is not normal forest management but conversion of these timbered habitats to croplands and other agricultural uses. For this reason, the Service believes that the exemption provided in the special rule will not contribute to loss of black bear habitat, but will provide for habitat diversity for the bear through continued forest management.

Certain restrictions pertaining to den trees are included in the special rule. Although den trees for Louisiana black bear are not essential, they are important (Weaver 1991). Because of their importance, actual den sites/trees or candidate den trees in occupied Louisiana black bear habitat are to be maintained. For purposes of the special rule, candidate den trees are considered to be bald cypress and tupelo gum with visible cavities, having a diameter at breast height (DBH) of 36 inches, and occurring in or along rivers, lakes, streams, bayous, sloughs, or other water bodies. Further or fewer restrictions in the special rule may become appropriate as results of ongoing research and recovery planning are assessed.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. 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. For threatened species, permits may also be available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an endangered or threatened species even though it is not otherwise listed as endangered or threatened if: (a) The species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial

difficulty in differentiating between listed and unlisted species; (b) the effect of such substantial difficulty is an unusual threat to the endangered or threatened species; and (c) that such treatment will substantially facilitate the enforcement and further the policy of the Act.

Introductions of bears from Minnesota in the mid-sixties of the subspecies *U. a. americanus* gives rise to the possibility (however remote) that bears remain somewhere within the historic range of *U. a. luteolus* that are of *U. a. americanus* ancestry. Evidence of *U. a. americanus* in southern Arkansas just north of the Louisiana line has been recently documented. This theoretically could present an enforcement and taxonomic problem because both subspecies may now or later inhabit the same range, and the listed subspecies (*U. a. luteolus*) cannot always be differentiated from the unlisted *U. a. americanus* by enforcement personnel or experts. For these reasons, the Service is treating all free-living bears of the species *U. americanus* other than *U. a. luteolus* as threatened by similarity of appearance within the historic range of *U. a. luteolus* (Louisiana, Mississippi and Texas).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the

Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Wendell A. Neal (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.11(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							
Bear, American black	<i>Ursus americanus</i>	North America	T(S/A)	456	NA	17.40(i)	
Bear, Louisiana black	<i>Ursus americanus luteolus</i>	USA (LA, MS, TX)	T	456	NA	17.40(i)	

3. Amend § 17.40 by adding paragraph (i) to read as follows:

§ 17.40 Special rules—mammals.

(i) Louisiana black bear (*Ursus americanus luteolus*). (1) Except as noted in paragraph (i)(2) of this section, all prohibitions of § 17.31 and provisions of § 17.32 shall apply to any

black bear within the historic range of the Louisiana black bear (Texas, Louisiana and Mississippi).

(2) Subsection 17.40(i)(1) and § 17.31 shall not prohibit effects incidental to normal forest management activities within the historic range of the Louisiana black bear except for activities causing damage to or loss of den trees, den tree sites or candidate

den trees. For purposes of this exemption, normal forest management activities are defined as those activities that support a sustained yield of timber products and wildlife habitats, thereby maintaining forestland conditions in occupied habitat. For purposes of this special rule, candidate den trees are considered to be bald cypress and tupelo gum with visible cavities, having

a minimum diameter at breast height (DBH) of 36 inches, and occurring in or along rivers, lakes, streams, bayous, sloughs, or other water bodies.

(3) This express exemption for normal forest management activities provided by this special rule is subject to modification or withdrawal if the Service determines that this provision fails to further the conservation of the Louisiana black bear.

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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