FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 96–45; DA 98–1581]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies the application of the Commission's ''lowest corresponding price'' requirement set forth in the *Universal Service Order,* 62 FR 32862 (June 17, 1997). The Commission clarifies that this requirement was not intended to preempt state law, and does not obligate carriers to offer rates that would violate state laws.

EFFECTIVE DATE: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Kaylene Shannon, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on August 7, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554. This document is also available from the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

I. Background

1. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission provided that schools and libraries should be eligible to apply for discounted telecommunications services, Internet access, and internal connections, subject to certain limitations and conditions. The *Universal Service Order* concluded that, to ensure that their lack of experience in dealing with telecommunications providers does not prevent schools and libraries from receiving competitive prices, service providers must offer services to eligible schools and libraries at prices no higher than the lowest price the provider charges to similarly situated non-residential customers for similar services. The Commission clarified that, for purposes of determining the lowest corresponding price, similar services would include those provided under contract as well as those provided under tariff. The Commission established a rebuttable presumption that rates offered within the previous three years are compensatory.

2. In the *Fourth Reconsideration,* 63 FR 2093 (January 13, 1998), the Commission concluded that earlier versions of tariffs that have been modified should be included in the comparable rates upon which the lowest corresponding rate is determined, ''[u]nless a regulatory agency has found that the tariffed rate should be changed, and affirmatively ordered such change, or absent a showing that the rate is not compensatory.'' A question has been raised whether the lowest corresponding rate can be based on rates not lawfully offered under state law.

II. Discussion

3. Although the Commission disagreed with the general assertion that the lowest corresponding price should not reflect expired tariffs, the Commission did not expressly preempt state laws governing what rates may lawfully be offered to eligible schools and libraries. In the absence of such an expressly stated intention to preempt, we conclude that the Commission did not intend to require carriers to base the lowest corresponding rate on rates that may not lawfully be offered under state law. Thus, we interpret the *Fourth Reconsideration* as requiring only that rates that may be offered consistent with state law must be made available as the lowest corresponding price.

III. Ordering Clause

4. Accordingly, it is ordered that, pursuant to section 4(i) and section 254 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, the lowest corresponding price requirement is clarified.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communication Commission.

Kathryn C. Brown,

Chief, Common Carrier Bureau.

[FR Doc. 98–24276 Filed 9–10–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB10

Captive-bred Wildlife Regulation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The final rule amends the definition of ''harass'' in § 17.3 applied to captive wildlife to exclude generally accepted animal husbandry practices, breeding procedures, and provisions of veterinary care that are not likely to result in injury to the animal. The final rule deletes the requirement to obtain a CBW registration for eight species of pheasants, parakeets of the species *Neophema splendida* and *N. pulchella,* the Laysan duck, and the ''generic'' or inter-subspecific crossed tiger. This final rule will be followed in the future by a new proposed rule that will set forth proposed criteria for addition to, or deletion from, the list of taxa exempted from registration requirements, and will further consider the subject of education.

DATES: This rule is effective October 13, 1998.

ADDRESSES: The complete file for this rule is available for inspection by appointment at the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, [see **ADDRESSES** section] telephone 703/358–2093; fax 703/358–2281.

SUPPLEMENTARY INFORMATION: On January 7, 1992, the Service initiated a review of the Captive-bred Wildlife (CBW) regulation (50 CFR 17.21(g)). On June 11, 1993, the Service followed with a proposed rule (58 FR 32632) that included several proposed changes to the CBW regulation, including elimination of CBW registrations for several species that are present in the United States in large numbers and/or that are genetically unsuitable for scientifically based breeding programs; amendment of the definition of ''harass'' in 50 CFR 17.3 to exclude normal animal husbandry practices such as humane and healthful care when applied to captive wildlife; and deletion of education from the definition of ''enhance'' in § 17.3. On December 27, 1993, the Service published a final rule (58 FR 68323) that eliminated public education through exhibition of living

wildlife as the sole justification for issuance of a CBW registration. On the same date, the Service published a notice (58 FR 68383) that reopened the comment period on the balance of the issues in the proposed rule, including the larger question of the value education provides to the conservation of non-native species in the wild as it applies to endangered and threatened species permits issued under §§ 17.22 and 17.32.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and implementing regulations prohibit any person subject to the jurisdiction of the United States from conducting certain activities with endangered or threatened species of fish, wildlife, or plants. These activities include import, export, take, and interstate or foreign commerce. The Secretary of the Interior (or the Secretary of Commerce in the case of certain marine species) may permit such activities, under such terms and conditions as he/she will prescribe, for scientific purposes or to enhance the propagation or survival of the affected species, provided these activities are consistent with the purposes of the Act. The Secretary of the Interior's authority to administer permit matters relating to endangered and threatened species generally has been delegated through the Director of the Fish and Wildlife Service to the Office of Management Authority (OMA).

Since 1976, the Service has been striving to achieve an appropriate degree of control over prohibited activities involving living wildlife of non-native species born in captivity in the United States.

In 1978, the Service announced a review of regulations on captive-bred wildlife (43 FR 16144, April 14, 1978). The notice reiterated the Service's philosophy on its approach to captive versus wild populations.

> The Service considers the purpose of the Act to be best served by conserving species in the wild along with their ecosystems. Populations of species in captivity are, in large degree, removed from their natural ecosystems and have a role in survival of the species only to the extent that they maintain genetic integrity and offer the potential of restocking natural ecosystems where the species has become depleted or no longer occurs.

Following an extensive public review in 1978 and 1979, the Service published a final rule (44 FR 54002, September 17, 1979) that established the Captive-bred Wildlife (CBW) registration system. The final rule amended regulations in 50 CFR 17.21 by adding § 17.21(g), which granted general, conditional permission to take; export or re-import; deliver, receive, carry, transport, or ship in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any non-native endangered or threatened wildlife that is bred in captivity in the United States. In other words, the regulation itself contains the permit. For persons or institutions to operate under that permit, certain conditions must be met, including that the person or institution must first register with the Service. Authorization for the Service to collect information from persons wanting to register was submitted and approved by the Office of Management and Budget under the clearance number of 1018–0093.

Unless an exception is made under § 17.21(g)(5), the CBW system applies only to species that do not include any part of the United States (as defined in 50 CFR part 10) in their natural geographic distribution. Additionally, the individual specimens must have been born in captivity in the United States. The registration authorizes interstate purchase and sale only between entities that each hold a registration for living wildlife of the taxon concerned. Interstate or foreign commere, in the course of commercial activity, with respect to non-living wildlife is not authorized under a CBW registration. To conduct such activities, separate permits must be applied for under the appropriate regulations for endangered or threatened wildlife at 50 CFR 17.22 or 50 CFR 17.32.

The 1979 final rule also amended the definition of ''enhance the propagation or survival'' of wildlife in captivity to include a wide range of normal animal husbandry practices used to maintain self-sustaining and genetically viable stocks of wildlife in captivity. Specifically included in those practices were ''culling'' and ''euthanasia''. Other aspects of the definition of ''enhance'' that were codified in 1979 and are still used today include accumulation and holding and transfer of animals not immediately needed or suitable for propagative or scientific purposes (50 CFR 17.3).

The above definition is found in subpart A, the General Provisions of part 17. Therefore, it applies not only to CBW registrations, but to all endangered and threatened species permits for captive wildlife issued under §§ 17.22 and 17.32.

After 12 years' experience with the system, the Service began another review with a notice of intent to propose a rule, published on January 7, 1992 (57 FR 548). The notice discussed problems the Service was experiencing with the system and offered for discussion three options intended to show the range of possible actions that might be taken. These ranged from no action (no change in the system) to complete elimination of the CBW registration process. The notice also questioned whether the term ''harass'' as defined in § 17.3 applied to captive-born wildlife, and whether education of the American public through exhibition of living, non-native wildlife actually accomplished measurable enhancement of the survival of the affected species in the wild. Three options for dealing with education were presented, ranging from no change in the existing definition to deleting education as a justification for permits and CBW registrations.

It should be noted here that while the preamble to the proposed rule referred to ''captive-born wildlife'' in the context of the discussion of the proposed amendment of the term ''harass'', the proposed rulemaking language refers to ''captive wildlife''. This was, and is, the Service's intent. Therefore, the rest of this discussion is in terms of ''captive wildlife'' to make it agree with both proposed and final rulemaking language.

Public comments and suggestions were solicited. Written responses were received from 942 individuals, institutions, and organizations.

After review of comments received, the Service published a proposed rule on June 11, 1993 (58 FR 32632), that proposed several changes to § 17.21(g): Elimination of registration for several species that are present in the United States in large numbers and/or that are genetically unsuitable for scientifically based breeding programs; restriction of eligibility for CBW registrations to those entities that are participants in an approved responsible cooperative breeding program for the taxon concerned; amendment to the definition of ''harass'' in § 17.3 to exclude normal animal husbandry practices such as humane and healthful care when applied to captive wildlife; and, the conditional deletion of education from the definition of ''enhance'' in § 17.3.

On December 27, 1993, the Service published a final rule (58 FR 68323) that was limited to the narrow issue of education as it relates to the CBW system. That rule eliminated public education through exhibition of living wildlife as the sole justification for issuance of a CBW registration under § 17.21(g). That decision was based on the Service's belief that the scope of the CBW system should be revised to relate more closely to its original intent, *i.e.,* the encouragement of responsible breeding that is specifically designed to help conserve the species involved. On the same date, the Service published a

notice (58 FR 68383) that reopened the comment period on the balance of the issues in the proposed rule, including the larger question of the value that education provides to the conservation of non-native species in the wild as it applies to endangered and threatened species permits issued under §§ 17.22 and 17.32.

Information and Comments

A total of 1,269 sets of written information and comments were received from individuals, institutions, and organizations in response to the proposed rule and during the re-opened comment period. Some commenters responded both times.

Of comments received, some 450 were form letters, patterned responses, or multiple signatures on letters or petitions. Opinions expressed on specific issues are summarized as follows (a number of letters offered comments on more than one issue):

Retain education as part of the definition of enhancement of survival of the species	1,165
Retain education, but establish guidelines	29
Delete education	10
Require CBW registrants to participate in a responsible cooperative breeding program	17
Do not require participation in a responsible cooperative breeding program	77
Change definition of ''harass'' to exclude normal animal husbandry practices for captive wildlife	18
Do not change definition of ''harass''	3
Replace CBW registration with rebuttable presumption	2
Do not use rebuttable presumption	37
Completely deregulate captive-bred wildlife	36
Deregulate interstate commerce in captive-bred wildlife	65
Exempt certain species from registration requirements as proposed	26
Exempt some species but not all of the proposed taxa	13
Exempt no species	2

Because the Service has decided to reformulate its proposal concerning deletion of education from the definition of ''enhancement'', the discussion below deals only with comments on other aspects of the proposed rule. Comments concerning education are being considered and will be the subject of a **Federal Register** notice at a later date.

Comments Concerning Definitions

Comment: Commenters generally favored changing the definition of ''harass'' to exclude normal animal husbandry practices for captive wildlife. Some felt that terms such as ''normal'', ''adequate'', ''safe'', and ''healthful'' are vague, subjective, and amenable to widely varying interpretation. Various suggestions for rewording the definition were offered.

Response: The Service agrees and believes that the revised definition in this final rule reduces subjectivity to the extent possible.

Comment: Some commenters objected to a change in the definition of ''harass''. Some believed that the change created a broad exception to the prohibition against harassment. One commenter suggested that any concerns over the definition be addressed through specific permit restrictions for individual permittees and registrants, thus tailoring protection to the particular affected species.

Response: The Service believes this approach could result in the need for preparing husbandry manuals for each species and would not result in a commensurate benefit to the species. To evaluate facilities and care provided by applicants, the Service will continue to consult with experts such as the Department of Agriculture's Animal and Plant Health Inspection Service, which is charged with administering the Animal Welfare Act, and knowledgeable persons in the zoo and aquarium communities and the private sector, as needed.

Comment: Several commenters recommended amending the definition of ''take'' to apply only to animals from the wild. This is based on the concern that holding animals in captivity or transferring them for breeding opportunities could be construed as a ''taking''.

Response: ''Take'' was defined by Congress in Section 3 of the Act as * * * ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect * * *'' endangered or threatened wildlife, whether wild or captive. Therefore, the definition can be clarified by further defining its component terms, but the statutory term cannot be changed administratively.

The purpose of amending the Service's definition of ''harass'' is to exclude proper animal husbandry practices that are not likely to result in injury from the prohibition against ''take''. Since captive animals can be subjected to improper husbandry as well as to harm and other taking activities, the Service considers it prudent to maintain such protections, consistent with Congressional intent.

Comment: One comment was that the Service is not authorized to treat members of a particular species differently based on whether the specimen is wild or held in captivity; the Act's protections are afforded to whole species of endangered and threatened animals and their habitats.

Response: It is true that the Act applies to all specimens that comprise a ''species'' (as defined in the Act) that has been listed as endangered or threatened, and in general does not distinguish between wild and captive specimens thereof. However, the definition of ''take'' in the Act clearly applies to individual specimens or groups of specimens, and the captive or non-captive status of a particular specimen is a significant factor in determining whether particular actions would ''harass'' that specimen or whether such actions would ''enhance the propagation or survival'' of the species. The Service believes that ample authority is provided by the Act to adopt the regulatory amendments set out in this final rule as a proper interpretation of the statutory provisions of the Act.

To decide otherwise would place those persons holding captive specimens of a listed species in an untenable position. If providing for the maintenance and veterinary care of a live animal were considered to be ''harassment'', those persons holding such specimens in captivity would be forced to obtain a permit or give up possession since any *failure* to provide proper care and maintenance would be an unlawful ''taking''. Since Congress chose not to prohibit the mere possession of lawfully-taken listed species in Section 9(a)(1) of the Act, the Service believes that congressional intent supports the proposition that measures necessary for the proper care and maintenance of listed wildlife in captivity do not constitute ''harassment'' or ''taking''.

Comments Concerning CBW Questions

Comment: Responses showed overwhelming opposition to a rebuttable presumption, usually based on the argument that it would in effect mean that a person was considered guilty until proven innocent.

Response: The Service does not agree with this assessment. As discussed in detail in the preamble to the proposed rule a rebuttable presumption is not a presumption of guilt. Section 10(g) of the Act imposes a burden of proof on any person claiming the benefit of an exemption or permit under the Act. Thus, the final regulation requires persons claiming benefit of exception at § 17.21(g) to maintain records and make them available for inspection at reasonable hours by law enforcement

officials as prescribed by 50 CFR 13.46 and 13.47 to document legal activities.

Comment: A few commenters favored completely deregulating captive-bred wildlife. However, most commenters thought the Service should deregulate and exempt only certain non-native species from the CBW registration requirements.

Response: The Service agrees that it is best, at this time, to delete the registration requirement for species that are known to be in the United States in large numbers and breeding well, and/or are genetically unsuitable for scientific breeding programs.

Comment: Commenters generally favored efforts by the Service to lessen the regulatory and paperwork requirements for interstate breeding transactions with captive-bred wildlife. Many believed that the current regulations for interstate commerce were the cause of inbreeding and hybridization of certain species within their State. Some stated that a change to the regulations would increase interstate breeding transactions resulting in better management of captive populations.

Response: The Service agrees that provisions of the final rule will facilitate interstate breeding transactions with exempted species, and thereby, increase successful breeding and maintenance of these endangered and threatened species.

Comment: Seventy-seven commenters opposed and seventeen favored the proposal to restrict CBW registrations to those entities that participate in an organized breeding program. Most of those opposed were concerned that currently there are very few organized programs other than the Species Survival Plans (SSP) of the American Zoo and Aquarium Association (AZA). As private breeders or non-AZA member institutions, they might have difficulty gaining approval to participate in an SSP. Another objection was that SSP's do not exist for most species and that it would be unrealistic to estimate more than 80–100 programs by the year 2000. Some commented to the effect that the proposed rule would create a monopoly on the part of the entity that would approve programs and would mandate a bureaucratic nightmare. Another concern was the cost and difficulty of developing and maintaining new breeding programs as opposed to participating in those already in place.

One commenter noted that the proposal doesn't meet Vice President Gore's goal of reducing regulatory burden and unnecessary paperwork; it actually creates a new layer of regulatory oversight and adds potential for litigation by those who disagree with the Service's decisions regarding those programs or participants that do or do not qualify. Another comment was that the Service couldn't, in effect, deny a permit to one who was refused participation in a breeding program without allowing the exercise of the appeal process; this would constitute abdication of the Service's responsibility to a private group or institution.

Some commenters also questioned what would happen if there were two applications for approval of a program for the same species; some said there should only be a single program for each species/subspecies, while others argued that more than one program should be allowed. Finally, it was pointed out that the goal should not be to develop a single well-managed genetically diverse and self-sustaining population. A species can be managed for either retention of alleles or of heterozygosity, and possibly both management schemes could be correct.

Response: While the Service believes that the concept embodied in the proposal is theoretically sound, the proposal has been deleted from this final rule. The practical, socio-economic, and biological problems inherent in attempting to manage such an effort in an effective and equitable manner could result in a significant increase in workload and paperwork. There is a potential for agency decisions to be perceived as unfair or biologically improper. Such a situation might give rise to frequent appeals and litigation, that would add to the burden on the public and the Service while contributing little to management of captive-bred wildlife.

Comment: The proposal to exempt certain species from CBW registration requirements elicited 142 comments, of which 101 recommended either complete deregulation of captive-bred wildlife or at least of interstate commerce in such animals. The proposal was supported by 26 commenters and opposed by 2. Thirteen other commenters favored or opposed some, but not all of the taxa proposed for exemption. The majority of the latter were concerned about exempting generic tigers because it might encourage uncontrolled breeding and further hybridization for commercial sales and exploitation. A related concern was that purebred tigers might be ''laundered'' as generic in order to avoid regulation, thus losing potentially valuable breeders from the SSP's for the various subspecies.

Response: The Service believes that the breeding of generic tigers has not been affected by the CBW system. Those who hold CBW registrations can legally purchase and sell generic tigers in interstate commerce. Non-commercial interstate transfers (e.g., breeding loans, donations) are not prohibited. As pointed out in the notice of intent to propose rule (57 FR 548), generic tigers can be found in most of the 50 states, and intrastate commerce is not regulated. The Service does not believe that ''laundering'' of purebred tigers as generic animals in order to avoid regulation would be widespread, since so doing would decrease the value of the animals in most cases. Further, those who would do this would probably not be likely participants in SSP's for purebred tiger subspecies.

Comment: Two commenters who generally supported the exemption for pheasants argued that several species are not present in the United States in large numbers (if at all), and therefore those species should continue to be regulated under the CBW system. These species are: Edwards, cheer, Swinhoe's, Mikado, imperial, and white eared pheasants; Sclater's and Chinese monals; and Blyth's, Cabot's, and western tragopans.

Response: Based on the 1993 survey conducted by the American Pheasant and Waterfowl Society (482 respondents, or the equivalent of nearly 25% of APWS membership), several of these species do have low captive populations: Imperial pheasant—0; Sclater's monal—0; western tragopan—25; Blyth's tragopan—32; and Cabot's tragopan—75. Therefore, these species will not be exempted from the CBW registration requirements at this time. Of the other 10 species to be exempted, the sample shows numbers of 222 or more. As stated in the proposed rule, it is impossible to project total pheasant populations in the United States with any certainty due to possible sampling bias, plus the fact that there is probably a significant number of pheasant breeders who do not belong to the APWS.

Comment: One objection to exemption was received for each of the following: Laysan duck, white-winged wood duck, and *Neophema.*

Response: The APWS survey indicates healthy captive populations of the Laysan duck (445) and the white-winged wood duck (278); therefore, they will be exempted from CBW registration requirements.

The 1991 Psittacine Captive Breeding Survey, done by World Wildlife Fund in collaboration with the American Federation of Aviculture, concludes that serious thought should be given to downlisting or delisting the captive stocks of *Neophema splendida* and *N.*

pulchella because the survival of these species in captivity appears assured if inbreeding can be minimized. Both 1990 and 1991 censuses showed that these species are well represented and are breeding well in captivity. In 1991, 114 pairs of *N. splendida* hatched 337 eggs, and 61 pairs of *N. pulchella* hatched 266 eggs. Thus, these species are exempted by this final rule.

Comment: No criteria were provided for the addition or deletion of taxa from the list exempted from the CBW registration requirement.

Response: The Service believes that a case-by-case determination of eligibility, consistent with the provisions of the Act and the public notice and comment procedure, is adequate for the small number of species that will be considered for exemptions. In the near future, the Service will propose a new rule that sets criteria for adding or deleting taxa from the list exempted from the CBW registration requirements. The Service will solicit comments from the public on the proposed rule to ensure that the proposal is as accurate and effective as possible.

Comment: The proposed exemptions from registration requirements violate the notice, comment, and finding provisions of sections 10(c) and (d) of the Act.

Response: The proposed exemptions make no change in existing CBW procedures concerning notice and review. Section 17.21(g)(1) contains a general permit issued to ''any person''. The question involved here is whether entities (permittees) holding the exempted taxa would be required to register with the Service. Thus, the new exemptions represent changes to the terms of the existing general permit, and public notice and comment procedures have been observed in developing those changes.

Comment: The proposed exemptions improperly do away with the Act's requirement that listed species be held for scientific purposes or to enhance the propagation or survival of the species.

Response: The proposed rule did not specify that the purpose of activities with species from taxa where the holder is exempted from registrating must be for the enhancement of propagation or survival of the species. This final rule now includes such language in the regulation at § 17.21(g)(6)(i). Captive U.S. stocks of taxa to be exempted from the CBW registration requirement are characterized by large numbers of specimens and successful breeding efforts; therefore, their survival in captivity appears assured. The fact that these stocks are sufficient to satisfy demand is evidenced by little or no demand for additional specimens from the wild. Computerized permit records show that in the 3-year period 1991 to 1993, there were no imports of wild specimens of any of these taxa (for the pheasants, there have been no requests for such imports since 1986). Importation of wild-caught specimens of these taxa for breeding purposes could be approved only in unusual circumstances, including a definitive showing of need for new bloodlines that could only be satisfied by wild animals. A determination would have to be made that the status of the wild population would safely allow limited taking. Preference would be given to imports of captive-born specimens of the exempted taxa. The importation of either wild-caught specimens or specimens born in captivity outside the United States would continue to require permits under section 10 of the Act as well as the Convention on International Trade in Endangered Species.

Comment: In the final rule published on December 27, 1993 (58 FR 68323), § 17.21(g)(1) was amended to state that the principal purpose of activities with animals regulated under the CBW system must be to facilitate captive breeding. Section 17.21(g)(1)(ii) requires that the purpose be to enhance the propagation or survival of the species. This double requirement is confusing and apparently redundant.

Response: The Service agrees. The purpose of the wording added to § 17.21(g)(1) was to indicate that public education could not be used as the sole basis for justifying issuance of a CBW registration for species that do not qualify for the exempted taxa list. The text of this final rule has been revised to clarify this issue.

Comment: An objection was made that the proposed rule would require entities such as circuses to show that permanent exports of generic tigers would be for the purpose of enhancement of propagation or survival of the species in accordance with § 17.21(g)(4). This does not make sense, since the Service has concluded that inter-subspecific crossed or generic tigers have no value in terms of preserving the species through propagation because they no longer have the same genetic makeup as wild populations.

Response: The Service agrees that generic or inter-subspecific crossed tigers cannot be used for enhancement of propagation of the species. However, they can be used in a manner that should enhance survival of the species in the wild. Examples include exhibition in a manner designed to educate the public about the ecological role and conservation needs of the species and satisfaction of demand for tigers so that wild specimens or captive purebred subspecies are not used.

Export of any of the exempted taxa will continue to require appropriate CITES documentation under 50 CFR part 23. The information required by § 17.21(g)(4) can be submitted with the CITES application, as is current practice.

Discussion of Final Rule

This final rule revises existing §§ 17.3 and 17.21(g). These revisions and their effects are discussed below:

1. ''Harass'' under the definition of ''take in § 17.3 is an act or omission that creates the likelihood of injury by annoying wildlife to such an extent as to significantly disrupt normal behavior patterns. The applicability of this concept to captive-held animals has been unclear, since human activities, including normal husbandry practices, provided in caring for captive-held wildlife in all probability disrupt behavior patterns.

In light of this, the definition of ''harass'' in 50 CFR 17.3 is modified to exclude normal animal husbandry practices that are not likely to result in injury such as humane and healthful care when applied to captive wildlife. While no permit is required to possess lawfully acquired listed wildlife, a person cannot possess wildlife without doing something to it that might be construed as harassment under a literal interpretation of the definition in use since 1979, *e.g.*, keep it in confinement, provide veterinary care, etc. Under this scenario, a person who legally possessed wildlife without a permit could be considered in violation of the prohibition against harassment unless they obtained a specific permit that authorized them to conduct normal animal husbandry activities. Had Congress intended this result, the prohibition on possession in section 9 of the Act would not have been limited to endangered species taken in violation of the Act.

However, maintaining animals in inadequate, unsafe or unsanitary conditions, physical mistreatment, and the like constitute harassment because such conditions might create the likelihood of injury or sickness. The Act continues to afford protection to listed species that are not being treated in a humane manner.

2. Ten species of pheasants (family Phasianidae), parakeets of the species *Neophema splendida* and *N. pulchella*, the Laysan duck, the white-winged wood duck, and the ''generic'' tiger are exempted from the CBW registration

requirements of § 17.21(g)(2), because their survival in captivity appears assured. All of these taxa are present in the United States in large numbers and/or are genetically unsuitable for scientifically-based breeding programs (as is the case with the generic tiger). The four purebred subspecies of tiger in captivity in the United States are the subject of breeding programs under SSP's and will continue to require CBW registrations.

Current holders of CBW registrations for the above taxa (listed in § 17.21(g)(6)) will no longer need them. Applications for new or renewed registrations for these taxa that are pending before the Service on the effective date of this rule will not be processed.

No written annual reports will be required of holders of these exempted taxa. However, record keeping and inspection requirements of 50 CFR 13.46 and 13.47 are still in place for persons holding the exempted taxa or other captive-bred species requiring a CBW registration. It is estimated that the paperwork burden of the CBW system on the Service and the public will be reduced.

The Service believes that this relaxation of the registration requirement in § 17.21(g) will not operate to the disadvantage of the species in the wild; further, it will be consistent with the conservation of the species because domestic demand has been, and will continue to be, satisfied by captive-born wildlife. The import of live wild-caught specimens, including those belonging to the exempted taxa, would not be authorized unless evidence showed a need for new bloodlines that could not be satisfied by internal exchange or that foreign-bred specimens were unavailable. Furthermore, the Service would have to determine that the wild populations could sustain limited taking.

Regulatory Analysis

This rulemaking has been reviewed by the Office of Management and Budget review under Executive Order 12866. Furthermore, the Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities (zoos, circuses, independent breeders) under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will beneficially affect about 400 small entities currently registered under the CBW system. The economic effects are minor since they represent less than $20,000 and thus, the total effect on such small entities will be minimal. There will be a regulatory reduction for those entities holding species to be exempted from registration by this rule. This rule may also provide a reduction of risk to holders of captive wildlife because of the amended definition of ''harass''.

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act and will not negatively effect the economy, consumer costs, or U.S. based-enterprises. The Service recognizes that the rule will effect a substantial number of small entities, such as zoo, circuses, or independent breeders, but in a beneficial manner.

The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on private entities, or local or State governments.

The Department has determined that these final regulations meet the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 the Service has determined that the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment.

The Service has determined that the rule has no potential takings of private property implications as defined in Executive Order 12630.

Persons registering with the Service for a captive-bred wildlife registration requires the collection of information, and the Office of Management and Budget has approved the collection of information contained in this rule under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0093 with an expiration date of February 28, 20001. The application information submitted by a person for a captive-bred wildlife registration is used by the Service to make decisions in accordance with wildlife regulations on the issuance, suspension, revocation or denial of permits. The Service has reviewed all permit information collection requirements and ensured the burden imposed on the public is the lowest possible. It should be noted that the main intent of this rule is to lower the number of persons needing a registration.

The Service has reviewed this rule under Executive Order 12372 and determined that intergovernmental consultation is unnessary.

The Service has determined that these regulations are categorically excluded from further National Environmental Policy Act (NEPA) requirements. Part 516 of the Departmental Manual, Chapter 6, Appendix I, section 1.4(A)(1) categorically excludes changes or amendments to an approved action when such changes have no potential for causing substantial environmental impact.

The Service has evaluated possible effects on Federally recognized Tribes and determined that there will be no adverse effects to any Tribe. Any individual tribal member possessing a CBW registration will receive the same beneficial regulatory and economic relief as other registrants who hold wildlife species that will be exempted by this rule.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

For the reasons set forth in the preamble, title 50, chapter I, subchapter B, part 17, subpart C is amended 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.

Subpart A—Introduction and General Provisions

2. The definition of ''Harass'' in § 17.3 is revised to read as follows:

§ 17.3 Definitions.

* * * * *

Harass in the definition of ''take'' in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. This definition, when applied to captive wildlife, does not include generally accepted:

(1) Animal husbandry practices that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act,

(2) Breeding procedures, or

(3) Provisions of veterinary care for confining, tranquilizing, or

anesthetizing, when such practices, procedures, or provisions are not likely to to result in injury to the wildlife.

* * * * *

Subpart C—Endangered Wildlife

3. Section 17.21(g) is revised to read as follows:

§ 17.21 Prohibitions.

* * * * *

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided either that the wildlife is of a taxon listed in paragraph (g)(6) of this section, or that the following conditions are met:

(i) The wildlife is of a species having a natural geographic distribution not including any part of the United States, or the wildlife is of a species that the Director has determined to be eligible in accordance with paragraph (g)(5) of this section;

(ii) The purpose of such activity is to enhance the propagation or survival of the affected species;

(iii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iv) Each specimen of wildlife to be re-imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export from the United States; and

(v) Any person subject to the jurisdiction of the United States who engages in any of the activities authorized by this paragraph does so in accordance with paragraphs (g) (2), (3) and (4) of this section, and with all other applicable regulations in this Subchapter B.

(2) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by this paragraph must first register with the Service (Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia 22203). Requests for registration must be submitted on an official application form (Form 3–200-41) provided by the Service, and must include the following information:

(i) The types of wildlife sought to be covered by the registration, identified by common and scientific name to the taxonomic level of family, genus or species;

(ii) A description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, and when appropriate, in conducting research directly related to maintaining and propagating such wildlife;

(iii) Photograph(s) or other evidence clearly depicting the facilities where such wildlife will be maintained; and

(iv) a copy of the applicant's license or registration, if any, under the animal welfare regulations of the U.S. Department of Agriculture (9 CFR part 2).

(3) Upon receiving a complete application, the Director will decide whether or not the registration will be approved. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section. Each person so registered must maintain accurate written records of activities conducted under the registration, and allow reasonable access to Service agents for inspection purposes as set forth in §§ 13.46 and 13.47. Each person registered must submit to the Director an individual written annual report of activities, including all births, deaths and transfers of any type.

(4) Any person subject to the jurisdiction of the United States seeking to export or conduct foreign commerce in captive-bred endangered wildlife that will not remain under the care of that person must first obtain approval by providing written evidence to satisfy the Director that the proposed recipient of the wildlife has expertise, facilities or other resources adequate to enhance the propagation or survival of such wildlife and that the proposed recipient will use such wildlife for purposes of enhancing the propagation or survival of the affected species.

(5)(i) The Director will use the following criteria to determine if wildlife of any species having a natural geographic distribution that includes any part of the United States is eligible for the provisions of this paragraph:

(A) Whether there is a low demand for taking of the species from wild populations, either because of the success of captive breeding or because of other reasons, and

(B) Whether the wild populations of the species are effectively protected from unauthorized taking as a result of the inaccessibility of their habitat to humans or as a result of the effectiveness of law enforcement.

(ii) The Director will follow the procedures set forth in the Act and in the regulations thereunder with respect to petitions and notification of the public and governors of affected States when determining the eligibility of species for purposes of this paragraph.

(iii) In accordance with the criteria in paragraph (g)(5)(i) of this section, the Director has determined the following species to be eligible for the provisions of this paragraph:

Laysan duck (*Anas laysanensis*).

(6) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by paragraph (g)(1) of this section may do so without first registering with the Service with respect to the bar-tailed pheasant (*Syrmaticus humiae*), Elliot's pheasant (*S. ellioti*), Mikado pheasant (*S. mikado*), brown eared pheasant (*Crossoptilon mantchuricum*), white eared pheasant (*C. crossoptilon*), cheer pheasant (*Catreus wallichii*), Edward's pheasant (*Lophura edwardsi*), Swinhoe's pheasant (*L. swinhoii*), Chinese monal (*Lophophorus lhuysii*), and Palawan peacock pheasant (*Polyplectron emphanum*); parakeets of the species *Neophema pulchella* and *N. splendida;* the Laysan duck (*Anas laysanensis*); the white-winged wood duck (*Cairina scutulata*); and the inter-subspecific crossed or ''generic'' tiger (*Panthera tigris*) (*i e.*, specimens not identified or identifiable as members of the Bengal, Sumatran, Siberian or Indochinese subspecies (*Panthera tigris tigris, P.t. sumatrae, P.t. altaica* and *P.t. corbetti,* respectively) provided:

(i) The purpose of such activity is to enhance the propagation or survival of the affected exempted species;

(ii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iii) Each specimen to be re-imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export of the specimen from the United States;

(iv) No specimens of the taxa in this paragraph (g)(6) of this section that were taken from the wild may be imported for breeding purposes absent a definitive showing that the need for new bloodlines can only be met by wild specimens, that suitable foreign-bred,

captive individuals are unavailable, and that wild populations can sustain limited taking, and an import permit is issued under § 17.22;

(v) Any permanent exports of such specimens meet the requirements of paragraph (g)(4) of this section; and

(vi) Each person claiming the benefit of the exception in paragraph (g)(1) of this section must maintain accurate written records of activities, including births, deaths and transfers of specimens, and make those records accessible to Service agents for inspection at reasonable hours as set forth in §§ 13.46 and 13.47.

Dated: May 26, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–24384 Filed 9–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 090498A]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna; Closure

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

ACTION: General category closure.

SUMMARY: NMFS has determined that the 1998 Atlantic bluefin tuna (BFT) General category subquota for the September period will be attained by September 8, 1998. Therefore, General category fishery for September will be closed effective 11:30 p.m. on September 8, 1998. This action is being taken to prevent overharvest of the adjusted subquota of 201 metric tons (mt) for the September period.

DATES: Effective 11:30 p.m. local time on September 8, 1998, through September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

General Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of BFT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 194 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning September 1 and ending September 30. Due to an underharvest of 7 mt in the June-August period subquota, the September period subquota was adjusted to 201 mt. Based on reported catch and effort, NMFS projects that this revised subquota will be reached by September 8, 1998. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the General category must cease at 11:30 p.m. local time September 8, 1998. The General category will reopen October 1, 1998, with a quota of 65 mt for the October-December period. If necessary, the October-December subquota will be adjusted based on actual landings from September. While the General category is open, General category permit holders are restricted from all BFT fishing, including tag-and-release fishing, on restricted-fishing days. However, for the remainder of September, previously designated restricted-fishing days are waived; therefore, General category permit holders may tag and release BFT while the General category is closed prior to the October 1 opening, subject to the requirements of the tag and release program at 50 CFR 285.27.

The intent of this closure is to prevent overharvest of the September period subquota established for the General category.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 4, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–24405 Filed 9–8–98; 2:00 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980903229–8229–01; I.D. 051898A]

RIN 0648–AK73

Fisheries of the Exclusive Economic Zone Off Alaska; Stand Down Requirements for Trawl Catcher Vessels Transiting Between the Bering Sea and the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement a stand down requirement for trawl catcher vessels transiting between the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA). This action is necessary to prevent unexpected shifts of fishing effort between BSAI and GOA fisheries that can lead to overharvests of total allowable catch (TAC) in the Western and Central (W/C) Regulatory Areas of the GOA. This action is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

DATES: Effective September 8, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries off Alaska are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Federal regulations governing the groundfish fisheries appear at 50 CFR parts 600 and 679.

Background and Need for Action

In recent years, management of the inshore pollock and Pacific cod fisheries