

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter No./name	Container ¹	Preservation ^{2,3}	Maximum holding time ⁴ (in hours)
Table IA—Protozoa Tests:			
8 Cryptosporidium	LDPE	0–8 °C	17 72
9 Giardia	LDPE	0–8 °C	17 72
Table IA—Aquatic Toxicity Tests:			
10–13 Toxicity, acute and chronic	P, G	Cool, 4 °C ¹⁶	36
*	*	*	*

¹ Polyethylene (P) or glass (G). For bacteria, plastic sample containers must be made of sterilizable materials (polypropylene [PP] or other autoclavable plastic). For protozoa, plastic sample containers must be made of low-density polyethylene (LDPE).

² Sample preservation should be performed immediately upon sample collection. For composite chemical samples, each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4 °C until compositing and sample splitting is completed.

³ When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Transportation Bureau, Department of Transportation, has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO₃) in water solutions of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H₂SO₄) in water solutions of concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

⁴ Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analyses and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the samples for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term "analyze immediately" usually means within 15 minutes or less of sample collection.

⁵ Should only be used in the presence of residual chlorine.

¹⁶ Sufficient ice should be placed with the samples in the shipping container to ensure that ice is still present when samples arrive at the laboratory. However, even if ice is present when the samples arrive, it is necessary to immediately measure the temperature of the samples and confirm that the 4 °C temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature can not be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature.

¹⁷ Holding time is calculated from time of sample collection to the completion of centrifugation.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG10

Endangered and Threatened Wildlife and Plants; Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On May 22, 2001, the U.S. Fish and Wildlife Service adopted special regulations governing take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*). This notice proposes to amend those regulations, which provide exemption from take provisions under section 9 of the Endangered Species Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and perfected

water rights. This action would provide exemption from the section 9 take prohibitions for certain noxious weed control and ditch maintenance activities. We believe this action would provide further relief for landowners while ensuring conservation of the Preble's meadow jumping mouse.

DATES: Comments must be received on or before October 1, 2001 to receive consideration.

ADDRESSES: Comments concerning this proposal should be sent to LeRoy Carlson, Field Supervisor, Colorado Field Office, Ecological Services, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson at the above address or telephone 303/275–2370.

SUPPLEMENTARY INFORMATION:

Background

The final rule listing the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) as a threatened species under the Endangered Species Act (Act) of 1973 (16 U.S.C. 1531 *et seq.*) was published

in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 9 of the Act prohibits take of endangered wildlife. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act. We, the Fish and Wildlife Service, have issued regulations (50 CFR 17.31) that generally apply to threatened wildlife the prohibitions that section 9 of the Act establishes with respect to endangered wildlife. Our regulations for threatened wildlife also provide that a "special rule" under section 4(d) of the Act can be tailored for a particular threatened species. In that case, the general regulations for some section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions (and exemptions) necessary and appropriate to conserve that species.

On December 3, 1998, we proposed a section 4(d) rule (63 FR 66777) to define conditions under which certain activities that could result in incidental take of Preble's would be exempt from the section 9 take prohibitions. We held two public meetings, at which 129 people attended. We also received 614 comment letters. On May 22, 2001, we published a final rule (66 FR 28125) adopting certain portions of this proposal. Some comments received on the proposed rule suggested additional exemptions to promote conservation of the Preble's. After consideration of these comments, we are now proposing to amend the section 4(d) rule to add special provisions providing exemptions from section 9 prohibitions for certain weed control and ditch maintenance activities.

Provisions of the Proposed Rule

Term

We propose that the special regulations contained in this amendment be applicable for a period not to exceed 36 months from May 22, 2001, the date the final special rule became effective, in order to be consistent with the 36-month timeframe of the May 22, 2001, final section 4(d) rule, (*i.e.*, May 22, 2001, to May 22, 2004). We expect that, during this time period, comprehensive Habitat Conservation Plans for the Preble's will be developed and a recovery plan and other conservation efforts for the Preble's will be completed.

Additional Exemptions

We propose that the activities discussed below, which may result in incidental take of Preble's, would be exempted from the section 9 take prohibitions. "Incidental take" refers to taking that is otherwise prohibited, if such taking is incidental to, and not the purpose of, an otherwise lawful activity, and is consistent with exceptions provided in this special rule. Take not exempted by this proposed rule and not otherwise authorized under the Act may be referred to the appropriate authorities for civil enforcement or criminal prosecution.

a. *Noxious weed control activities*—Comments on the proposed section 4(d) rule of December 3, 1998, included a request to consider a rangewide exemption for control of noxious weeds. The comments stressed that laws in both Colorado and Wyoming require control of noxious weeds and that such control is compatible with Preble's conservation. We propose to amend the final 4(d) rule by including a rangewide exemption for noxious weed control,

with appropriate limitations designed to prevent eradication of entire plant communities in the course of controlling weeds. We believe that this exemption will facilitate conservation of the Preble's, because noxious weeds are displacing desirable natural vegetation on which the Preble's depends for survival.

b. *Ongoing ditch maintenance activities*—In the December 3, 1998, proposed rule, we stated that we considered adopting a rangewide exemption for periodic maintenance of existing water supply ditches, but chose not to do so because ditches support occupied and potential Preble's habitat. We received a large number of comments on this decision, many supporting a rangewide exemption and arguing that current maintenance practices have resulted in viable habitat for the Preble's.

In response to these comments, we have elected to propose a limited exemption for customary ditch maintenance activities that are designed to protect and enhance Preble's habitat. This proposed exemption builds upon the guidance provided in a January 31, 2001, "To Whom It May Concern Letter" (Letter), which was originally issued by us on March 11, 1999, and reissued on February 1, 2000, and January 31, 2001, and which was our initial response to these comments. While the Letter specifically describes activities throughout the range of the Preble's that we believe would not constitute take under section 9 of the Act, this proposed amendment to the 4(d) rule specifies certain activities that may result in take and grants exemption from such take.

Our intent is to allow normal and customary maintenance activities that will result only in temporary or limited disturbance of Preble's habitat, and that will result in only minimal take of Preble's. We intend for this exemption to apply only to manmade ditches and not to alteration of habitat along naturally occurring streams and watercourses.

We believe that a limited exemption is necessary, not only to provide relief to those who must maintain active ditches, but to assure that currently existing Preble's habitat along ditches remains functionally intact and viable. Should limited ditch maintenance not be allowed to continue, we face the possibility that these ditches would no longer be capable of conveying water and any habitat dependent on this water would degrade over time and eventually be lost. Maintenance of these ditches, as defined by this proposed rule, is

necessary to maintain future conservation options for the Preble's.

Therefore, we propose to exempt from the section 9 take prohibitions, limited maintenance activities on water conveyance ditches throughout the range of the Preble's. We believe that providing exemption from take for all ditch maintenance activities would be imprudent because—(a) some areas contain many ditches known or thought to be occupied by Preble's, (b) the stability of many local Preble's populations is uncertain, (c) the importance of ditch habitat to Preble's populations in many areas is not completely known, and (d) some occupied ditches may serve as important population refugia and travel corridors connecting populations.

We propose exemptions from the take prohibitions of section 9 of the Act for the following ditch maintenance activities, if the Best Management Practices described below are followed.

1. Normal and customary ditch maintenance activities that result in the annual loss of no more than ¼ mile of riparian shrub habitat within any one linear mile of ditch within any calendar year. Riparian shrub habitat is defined as vegetation dominated by plants that generally have more than one woody stem that measures less than 2 inches in diameter and are typically less than 10 feet in height at maturity, put on new growth each season, and have a bushy appearance. Examples of shrubs include, but are not limited to, willow, snowberry, wild plum, and alder.

2. Included in 1. above is the burning of ditches that results in the annual loss of no more than ¼ mile of riparian shrub habitat within any one linear mile of ditch within any calendar year and is conducted out-of-season (see "Best Management Practices").

Best Management Practices

Avoiding impacts to shrubs—Persons engaged in ditch maintenance activities must, to the maximum extent practicable, avoid impacts to shrub vegetation. For example, if it is possible to access the ditch for maintenance or repair activities from an area containing no shrubs, then damage to adjacent shrub vegetation must be avoided.

Disposition of debris—Persons engaged in placing or sidecasting silt and debris removed during ditch cleaning, vegetation or mulch from mowing/cutting, or other material from ditch maintenance must, to the maximum extent practicable, avoid shrub habitat, and at no time disturb more than ¼ mile of riparian shrub habitat within any one linear mile of ditch within any calendar year.

Timing of work—To the maximum extent practicable, all ditch maintenance will be carried out during the Preble's hibernation season, November through April. Any maintenance activities carried out during the Preble's active season, May through October, will be conducted during daylight hours only.

This exemption includes maintenance of roads used to access ditches and related infrastructure. These maintenance activities are limited to the historic footprint associated with the infrastructure and access roads. Examples of activities that are covered by the exemption include the following activities, each limited to the destruction of $\frac{1}{4}$ mile of riparian shrub habitat within one linear mile of ditch within any calendar year:

a. *Clearing trash, debris, vegetation, and silt by either physical, mechanical, chemical, or burning procedures*—Examples include mowing or cutting grasses and weeds, removal of silt and debris from the ditch below the high-water line, and control of shrubs that could result in ditch leakage.

b. *Reconstruction, reinforcement, repair, or replacement of existing infrastructure with components of substantially similar materials and design*—Examples include replacement of a damaged headgate, grading or filling areas susceptible to ditch failure, patchwork on a concrete ditch liner, or replacement of failed culvert with a new culvert of the same design and material.

The following maintenance activities are *not* exempted from the take provisions of section 9 of the Act:

a. *Replacement of existing infrastructure with components of substantially different materials and design*—such as replacing an existing gravel access road with a permanently paved road.

b. *Construction of new infrastructure or the movement of existing infrastructure to new locations*—Examples include redrilling a well in a new location, building a new access road, change in the location of a diversion structure or installation of new diversion works where none previously existed.

Comments

These additional exemptions are proposed in response to comments received during the public review on the December 3, 1998, 4(d) rule proposal. Water rights owners argued that lack of an exemption for periodic maintenance of existing ditches conflicted with the exemption for existing uses of perfected water rights, because ditch maintenance is an

intrinsic part of exercising a perfected water right. In addition, respondents noted that ditch maintenance is required by State law in both Wyoming and Colorado. Failure to adequately maintain water conveyance structures can result in fines, penalties, and liability for damage to property caused by ditch failures. Finally, respondents noted that prohibition of ditch maintenance could subsequently result in curtailment or cessation of water diversions. This situation in turn could result in forfeiture or abandonment of water rights under State law.

By exempting limited periodic maintenance activities on existing water supply ditches, this proposed amendment facilitates consistency among the rangewide exemptions. Where appropriate, permits can be issued under section 10 of the Act to allow incidental take of Preble's for activities not proposed to be exempted through this rule.

Some respondents believed that any exemption should include maintenance of water supply wells, water measurement devices, dams, other infrastructure, and associated roads.

The proposed amendment includes a limited exemption for maintenance of roads used to access existing ditches and related infrastructure provided that these activities do not exceed the maximum allowable loss of riparian shrub habitat in any calendar year. This exemption covers only maintenance and replacement of dams or infrastructure directly related to, and used in, the operation of ditches. An exemption also applies to activities covered in § 17.40 (l)(2)(v) of the final rule relating to *existing* uses of water associated with the exercise of perfected water rights. Any person contemplating dam or infrastructure work not covered by either of these two exemptions should consult with us when the maintenance procedure has the potential to take Preble's.

Several respondents requested rangewide exemptions for maintenance of other types of water-related infrastructure. The suggested exemptions included maintenance of sewer lines; wastewater treatment and conveyance facilities; and stormwater collection, conveyance, and treatment facilities.

We elected not to propose an exemption for these types of water-related infrastructure. These systems typically incorporate extensive pipeline systems that either cross Preble's habitat, or are installed along stream corridors that provide Preble's habitat. Activities to maintain this infrastructure can create large areas of surface

disturbance within or near Preble's habitat that could temporarily or permanently prevent occupation of habitat or migration from one Preble's habitat area to an adjacent Preble's habitat area.

Owners and operators of stormwater and wastewater systems will be required to consult with us when their maintenance activities have the potential to result in take of Preble's. We will work with wastewater and stormwater system owners and operators to develop maintenance procedures that minimize and mitigate take of Preble's when maintenance activities occur within Preble's habitat.

Comments Solicited

The Service invites comments on this proposed rule. Comments should be forwarded to the Field Supervisor, Colorado Field Office (see **ADDRESSES** section). While our normal practice is to solicit comments on proposed rules for 60 days, we believe a 30-day comment period is sufficient in this case because we have already received public comments regarding the substance of this proposed rule.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may e-mail the comments to Exsec@ios.doi.gov.

Required Determinations

A Record of Compliance was prepared for the May 22, 2001, final rule that exempted from the take prohibitions listed in section 9 of the Act, the four activities of rodent control, ongoing agricultural activities, landscaping, and

ongoing use of existing water rights. A Record of Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Amendment of the May 22, 2001, rule to include the two additional exemptions proposed herein, noxious weed control and ongoing ditch maintenance, does not add any significant elements to this Record of Compliance.

Without this proposed special rule, noxious weed control or ongoing ditch maintenance activities that may result in take of Preble's would not be exempted from the take prohibitions. This rule would allow certain affected landowners to engage in certain noxious weed control and ditch maintenance activities that may result in take of Preble's. Without this rule, anyone engaging in those activities would need to seek an authorization from us through an incidental take permit under section 10(a) or an incidental take statement under section 7(a)(2) of the Act. This process takes time and can involve an economic cost. The rule would allow these landowners to avoid the costs associated with abstaining from conducting these activities or with seeking an incidental take permit from us. These economic benefits, while important, do not rise to the level of "significant" under the following required determinations.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action. This rule would not have an annual economic impact of more than \$100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This rule would reduce the regulatory burden of the listing of the Preble's meadow jumping mouse under the Act as a threatened species by providing certain exemptions to the section 9 take prohibitions that currently apply throughout the Preble's range. These exemptions would reduce the economic costs of the listing; therefore, the economic effect of the rule would benefit landowners and the economy. This effect does not rise to the level of "significant" under Executive Order 12866.

This rule will not create inconsistencies with other Federal agencies' actions. Other Federal agencies would be mostly unaffected by this proposed rule.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule would allow landowners to continue otherwise prohibited activities without first obtaining individual authorization, the rule's impacts on affected landowners would be positive.

This rule will not raise novel legal or policy issues. We have previously promulgated section 4(d) rules for other species, including the special rule for the Preble's pertaining to rodent control, ongoing agricultural activities, landscaping, and activities associated with water rights. This rule would simply add exempted activities to that rule.

Regulatory Flexibility Act

We have determined that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. This rule would reduce the regulatory burden of the listing of the Preble's as a threatened species. Without this proposed rule and the final special rule, all of the take prohibitions listed in section 9 of the Act would apply throughout the range of the Preble's. This rule would allow certain affected landowners to engage in noxious weed control and ditch maintenance activities that may result in take of Preble's. This rule would enable these landowners to avoid the costs associated with abstaining from conducting these activities to avoid take of Preble's or seeking incidental take permits from us.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule would not have an annual effect on the economy of \$100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. As described above, this rule would reduce regulatory burdens on affected entities, who are mostly agricultural producers.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. By reducing the regulatory burden placed on affected landowners resulting from the listing of the Preble's as a threatened species, this rule would reduce the likelihood of potential takings. Affected landowners would have more freedom to pursue activities (i.e., noxious weed control and ditch maintenance) that may result in taking of Preble's without first obtaining individual authorization.

Federalism

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Currently, the State of Colorado, the Service, and various local governmental entities in Colorado and Wyoming are working together to develop plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of Habitat Conservation Plans that will provide the foundation upon which to build a lasting, effective, and efficient conservation program for the Preble's. Because we anticipate beneficial impacts of such collaborative conservation efforts, we are proposing that this rule would be applicable only during the 36-month timeframe of the final special rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

We have examined this proposed rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The National Environmental Policy Act analysis has been conducted. An Environmental Assessment was prepared for the final special rule. The additional exemptions covered in this proposed rule were included in this analysis.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes. We have determined that, because no Indian trust resources occur within the range of the Preble's, this rule would have no effects on federally recognized Indian Tribes.

Executive Order 13211

We have evaluated this proposed rule in accordance with E.O. 13211 and have determined that this rule would have no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend 50 CFR part 17, 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 § 17.40 by adding paragraph (l)(2)(vi) and (l)(2)(vii) to read as follows:

§ 17.40 Special rules—mammals.

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(l) Preble's meadow jumping mouse (*Zapus hudsonius preblei*).

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(2) * * *

(vi) *Noxious weed control.* Preble's meadow jumping mice may be taken incidental to noxious weed control as long as the weed control:

(A) Is implemented pursuant to the undesirable plant management plan adopted by the applicable county or municipal government;

(B) Is implemented in consultation with the weed control officer designated by the applicable county or municipal government;

(C) Utilizes the best available methods of integrated management as prescribed in the local undesirable plant management plan; and

(D) Follows herbicide application guidelines as prescribed by herbicide manufacturers and Federal law.

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

(A) Result in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch, including burning of ditches that results in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch.

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

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

(1) Persons engaged in ditch maintenance activities must avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if accessing the ditch for maintenance or repair activities from an area containing no shrubs is not possible, then damage to adjacent shrub vegetation must be avoided.

(2) Persons engaged in placement or sidecasting of silt and debris removed during ditch cleaning, vegetation or mulch from mowing or cutting, and other material from ditch maintenance must, to the maximum extent practicable, avoid shrub habitat and at no time disturb more than ¼ mile of riparian shrub habitat per linear mile of ditch within any calendar year.

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

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

(E) Ditch maintenance activities that would result in permanent or long-term loss of potential habitat, including replacement of existing infrastructure with components of substantially different materials and design, such as replacement of open ditches with pipeline or concrete-lined ditches, replacement of an existing gravel access road with a permanently paved road, or

replacement of an earthen diversion structure with a rip-rap and concrete structure, and construction of new infrastructure or the movement of existing infrastructure to new locations, such as realignment of a ditch, building a new access road, or installation of new diversion works where none previously existed, would not be considered normal and customary.

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Dated: August 8, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–21680 Filed 8–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 660**

[I.D. 080601E]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit (EFP); request for comments.

SUMMARY: NMFS announces receipt of an application for an EFP from the California Department of Fish and Game. The EFP application applies to vessels with valid California state delivery permits fishing for chilipepper rockfish with small footrope trawl gear south of 40°10' N. lat. If awarded, the EFP would allow federally managed groundfish species to be landed in excess of cumulative trip limits and a portion of the chilipepper rockfish caught to be sold for profit, providing the vessels carry state-sponsored observers. Observers would collect data that are otherwise not available. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing data that can be used to enhance management of the groundfish fishery.

DATES: Comments must be received by October 1, 2001.

ADDRESSES: Copies of the EFP application are available from Becky Renko Northwest Region, NMFS, 7600