

§ 177.814 entitled "Retention of manufacturer's certificate and retest reports," requiring that each user of a cargo tank retain a copy of the tank manufacturer's certificate and all records from retesting the cargo tank. Section 177.814 referred to provisions in the specifications whereby a motor carrier could certify a cargo tank in place of a manufacturer's certification. The Board failed to recognize however, that the specifications for MC 330 and MC 331 cargo tanks do not provide for certification by other than the manufacturer of the cargo tank since these tanks are built according to the ASME Code, and only the tank manufacturer can certify compliance with the Code requirements. Therefore, § 177.814 is being changed to recognize this distinction by excepting specifications MC 330 and MC 331 tanks from carrier certification.

It has been brought to the Bureau's attention by a petition from the National LP-Gas Association, that the specification for MC 330 cargo tanks did not require a manufacturer's certification. Instead a manufacturer's data report was required to indicate compliance with the ASME Code under which the tank was constructed. The petitioner points out that users of specification MC 330 cargo tanks cannot comply with § 177.814 because certificates were not required for these tanks, and because the users cannot test the tanks to determine if in fact they were built to the specification. Therefore, petitioner asks that § 177.814 be amended to provide that users of specification MC 330 tanks can copy the information imprinted on the identification plate and ASME data plate permanently attached to the tank, and retain this information in place of the original manufacturer's data report when such report is not available. The Bureau believes the petition has merit and is amending § 177.814 accordingly.

Section 177.823 presently prohibits the placarding of cargo tanks and motor vehicles containing less than 1,000 pounds of a hazardous material except for explosives, Class A and Class B; poisons, Class A and certain radioactive materials. Since the regulations of the U.S. Coast Guard and the Federal Railroad Administration require the placarding of containers and trailers containing any amount of these materials, shipments are often frustrated when moving between highway and water or highway and rail. In order to facilitate the ease of intermodal movement of hazardous materials, the Bureau is amending the highway placarding requirement to permit placarding for less than 1,000 pounds when the motor vehicle or cargo-carrying container has a prior or subsequent movement by water or rail.

Since these amendments will allow a retesting procedure that will have the effect of enhancing the integrity and safety of certain cargo tanks and because these amendments will provide for consistency between various Departmental regulations and remove an unwarranted frustration on the intermodal movement of hazardous materials, the Materials

Transportation Bureau finds that notice and public procedure thereon are impracticable and unnecessary.

In addition, because these amendments are a relaxation of the existing rules and place no additional burden on any person, they are being made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Parts 173 and 177 of Title 49 CFR are amended as follows:

1. In § 173.33 paragraph (e) (2) is revised to read as follows:

§ 173.33 Cargo tank use authorization.

(e) * * *

(2) The tank less any fittings must be subjected to a hydrostatic or pneumatic pressure of one and one-half times the design pressure (maximum allowable working pressure or rated pressure) of the tank. For pneumatic testing, the test procedure specified in § 177.824(d) (3) of this subchapter shall be followed. When a pneumatic test is performed, suitable safeguards should be provided to protect employees and other persons should a failure occur.

2. In § 177.814 paragraphs (a) and (d) are revised to read as follows:

§ 177.814 Retention of manufacturer's certificate and retest reports.

(a) Each motor carrier who uses a cargo tank vehicle shall have in his files a certificate or manufacturer's data report signed by a responsible official of the manufacturer or fabricator of the cargo tank, or a competent testing agency, certifying that the cargo tank identified in the certificate was manufactured and tested in accordance with the requirements contained in the specification under which the cargo tank was constructed. The certificate and any other data furnished as required by the specification must be retained at the principal office of the carrier during the time that the cargo tank is used by the carrier and for one year thereafter.

(1) Except for specifications MC 330 and MC 331 cargo tanks, a motor carrier may himself perform the tests and inspections to determine whether the tank meets the requirements of the specification. If the motor carrier performs the tests and inspections and determines that the tank conforms to the specification, he may use the tank if he retains the test data, in place of a certificate, in his files at his principal office for as long as he uses the tank and one year thereafter.

(2) A motor carrier using a specification MC 330 cargo tank for which such carrier is unable to obtain the manufacturer's data report required by the specification may copy the information contained on the cargo tank's identification plate and ASME Code plate and retain such information as required by this section.

(3) Each motor carrier who uses a specification cargo tank which he does not own and has not tested or inspected

shall obtain a copy of the manufacturer's certificate or manufacturer's data report and retain it in his files at his principal office during the time he uses the tank and for one year thereafter. A motor carrier using a specification MC 330 cargo tank which he does not own may copy the information contained on the cargo tank's identification plate and ASME Code plate if the manufacturer's data report is not available from the owner of the tank.

(d) A copy of retest and inspection reports required by §§ 173.33 and 177.82 of this subchapter and all records of repairs to each cargo tank vessel must be retained in the same file with the manufacturer's certificate or manufacturer's data report for that tank as specified in paragraph (a) of this section. This provision does not apply to a motor carrier leasing a cargo tank for less than 30 days if the lessor has the records required by this section in his files.

3. In § 177.823 paragraph (e) is added to read as follows:

§ 177.823 Required exterior marking of motor vehicles and combinations.

(e) A motor vehicle, trailer, or other cargo-carrying body, other than a cargo tank, containing less than 1,000 pounds of a flammable liquid, oxidizing material, compressed gas, or corrosive liquid, may be placarded as specified in paragraph (a) (1) of this section when such vehicle, trailer or cargo-carrying body has an immediate prior or subsequent movement by water or rail.

(18 U.S.C. 834; 49 CFR 1.53(g).)

Effective: These amendments are effective April 28, 1976.

Issued in Washington, D.C. on April 23, 1976.

JAMES T. CURTIS, Jr.,
Director,

Materials Transportation Bureau.

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Title 50—Wildlife and Fisheries
CHAPTER 1—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That Two Species of Butterflies Are Threatened Species and Two Species of Mammals Are Endangered Species

The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a Rulemaking pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533, 87 Stat. 884; hereinafter, the Act) which determines that: Schau Swallowtail (*Papilio aristodemus ponceanus*); and that population of the Bahama Swallowtail (*Papilio andraemon bonhoteti*) which occurs within the United States each to be Threatened Species.

This Rulemaking also determines the: Gray Bat (*Myotis grisescens*) and the Mexican Wolf (*Canis lupus baileyi*) each to be Endangered Species.

BACKGROUND

Schaus Swallowtail and U.S. Population of the Bahama Swallowtail butterflies. On April 22, 1975, the Service published proposed rules in the FEDERAL REGISTER (40 FR 17757) advising that sufficient evidence was on file to support proposing a determination that the two subject species of butterflies were Threatened Species as provided for by the Act. That proposal summarized the factors thought to be contributing to the likelihood that each species would become Endangered within the foreseeable future; specified the prohibitions which would be applicable to each species if such a determination were made; and solicited comments, suggestions, objections and factual information from any interested person.

Section 4(b) (1) (A) of the Act requires that the Governor of each State within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a Threatened Species or an Endangered Species. Such a letter was drafted but apparently was not mailed to Governor Askew or at any rate was not received by the Governor's Office. This oversight was rectified on August 15, 1975, when Acting Director Keith M. Schreiner forwarded a letter to Governor Askew advising him of the proposed action and requesting his comments.

In addition, on April 30, 1975, the Service issued a news release entitled "Two Florida Butterflies May Become First Insects Listed as Threatened Species" which advised that " * * * All comments received within 90 days of the FEDERAL REGISTER notice will be considered * * *".

Gray Bat and Mexican Wolf. On April 21, 1975, the Service published proposed rules in the FEDERAL REGISTER (40 FR 17590) advising that sufficient evidence was on file to support a proposal to determine that several species of fauna were Endangered Species or Threatened Species as provided for by the Act. Included were the Gray Bat and the Mexican Wolf, both of which were proposed to be determined Endangered Species.

On April 24, 1975, Director Lynn A. Greenwalt forwarded letters notifying the Governors of the States of Arizona, Arkansas, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, New Mexico, North Carolina, South Carolina, Texas, Virginia and West Virginia of this proposal and requesting their views and comments. Included among those States are all within which the Gray Bat and Mexican Wolf are known to occur except for the State of Oklahoma. Oklahoma inadvertently was omitted when the April 24 letter was prepared. Since the Gray Bat has been reported from Oklahoma, that oversight was corrected on August 25, 1975, when Acting Associate Director, Harold J.

O'Connor, forwarded a letter to the Honorable David L. Boren, Governor of Oklahoma advising him of the proposal to determine the Gray Bat to be an Endangered Species and requesting his views and opinions. Associate Director, Keith M. Schreiner, subsequently forwarded a second letter dated October 3, 1975, to Governor Boren again calling the proposal to his attention and seeking any comments the State of Oklahoma cared to offer. Director Lynn A. Greenwalt forwarded a third, similar letter on November 18, 1975.

On April 25, 1975, the Service, through the Department of State, forwarded a cable (State 096118) to the American Embassy in Mexico City, Mexico, advising the embassy of the proposal to determine the Mexican Wolf to be an Endangered Species; instructing the embassy to so advise the proper officials of the Government of Mexico and to request from them any comments, data or other relevant information they cared to offer.

A subsequent cable (State 099714) dated April 29, 1975, was forwarded to clarify possible ambiguities in the wording of the April 25 cable.

On July 17 through July 19, 1975, a U.S. delegation headed by Director Lynn A. Greenwalt, met with a counterpart Mexican delegation headed by Senor Mario Luis Cassio Gabucio in Mexico City, Mexico. The purpose of this meeting was to discuss mutual interests and problems, and to develop an agreement for implementing future coordination and cooperative work and exchanges between the U.S. Fish and Wildlife Service and the Mexican Direccion General de la Fauna Silvestre. During that meeting, the Service's proposal to determine the Mexican Wolf to be an Endangered Species was discussed with the Mexican officials who requested the Service delay the determination to provide an opportunity for them to ascertain whether they had additional, relevant data to submit. On September 5, 1975, Acting Director F. V. Schmidt forwarded a letter to Sr. Mario Luis Cossio, Director General, Direccion General de la Fauna Silvestre in which Mexico's comments or data were again requested.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b) (1) (C) of the Act requires that a " * * * summary of all comments and recommendations received * * *" be published in the FEDERAL REGISTER prior to adding any species to or removing any species from the List of Endangered and Threatened Wildlife.

Schaus Swallowtail and U.S. population of the Bahama Swallowtail butterflies. Approximately 13 comments were received. No response was received from Governor Askew nor did the State of Florida offer any other comments upon the proposal.

A lengthy letter dated October 23, 1975, was received from Acting Deputy Director T. G. Darling of the U.S. Department of Agriculture's Animal and Plant

Health Inspection Service. Although that letter was received long after the comment period specified in the proposed rules (July 21, 1975) it was considered.

One point in that letter is significant, reflects a degree of misunderstanding concerning the criteria and process of determining whether a species is Threatened or Endangered, and is commented upon below.

In his penultimate paragraph, Mr. Darling states, with reference to the two subject species, " * * * It would appear that no scientific survey (biometrical survey) has been made for a population index. This appears to be a basic fact in determining endangerment * * *".

While the Service recognizes that statistically sound population data are a very desirable ingredient in the process of determining whether a species is Threatened or Endangered, it also recognizes that seldom are such data available, particularly for the less studied, frequently obscure forms that become candidates for such determinations. While a biometrically defensible documentation of a critically low or precipitously declining population would, of itself, be considered sufficient reason to determine a species to be Threatened or Endangered, such refined data are not necessarily a prerequisite to such determinations. Section 4(a) of the Act sets forth the factors that must be considered. Section 4(b) requires that such determination be made " * * * on the basis of the best scientific and commercial information available to him * * *"; specifies the consultation process that must be followed in assessing that information and sets forth the "due process" provided for by the Act. That process, particularly the requirements for a 60-day period for comment by interested persons and a 90-day period for comment by the affected States in cases involving "resident" species, is intended to insure that such information as is available is solicited and considered and that all interested parties have ample opportunity to submit comments.

Thus the Service concurs that a complete assessment of available data and information must be made prior to determining a Threatened or Endangered Species. However, the Service cannot support the view that the protection provided for by the Act should be denied a species, which the information available indicates is Endangered or Threatened, while biometrical surveys are conducted to gather additional data.

Comments from twelve other persons (including three biologists and two conservation organizations), fully supported the proposal to determine both butterflies to be Threatened Species. Several of these comments emphasized the dangers of habitat destruction and urged that protective measures be taken.

Two persons, while not objecting to the proposed determination, questioned its efficacy and emphasized that, for example, "the only help (for these species of butterflies) would be protection of habitat." These persons also expressed

concern that the proposal would prohibit amateur lepidopterists from collecting specimens of these butterflies.

One professional lepidopterist wrote a lengthy letter raising an array of issues and objections concerning the determination of Threatened or Endangered butterflies in particular and the statutory scheme for protecting Endangered wildlife in general. With respect to the Schaus Swallowtail and the Bahama Swallowtail, the letter questioned the rarity of these species and offered some conflicting interpretations of the scientific evidence available. This letter, as did many of the others, emphasized the critical need to protect the habitats of these species, and expressed the prevailing view that mere collecting by limited numbers of amateurs was not a primary threat to the species. Copies of that letter also were received by the Service via the office of members of Congress. In a letter dated July 18, 1975, Acting Associate Director Harold J. O'Connor responded individually to this person and requested any scientific data or population estimates. None has been received.

Gray Bat and Mexican Wolf: Approximately 23 comments were received. Of these, about 20 dealt with the Gray Bat, 2 with the Mexican Wolf and one with both. Of the States which responded, Alabama, Arkansas, Florida, Illinois, Indiana, Kentucky, Mississippi, Missouri, and Tennessee supported the proposal to determine the Gray Bat to be an Endangered Species. The proposal also was supported by comments from specialists at the Florida State Museum and the Memphis State University.

Comments received from the State of Georgia suggested the Gray Bat be classified "rare or unusual" rather than "Endangered" based upon the status of the bat in Georgia. The Georgia Department of Natural Resources letter defined those terms as: "species with small populations in the State which, though not presently Endangered or Threatened as previously defined, are potentially at risk".

The North Carolina Wildlife Resources Commission and the North Carolina Department of Natural and Economic Resources both stressed the apparent rarity of the species within that State and suggested the Gray Bat be temporarily classified "Undetermined or Peripheral" in North Carolina.

The Act does not provide for classifications of "rare, unusual, undetermined or peripheral"; therefore these suggestions cannot be acted upon. Taken in the context of the proposal, as amplified by other comments, the comments of Georgia and North Carolina are construed as supportive of, or at least not in opposition to, the proposal to determine the Gray Bat to be an Endangered Species.

The South Carolina Wildlife and Marine Resources Department advised that " . . . a survey of known records indicates that the Gray Bat has not been described from South Carolina . . ." and that " . . . status investigations are being conducted on the Chiroptera of South Carolina . . ." No specific comment or recommendation concerning the

proposed Endangered Species determination was offered.

The Office of the Governor of the Commonwealth of Virginia advised, based upon the best information available, that " . . . the Gray Bat is believed to be found in the Clinch Valley in Russell County, that the Commission (of Game and Inland Fisheries) has no evidence that this bat has ever been recorded elsewhere in our State . . ." No opinion concerning the proposed determination of the Gray Bat to be an Endangered Species was offered.

Governor Arch A. Moore, Jr., of West Virginia indicated that " . . . After consulting our wildlife biologists, the Wildlife Services biologist of the U.S. Fish and Wildlife Service and mammalogists at West Virginia University and Marshall University, I can find no record of the Gray Bat in West Virginia. The possibility of its occurrence cannot be dismissed due to its presence in Kentucky . . ." No comments concerning the proposed determination of the Gray Bat to be an Endangered Species were offered.

Colonel Thorwald R. Peterson, District Engineer of the St. Louis District of the Department of the Army's Corps of Engineers advised that " . . . the species may be impacted by the authorized Meramec Park Lake which is under construction on the Meramec River . . ." and cited the Final Environmental Impact Statement on that project (dated August 1973), as amended, which notes that one cave, Bat Cave, which was a reported maternity area for 3,000 Gray Bats, is located in the Flood pool and will be inundated at a frequency of less than every two years. Two other caves, Hamilton and Press Caves, are reported to be temporary summer roosts for an unknown number of Gray Bats and will be permanently inundated.

Colonel Peterson also advised that:

" . . . These caves, with the exception of Press Cave which was not positively located, were recently visited by a St. Louis District biologist and a biologist from the U.S. Fish and Wildlife Service's Kansas City Area Office. They failed to find any gray bats. All of these caves showed signs of human visitation and vandalism.

On the positive side, Tuttle (Tuttle, Merlin D. 1974. Population Ecology of the gray bat (*Myotis grisescens*). Ph.D. Dissertation, University of Kansas), reports that large rivers and lakes are preferred foraging areas for the gray bat . . ."

No further suggestions concerning the advisability of the proposal to determine the Gray Bat to be an Endangered Species were provided. The Environmental Defense Fund advised that:

" . . . Good cause has been shown . . . to support the proposed listing of the (Gray Bat and Mexican Wolf) on the Endangered . . . species list . . ."

In addition to the Environmental Defense Fund, comments were received from the States of Texas and New Mexico regarding the proposal to determine the Mexican Wolf to be an Endangered Species.

The Texas Parks and Wildlife Department indicated:

" . . . The Mexican wolf is considered to be an extremely scarce, peripheral animal in this State, based on only three authentic records of its occurrence in the Trans-Pecos region. The first wolf determined to represent this species was taken in 1944, and the other two were recorded in 1970.

Considering the isolated and infrequent occurrence of the Mexican wolf in Texas over a long period of time, I support the listing of this species as endangered . . ."

The New Mexico Department of Game and Fish advised:

"According to our best information, the Mexican wolf is extremely rare and irregular in New Mexico at present. We doubt that an resident population exists in our state, although occasional individuals do wander into the southwestern area from time to time. The last definite record that we know was specimen collected in December 1950 . . ."

In Mexico, we understand that only a few wolves remain, the number perhaps being few hundred at most. In view of the animal's rarity there, as well as the adjacent United States, it would appear that this subspecies can be classified as Endangered. It must be recognized; however, that, if the wolf is added to the list, some mechanism must be developed to protect livestock from damage and to compensate owners for losses that might occur as the result of predation . . ."

No response has been received from the Government of Mexico nor have any subsequent data or objections been received as discussed at the July 1975 meeting in Mexico City.

Conclusion. After a thorough review and consideration of all the information available, the Director has determined that the Mexican Wolf and the Gray Bat are in danger of extinction and that the U.S. population of the Bahama Swallowtail butterfly and the Schaus Swallowtail butterfly are likely to become Endangered Species within the foreseeable future throughout all or a significant portion of their range due to one or more of the factors described in Section 4(a) of the Act. This review amplifies and substantiates the description of those factors included in the proposed rulemakings (40 FR 17590 and 40 FR 17757).

Effect of the rulemaking. The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered Species. All of those prohibitions and exceptions also apply to any Threatened Species unless a Special Rule pertaining to that Threatened Species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered Species, are found at § 17.21 of Title 50 and; for the convenience of the reader, are reprinted below:

§ 17.21 Prohibitions. (a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause

to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c) (1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c) (1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

- (i) Aid a sick, injured or orphaned specimen; or
- (ii) Dispose of a dead specimen; or
- (iii) Salvage a dead specimen which may be useful for scientific study; or
- (iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d) (1) of this section, Federal and State law enforcement officers may possess, deliver,

carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

The general prohibitions and exceptions for Threatened Species are found at § 17.31 of Title 50 of the Code of Federal Regulations and, for the convenience of the reader, are reprinted below:

§ 17.31 *Prohibitions.* (a) Except as provided in Subpart A of this Part, or in a permit issued under this Subpart, all of the provisions in § 17.21 shall apply to threatened wildlife.

(b) In addition to any other provisions of this Part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating under a Cooperative Agreement with the Service or with the National Marine Fisheries Service, in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take any threatened wildlife to carry out scientific research or conservation programs.

(c) Whenever a special rule in §§ 17.40 to 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions.

Thus, rules which pertain to a Threatened Species are established thru: Section 17.31 which also incorporates the provisions of § 17.21 as modified by special rules containing specific provisions tailored to the conservation needs of the particular species in question. When such special rules are published for a given Threatened Species, those special rules take precedence over both §§ 17.31 and 17.21.

As a result of these rules, all of the provisions of § 17.21 will apply to the Gray Bat and the Mexican Wolf.

A Special Rule (§ 17.47(a)) applies to the Schaus Swallowtail and the U.S. populations of the Bahama Swallowtail butterflies. That Special Rule incorporates all the provisions of § 17.21 with three exceptions:

1. Adult specimens (but not deposited eggs, larvae or pupae) may be taken or exported without a Federal permit provided such taking or exportation is otherwise lawful and is not in the course of a commercial activity as defined below;

2. Inadvertent injury to or destruction of deposited eggs, larvae or pupae incurred during lawn mowing or other routine maintenance operations in or around buildings shall not be considered to constitute "taking"; and

3. The killing or injuring of specimens by unintentionally striking them with automobiles or other conveyances shall not be considered to constitute a "taking" within the context of the Regulations.

These rules impose no restrictions upon the otherwise legal intrastate sale of lawfully taken specimens. Nor do they impose any restrictions upon the interstate movement of lawfully taken specimens unless such interstate movement is in the course of a commercial activity involving a change of ownership of the specimen. In this context, the term "commercial activity" is defined in Section 3(1) of the Act as follows:

"(1) The term 'commercial activity' means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling."

The terms "industry or trade," as used in the above definition, were defined in the September 26, 1975, FEDERAL REGISTER (40 FR 44416) as follows:

"'Industry or trade' in the definition of 'commercial activity' in the Act means the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit;"

The determination set forth in these rules also makes all four species eligible for the consideration provided by Section 7 of the Act. That Section reads as follows:

"INTERAGENCY COOPERATION

Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

Although no "Critical Habitat" has yet been determined for any of the four subject species, the other provisions of Section 7 are applicable. Regulations published in the FEDERAL REGISTER of September 26, 1975, (40 FR 44412) provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened Species under certain circumstance. Such permits involving Endangered Species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship

which would be suffered if such relief were not available.

Effect upon the States. The determination that these four species are Threatened or Endangered Species will require States proposing to enter into Cooperative Agreements pursuant to Section 6 of the Act to consider these species.

Several States have State laws which recognize the List of Threatened or Endangered Wildlife promulgated pursuant to the Act and provide State protection to these species. This determination will make these four species eligible for such consideration as those State laws provide.

Effect internationally. In addition to the protection provided by the Act, the Service will review these four species to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendix(ices) to that Convention or whether they should be considered under other, appropriate international agreements.

National Environmental Policy Act. Two Environmental Assessments have been prepared and are on file in the Service's Washington Office of Endangered Species. One addresses this action as it involves the Gray Bat and the Mexican Wolf and the second deals with the Schaus and Bahama Swallowtail butterflies. Each assessment is the basis for a decision that these determinations are not major Federal actions which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Format. These final rules are published in a format different from that set forth in the proposed rulemaking. This new format was adopted by rules published in the FEDERAL REGISTER of September 26, 1975, (40 FR 44412) and represents no substantive change.

Effective date. Considering the long period during which the public has had notice of the proposal to determine these species to be Threatened or Endangered, and in view of the precarious status of the species, it has been determined that

there is good cause to make this rule making effective shortly after publication.

The determinations set forth in the rules shall become effective May 4, 1976.

LYNN A. GREENWALT,
Director, Fish and
Wildlife Service.

APRIL 15, 1976.

Accordingly of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. § 17.11 By adding the Gray Bat to the list of "Mammals," following the entry for "Banteng; *Bibos bonteng*" and the Mexican Wolf to the list of "Mammals," following the entry for "Wolf, Maned *Chrysocyon brachyurus*" and by adding the U.S. Population of the Bahama Swallowtail Butterfly and the Schaus Swallowtail Butterfly list under "Insects", as indicated below:

§ 17.11 Endangered and Threatened Wildlife.

* * * * *

(i) * * *

SPECIES			RANGE		Status	When Listed	Special Rules
Common Name	Scientific Name	Population	Known Distribution	Portion of Range Where Threatened or Endangered			
MAMMALS:							
Bat, Gray	<i>Myotis grisescens</i>	N/A	Central and Southeastern USA	Entire	E	...	N/A
Wolf, Mexican	<i>Canis lupus baileyi</i>	N/A	Mexico, USA (Arizona, New Mexico, Texas)	Entire	E	...	N/A
INSECTS:							
Butterfly, Bahama Swallowtail	<i>Papilio andraemon behnotei</i>	USA	USA (Florida), Bahamas	USA	T	...	17.47
Butterfly, Schaus Swallowtail	<i>Papilio aristodemus ponceanus</i>	N/A	USA (Florida)	Entire	T	...	17.47

3. Delete the notation "Reserved" from § 17.47 and insert the following in lieu thereof:

§ 17.47 Special rules—insects.

"(a) U.S. population of the Bahama Swallowtail butterfly (*Papilio andraemon behnotei*) and the Schaus Swallowtail butterfly (*Papilio aristodemus ponceanus*)—

(1) Prohibitions—All of the provisions set forth in Section 17.31 shall apply to both species with the following exceptions:

(i) Adult specimens of either species (but not deposited eggs, larvae or pupae) may be taken 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 and, provided further, That such taking is not in the course of a commercial activity. In addition, any such lawfully taken specimens may be exported without a permit issued pursuant to these Regulations provided such export is otherwise lawful and is not in the course of a commercial activity.

(ii) The inadvertent injury to or destruction of deposited eggs, larvae or pupae of these species incurred during lawn mowing or other routine maintenance operations in or around buildings shall not be considered to constitute "taking" in the context of the Act.

(iii) The killing or injuring of specimens of these species by unintentionally striking them with automobiles or other conveyances shall not be considered to constitute a "taking" within the context of the Act.

[FR Doc.76-12094 Filed 4-27-76; 8:45 am]

PART 33—SPORT FISHING

Moosehorn National Wildlife Refuge, Maine

The following special regulations are issued and are effective during the period April 30, 1976 through December 31, 1976.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Sport fishing on the Moosehorn National Wildlife Refuge, Calais, Maine,

is permitted on the areas designated by signs as open to fishing. These open areas, comprising 500 acres, are delineated on maps available at Refuge Headquarters, Box X, Calais, Maine 04619 or from the Regional Director, U.S. Fish and Wildlife Service, Post Office and Courthouse Building, Boston, Massachusetts 02109. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The use of boats without motor is permitted on Bearce, Conic, and Cranberry Lakes.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33 and are effective through December 31, 1976.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

APRIL 21, 1976.

[FR Doc.76-12291 Filed 4-27-76; 8:45 am]