



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0010; 4500030113]

RIN 1018–BD06

Endangered and Threatened Wildlife and Plants; Section 4(d) Rule for Louisiana Pinesnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), adopt a rule under section 4(d) of the Endangered Species Act for the Louisiana pinesnake (*Pituophis ruthveni*), a reptile that is listed under the statute as threatened. This rule will provide measures to protect the species, which is from Louisiana and Texas.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov> in docket number FWS–R4–ES–2018–0010 and at <https://www.fws.gov/lafayette/>.

Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov> and will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Louisiana Ecological Services Office, 200 Dulles Drive, Lafayette, LA 70506; 337–291–3100.

FOR FURTHER INFORMATION CONTACT: Joseph Ranson, Field Supervisor, U.S. Fish and Wildlife Service, Louisiana Ecological Services Office, at the address above; telephone 337–291–3113. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On October 6, 2016, the Service, under the authority of the Endangered Species Act, as amended (“Act” or “ESA”; 16 U.S.C. 1531 et seq.), published in the *Federal Register* a proposed rule to add the Louisiana pinesnake (*Pituophis ruthveni*), a reptile from Louisiana and Texas, as a threatened species to the List of Endangered and Threatened Wildlife (81 FR 69454). This List is found in title 50 of the Code of Federal Regulations in part 17 (50 CFR 17.11(h)). The final listing rule published on April 6, 2018 (83 FR

14958), and on that same day, we proposed a rule under section 4(d) of the Act for the Louisiana pinesnake (83 FR 14836). Please refer to those rulemaking documents for a detailed description of previous Federal actions concerning this species.

Background

The primary habitat feature that contributes to the conservation of the Louisiana pinesnake is open-canopy forest situated on well-drained sandy soils with an abundant herbaceous plant community that provides forage for the Baird's pocket gopher (*Geomys breviceps*), which is the snake's primary known source of food. In addition, Baird's pocket gopher burrows are the primary known source of shelter for the Louisiana pinesnake. As discussed in the proposed listing rule, one of the primary threats to the Louisiana pinesnake is the continuing loss and degradation of the open pine forest habitat that supports the Baird's pocket gopher. In the types of sandy soil in which the Louisiana pinesnake and pocket gopher are found (Wagner et al. 2014, p. 152 ; Duran 2010, p. 11; Davis et al. 1938, p. 414), the pocket gopher creates burrows at an average depth of about 18 centimeters (cm) (7 inches (in)) (Wagner et al. 2015, p. 54).

One of the primary features of suitable pocket gopher habitat is a diverse herbaceous (non-woody) plant community with an adequate amount of forbs (non-grass herbaceous vegetation) that provide forage for the pocket gopher. Louisiana pinesnakes and pocket gophers are highly associated (Ealy et al. 2004, p. 389) and occur together in areas with herbaceous vegetation, a nonexistent or sparse midstory, and a low pine basal area (Rudolph and Burgdorf 1997, p. 117; Himes et al. 2006, pp. 110, 112; Wagner et al. 2017, p. 22). In a Louisiana forest system managed according to guidelines for red-

cockaded woodpecker (*Picoides borealis*) habitat, pocket gopher selection of habitat increased with increasing forb cover and decreased with increasing midstory stem density and midstory pine basal area (Wagner et al. 2017, p. 11). Few (less than 25 percent) sites used by pocket gophers had less than 18 percent coverage by forbs alone (Wagner et al. 2017, p. 22). Use by pocket gophers is also inhibited by increased midstory stem density and midstory pine basal area even when herbaceous vegetation is present (Wagner et al. 2017, pp. 20, 22, 25). Pocket gophers use areas with higher densities of trees much less frequently than areas with fewer stems, presumably because of greater root mass, which reduces burrowing efficiency (Wagner et al. 2017, pp. 11, 22).

One of the main causes of the degradation of this habitat is the decline in or absence of fire. Fire was the primary source of historical disturbance and maintenance, and prescribed fire reduces midstory and understory hardwoods and promotes abundant herbaceous groundcover in the natural communities of the longleaf-dominant pine ecosystem where the Louisiana pinesnake most often occurs. In the absence of regularly recurring, unsuppressed fires, open pine forest habitat requires active management activities essentially the same as those required to produce and maintain red-cockaded woodpecker foraging habitat. Those activities, such as thinning, prescribed burning, reforestation and afforestation, midstory woody vegetation control, herbaceous vegetation (especially forbs) enhancement, and harvest (particularly in stands that require substantial improvement) are necessary to maintain or restore forests to the conditions that are suitable (as described in the preceding paragraph) for pocket gophers and Louisiana pinesnakes.

Establishment and management of open pine forests beneficial to the Louisiana pinesnake has been occurring on some privately owned land in Louisiana and Texas.

Additionally, throughout the range of the Louisiana pinesnake, Federal and State agencies have developed conservation efforts, which have provided a conservation benefit to the species. Increased efforts, however, are necessary on both public and private lands to address continued habitat loss, degradation, and fragmentation, one of the species' primary threats across its entire range, and it is the intent of this final rule to encourage these increased efforts.

In the proposed listing rule (81 FR 69454, October 6, 2016), we solicited public comments as to which prohibitions, and exceptions to those prohibitions, are necessary and advisable to provide for the conservation of the Louisiana pinesnake. During the public comment periods on the proposed listing rule (81 FR 69454, October 6, 2016; 82 FR 46748, October 6, 2017), we received comments expressing concern that when the species is listed under the Act, certain beneficial forest management activities on private land could be considered takings in violation of section 9(a)(1) of the Act or its implementing regulations, and would thus be regulated.

The Service intends to strongly encourage the continuation and increased implementation of forest management activities—thinning, prescribed fire, and mid- and understory woody vegetation control in particular—that promote open-canopy forest and herbaceous vegetation growth, which are beneficial to the Louisiana pinesnake. In recognition of efforts that provide for conservation and management of the Louisiana pinesnake and its habitat in a manner consistent with the purposes of the Act, as discussed in more detail below, we are now finalizing a rule under section 4(d) of the Act that prohibits take of the species except for take that results from actions providing for conservation and management of the Louisiana pinesnake. Information about section 4(d)

of the Act is set forth below in **Provisions of Section 4(d) of the Act**.

Our goal is to strongly encourage continuation and increased implementation of these beneficial practices. Nevertheless, if activities (with exceptions noted in the 4(d) rule provisions) could cause subsurface ground disturbance that can directly harm or kill Louisiana pinesnakes inhabiting pocket gopher burrows, or inhibit the persistence of suitable pocket gopher and Louisiana pinesnake habitat, as described above, they would be subject to the section 9 take prohibitions in certain occupied habitat areas, specifically areas known as Louisiana pinesnake EOHAs (for estimated occupied habitat areas). These areas have recorded occurrences of Louisiana pinesnakes, and they are considered by the Service to be occupied by the species (see the proposed listing rule). This regulation would also apply to any EOHAs that are identified in the future, because activities in such areas could be detrimental to maintenance and development of suitable habitat conditions critical to this species and are more likely to affect the Louisiana pinesnake directly.

Summary of Comments and Recommendations

(1) Comment: Several commenters encouraged the Service not to restrict its broad discretion in designing the 4(d) rule through limiting language in the rule's preamble, because the Service has the discretion to regulate take independently of whether doing so will promote conservation. The commenters suggest that the Service's decision to allow incidental take of a threatened species should be flexible enough to maximize the agency's discretion to consider both the conservation of the Louisiana pinesnake and the overall public interest regarding the importance of maintaining land in forest use within the broader context of the multiple benefits that those forests provide. The commenters

recommend that if the Service chooses to retain a “conservation” reference in the rule’s preamble, the language should be revised to clarify whether incidental take authorized under the 4(d) rule will be allowed where it does not materially detract from the species’ conservation.

Our response: Under section 4(d) of the Act, the Secretary may issue regulations that he deems necessary and advisable to provide for the conservation of threatened species. Also under section 4(d) (specifically, the second sentence), the Secretary may, with respect to any threatened species of fish or wildlife, prohibit by regulation any act that is prohibited under section 9(a)(1) of the Act for endangered wildlife, without necessarily making a finding that each prohibition or exception is necessary or advisable. We are not obligated to make a finding that the specific contours of the prohibitions under section 9(a)(1) that the Service adopts are necessary or advisable for the conservation of the Louisiana pinesnake. The Secretary is also not obligated to make a finding that adoption of a prohibition against incidental take under section 9(a)(1) that contains exceptions, or that applies to only some categories of incidental take, is in the overall public interest. The Secretary can invoke the general provisions under section 9(a)(1) or in 50 CFR 17.21, or set prohibitions less or more restrictive than the general provisions under section 9(a)(1) or 50 CFR 17.21.

For this final 4(d) rule, the Secretary has used his discretion to apply the general prohibitions in 50 CFR 17.21, with exceptions identified in the 4(d) rule itself, because these provisions provide for the conservation of the Louisiana pinesnake. The exceptions to the prohibitions that we have included in this final 4(d) rule consider the overall public interest in the importance of maintaining land in forest use as well. Exceptions from

incidental take prohibitions for game animal food plots, maintenance of roads, and adherence to forestry best management practices (BMPs), for instance, do not directly address the threats to the Louisiana pinesnake, but they do promote the continuation of forest land use. On the other hand, we have determined that activities that do not provide any conservation benefit, but could result in incidental take of the Louisiana pinesnake, would materially detract from the species' conservation, and, therefore, those activities will be subject to the incidental take prohibitions in the final 4(d) rule.

(2) Comment: The Louisiana Department of Wildlife and Fisheries (LDWF) expressed concern that the cooperative agreement between the Service and LDWF, which allows any employee or agent of LDWF when acting in the course of his/her official duties to take a threatened species to carry out conservation programs, would no longer remain in effect due to the 4(d) rule. The commenter requested an exemption be made to allow the cooperative agreement to remain in effect in order for LDWF to provide conservation programs for the Louisiana pinesnake.

Our response: We received this comment as well as others below asking for exemptions from prohibitions. Throughout this 4(d) rule, we will refer to these as “exceptions” to the prohibitions and not exemptions. In this final 4(d) rule, we have chosen to apply to the Louisiana pinesnake the prohibitions and provisions of 50 CFR 17.21, 17.31(b), and 17.32, with the exception of specific activities and conditions. In doing so, the provisions of 50 CFR 17.31(b) remain applicable, which is the authority for the cooperative agreement referenced in the comment. Accordingly, no special exemption is necessary for State agencies such as the LDWF or Texas Parks and Wildlife to retain that authority. Thus, employees or agents of LDWF and Texas Parks and Wildlife, when acting

in the course of their official duties, may take the Louisiana pinesnake when the species is covered by an approved cooperative agreement for conservation programs in accordance with the cooperative agreement.

(3) Comment: Several commenters stated that Louisiana and neighboring States have adopted published BMPs for the sustainable management of forest resources and protection of soils and that the BMPs are an integral part of forest certification programs. Several BMPs, including construction and maintenance of turnouts, water bars along roads, and wing ditches from the road into the forest to drain water off roads, are designed to prevent soil erosion and sediment delivery to streams. Such BMPs are prudent on highly erodible soils and minimize future road maintenance problems. Those commenters recommended that foresters implementing BMPs be specifically exempted from the prohibitions in the 4(d) rule because the overall impact on Louisiana pinesnake habitat is minor in comparison to the BMPs' importance to environmental quality. Several commenters stated that adherence to Louisiana BMPs, and logging decks to load trucks and skid trails, should be exempted. Some commenters also stated that practices used to manage vegetative competition that are temporary in nature and help open the forest canopy allow the development of more herbaceous ground cover that enhances habitat for pocket gophers and the Louisiana pinesnake. The commenters also stated that leaving small debris piles at final harvest provide temporary refugia to rodents and other small wildlife that may be prey for the Louisiana pinesnake. Those commenters suggest adding language to reference critical support activities for implementing forest management.

Our response: The Service does not intend to prevent through the 4(d) rule the implementation of protective measures that minimize impacts to fish and wildlife. The

BMPs recommended by Louisiana and Texas Forestry are generally used to avoid or minimize environmental impacts, especially to streams, wetlands, and highly erodible land, while conducting forestry activities. While most BMPs are not designed to directly protect or benefit the Louisiana pinesnake, we agree that conservation measures with small footprints, such as water bars, wing ditches, etc., for existing roads that prevent sediment delivery to streams are an important part of protection for fish and wildlife. Some BMPs, especially the following recommendations, would lessen impact to the Louisiana pinesnake: Use the smallest number, width, and length of skid trails; use no more landings, log decks, and sets than necessary; seed and fertilize bare areas that would erode before natural vegetation is established; hand-plant steep erodible sites; avoid intensive mechanical preparation on steep slopes; and minimize moving soil into windrows and piles. The Service encouraged the use of forestry BMPs in the proposed 4(d) rule, and we have revised the provisions of the final 4(d) rule to include their implementation, as well as the use of skidding logs and loading decks, in the list of activities excepted from incidental take prohibitions.

(4) Comment: Several commenters stated that regular forestry and associated activities should be exempted by the 4(d) rule, including periodic thinning; fertilization; herbicide treatment and prescribed burning to control woody competition; wildfire control activities; supplemental planting; bedding; thinning; ATV use; hunting; recreation; mechanical site preparation; one-pass shearing; shear and pile; mulching; ripping; roller chopping; and creation, use, and maintenance of trail and forest roads. Several commenters stated that many of these forestry practices are beneficial to the Louisiana pinesnake and cause only minimal disturbance to its habitat, and that grasses and

herbaceous vegetation quickly reestablish following treatments. They said some forestry activities would increase sunlight on the forest floor and increase herbaceous cover while maintaining a forested condition and help establishment of the targeted forest stand conditions. Two commenters stated that some intensive mechanical practices are needed for conversion and restoration to longleaf pine, especially in areas that are heavily infested with species such as yaupon (*Ilex vomitoria*), and that limiting options to control yaupon is an obstacle to creating habitat conditions for pocket gophers and the Louisiana pinesnake.

Our response: The Service agrees that some forestry activities that help to control native shrub and invading species and restore historical longleaf pine forest would be beneficial to the Louisiana pinesnake and should not be subject to the prohibitions in the 4(d) rule. Some of the activities that commenters requested not be subject to the prohibitions in the 4(d) rule were excepted from the proposed prohibitions and continue to be excepted in the final 4(d) rule—including: wildfire control, firebreak establishment, clearcut harvesting, prescribed burning, herbicide application, thinning, and disking for firebreak establishment. We have revised the list of activities excepted from prohibitions in the final 4(d) rule to also include machine-planting, skidding logs and use of loading decks, maintenance of existing roads, State BMPs, and food plot establishment. We also added exceptions for some activities that are generally prohibited within Louisiana pinesnake EOHAs under specific circumstances (see **Summary of Changes from the Proposed Rule**).

(5) *Comment:* Several commenters stated that many landowners allow recreational hunting on their forested lands and establishment of food plots for wild game requires tilling the soil greater than 4 inches in depth. Food plots are often 1 to 3 acres in size and

can be shaped to avoid visible pocket gopher mounds. Several commenters stated that food plots are beneficial because they increase vegetative cover for pocket gophers, the Louisiana pinesnake, and other wildlife.

Our response: Pocket gophers appear to forage on several different species of grasses and forbs. While we know that forbs are important to pocket gophers, we do not know which specific herbaceous plant species are preferred by them. Native plants would likely be the best choice, but herbaceous species typically planted in food plots may also be used by pocket gophers. We have revised the 4(d) rule provisions to except food plots under certain circumstances.

(6) Comment: One commenter stated that conversion of loblolly pine stands to longleaf pine stands is being done by willing landowners and that landowners may choose not to convert pine stands from loblolly to longleaf if they believe that silvicultural choices are not available, including the choice to change pine species later in time. The commenter indicated that longleaf restoration cannot occur on private lands without incentives and asked that the Service avoid creating disincentives through regulations or restricting a landowner's timber type through rulemaking. Another commenter specifically questioned whether landowners would be required to maintain pine forests within the Louisiana pinesnake's range, or if non-pine species could be used in reforestation as long as they still provide for open-canopy conditions with a diverse herbaceous understory.

Our response: While the Service encourages longleaf pine restoration within the historical range of longleaf pine, the proposed 4(d) rule did not include language that restricted a landowner's choice of tree species to plant and grow. The historical habitat of the Louisiana pinesnake was dominated by longleaf pine but also included shortleaf and

loblolly pines. Some hardwoods also inhabit the well-drained sandy soils where the Louisiana pinesnake is found, but the vast majority of trees planted commercially or for restoration in that range are pine species. We encourage landowners to maintain forests with trees native to their area. In the final 4(d) rule, we revised the exception regarding “maintenance of open pine canopy conditions” to “maintenance of open-canopy pine-dominated forest stands.”

(7) Comment: Because suitable habitat for the Baird’s pocket gopher and the Louisiana pinesnake is unlikely to occur on sites without preferred or suitable soils, several commenters recommended that the 4(d) rule should clearly state that incidental take from forestry activities will not be considered a violation of section 9 of the Act if take occurs on sites without preferred or suitable soils, regardless of whether those sites are inside or outside of EOHAs. The commenters request that language be added to paragraphs 3(i) and (ii) to clarify such an exemption.

Our response: The 4(d) rule exceptions to incidental take prohibitions for forestry activities conducted outside of EOHAs apply to all land, including those with preferred or suitable soils. To clarify this provision, we have removed the conditional requirement of “resulting in the establishment and maintenance of open-canopy pine-dominated forest stands that are interconnected with at least some other open-canopy stands” for lands other than those with preferred or suitable soils. The additional conditions required to be met for land within EOHAs and where Baird’s pocket gopher are present apply only to land meeting certain criteria, one of which is that it contains preferable or suitable soils.

(8) Comment: One commenter recommended revising the phrase in paragraph (3)(i)(A) “open canopy conditions *through* time across the landscape” to state “open

canopy conditions *over* time across the landscape.”

Our response: In recognition that, during periods of establishment of open canopy pine-dominated forest stands, there may be time prior to thinning where the canopy is closed, we have changed “through” to “over” time across the landscape.

(9) Comment: Several commenters stated various objections to the following language in the proposed 4(d) rule: “activities do not inhibit the persistence of suitable pocket gopher and Louisiana pinesnake habitat.” Commenters believe that this language requires clarification, introduces unnecessary uncertainty into the rule, appears to be subjective and dependent upon individual interpretation, and is an unnecessary qualification on silvicultural practices.

Our response: We describe in detail the components of suitable pocket gopher habitat in the preamble. We also describe suitable pocket gopher habitat in paragraph (i)(3)(v)(B)(2) of this final 4(d) rule. We do not detail all activities that could inhibit the persistence of the habitat, but instead rely on landowners’ unique knowledge of their property and management practices to determine how best to curtail activities that would prevent them from being covered by the take exceptions of the 4(d) rule. Paragraph (i)(3)(v)(B)(2) is necessary because not all silvicultural management practices further the persistence of suitable habitat for pocket gophers and the Louisiana pinesnake.

(10) Comment: One commenter suggested that, while pipeline construction and installation activities disturb the soil greater than 4 inches in depth, long-term maintenance of pipeline rights-of-way provide habitat for the Baird’s pocket gopher and, therefore, can provide habitat for the Louisiana pinesnake. That commenter recommended including pipeline rights-of-way in the 4(d) rule.

Our response: Though we have no information showing that pipeline rights-of-way are inhabited by the Louisiana pinesnake, rights-of-way often host herbaceous vegetation, and pocket gopher mounds have been sighted within them. However, the nature and amount of potential impact to the Louisiana pinesnake of a major construction project such as pipeline installation could vary based on the exact location of the project and the extent of the resulting disturbance. Because of the potential variability of impacts to the species for projects of this type, a general exception is not provided in the final 4(d) rule. Landowners wishing to install pipelines on their properties should contact the Service for further guidance to avoid potential violations of section 9 of the Act.

(11) Comment: One commenter discussed the historical records of pocket gophers as a nuisance species that causes immense damage to agricultural and forestry crops both inside and outside of the Louisiana pinesnake's range and on erodible soils other than sandy soils. That commenter suggested that there was a need for a rule to control pocket gophers in unsustainable habitats or within forest stands, especially longleaf pine stands age 5 years and younger, without the need to consult with the Service.

Our response: The Service notes the 1974 U.S. Forest Service Environmental Statement (marked as "Draft"), referenced by the commenter, which discusses the poisoning of pocket gophers. The Service is also aware of anecdotal reports of seedling damage presumably caused by pocket gophers. The Service is not aware of documented instances of widespread damages to tree seedlings due to pocket gophers in the range of the Louisiana pinesnake in recent decades. The habitat needs for pocket gophers and Louisiana pinesnakes are very similar, although the pocket gopher has a much larger range than the Louisiana pinesnake, and pocket gopher density can be locally variable. Baird's

pocket gophers are the primary prey and microhabitat provider for the Louisiana pinesnake, which is nearly always found in or near pocket gopher burrows. Reduction or elimination of Baird's pocket gophers in the range of the Louisiana pinesnake could significantly reduce food and shelter for the already threatened species, potentially reducing its abundance. Furthermore, using poison to control pocket gophers, as described in the 1974 Environmental Statement, could have even greater negative effects on the Louisiana pinesnake if the species consumed the poisoned pocket gophers. Because of the potential significant negative impacts to the species via population control of pocket gophers, and the apparent lack of widespread damage events, a general 4(d) exception for control of pocket gophers would not be prudent. If landowners decide that pocket gophers have become a pest that affects the human environment or causes economic loss, they may consult with the Service to determine the best course of action for their specific situation. Nothing in this rule would limit pocket gopher control methods outside the historical range of the Louisiana pinesnake.

(12) Comment: One commenter recommended that the Service prohibit the use of erosion control netting, and other plastic netting known to entangle snakes, in areas where Louisiana pinesnake may occur.

Our response: The Service has recognized the detrimental effect of erosion control netting, especially long-lasting polypropylene mesh, on snakes, and in the final listing rule we determined that the use of erosion control netting was currently a potential threat to the Louisiana pinesnake. On the other hand, while other snake species have been killed by the netting, the Service is unaware of any records of the Louisiana pinesnake being entangled or killed. Because the potential threat of erosion control netting to the Louisiana pinesnake

is greatest in the areas occupied by the species, we have added activities that do not involve “the use of plastic mesh in erosion control and stabilization devices, mats, blankets, or channel protection” to the list of additional conditions for the areas specified within the EOHAs.

(13) Comment: One commenter stated that the 4(d) rule should not exempt intensive, short-rotation pine plantations.

Our response: The 4(d) rule does not specifically except “intensive, short-rotation pine plantations” from the prohibitions against take. The Service has determined through its final listing rule and the 4(d) rule what type of habitat is suitable for the Louisiana pinesnake. We have developed the 4(d) rule provisions to protect habitat for the species regardless of the terminology commonly used to describe certain management scenarios. “Intensive, short-rotation pine plantations” does not necessarily describe habitat conditions. Some management activities that may be considered intensive, such as mechanical site preparation that significantly disturbs the soil, are excepted under certain conditions even within the EOHAs. Some “intensive” management may be necessary to restore degraded habitat. Additionally, stand rotation length is not specifically addressed in the 4(d) rule because that metric does not necessarily dictate canopy cover and the potential effects on herbaceous vegetation abundance, which is an important factor of habitat suitability for the pocket gopher and thus the Louisiana pinesnake.

(14) Comment: Several commenters recommended that the Service not attempt to limit the planting density of longleaf pine. The commenters explained that higher density planting generates pine straw fuel to carry fire, and many establishment projects do not have adequate warm-season grasses to carry fire for the first 4 to 5 years. Without the pine

straw to fuel prescribed burns, establishment stands quickly revert back to yaupon and sweetgum species. Young longleaf with the appropriate density can create enough pine straw to carry a burn in years 2 through 5. Planting an adequate number of seedlings is also needed to ensure a high survival success and low mortality rates due to drought, feral hogs, competition with invasive species, and from prescribed burning. Another commenter stated that the 4(d) rule should exempt thinning to 40–60 square feet per acre basal area.

Our response: As discussed in the 4(d) rule preamble, low tree density is beneficial to the pocket gopher. The proposed 4(d) rule provisions did not specifically address planting density of longleaf pine or any other tree species and do not except or require a specific tree basal area. To attain an open-canopy forest condition, some consideration of planting density and basal area would be required. Both the proposed and final 4(d) rules do not restrict individuals from determining how to create open-canopy conditions and herbaceous vegetation cover.

(15) Comment: One commenter recommended that the term “below-ground shearing” be removed or replaced with a less confusing term. The commenter expressed that normal shearing operations, which are critical to preparing sites for reforestation (especially longleaf), are conducted above the soil level and have minimal soil disturbance.

Our response: In recognition that normal shearing operations are conducted above ground, but may cause subsurface disturbance when not properly performed, we have changed “below-ground shearing” to “shearing that penetrates the soil surface.”

(16) Comment: Two commenters stated their support for the creation of a safe harbor agreement program for the Louisiana pinesnake similar to the one established for the endangered red-cockaded woodpecker.

Our response: The Service plans to develop and implement one or more safe harbor agreements to increase conservation opportunities for the Louisiana pinesnake in Louisiana and Texas.

(17) Comment: One commenter recommended that a 4(d) rule exemption from take prohibitions should apply to private landowners enrolled in a Working Lands for Wildlife agreement with the National Resources Conservation Service (NRCS), and one commenter recommended that the 4(d) rule should consider excluding from the prohibitions conservation practices found in the Louisiana pinesnake biological opinion/conference opinion for the NRCS's Working Lands for Wildlife program to allow for consistency and continuity across NRCS programs.

Our response: Participants in NRCS's Working Lands for Wildlife program are allowed incidental take according to the approved biological opinion for that program, and thus do not need an exception in the 4(d) rule for the program activities considered in the biological opinion. The exceptions in the 4(d) rule are not an exhaustive list of all NRCS conservation practices considered in the biological opinion. The conservation practices, their expected results, participant responsibilities, and the consideration of incidental take were carefully discussed during close collaboration between Service and NRCS biologists. Exempting all NRCS Working Lands for Wildlife conservation practices from the take prohibitions in the 4(d) rule is not necessary and would not be prudent. The Service encourages interested parties to contact the Service or NRCS about the possibility of enrolling in the Working Lands for Wildlife program. Additionally, it should be noted that the conservation practices in the Working Lands for Wildlife program and the forestry activities that the 4(d) provisions except from the stay prohibitions overlap significantly.

Conservation activities that are not specifically excepted in the 4(d) rule could possibly be exempted from the section 9 prohibitions of the ESA through a section 7 consultation with issuance of an incidental take statement.

(18) Comment: One commenter recommended that the 4(d) rule should include a detailed description and listing of the preferred soil series and specific soil mapping units (in consultation with NRCS) for the Louisiana pinesnake and Baird's pocket gopher.

Our response: Soil maps at the scale that could be included in the *Federal Register* would not be useful. Maps delineating the preferred and suitable soils for the Louisiana pinesnake as described by Wagner et al. 2014 are publicly available at <https://gcpolcc.databasin.org/datasets/a2a0ace6964942b98f0514b84dfa9fb8>. NRCS soil survey maps of hydrologic group Categories A (preferred) and B (suitable), are available publicly on the NRCS soil mapping website:

<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>, or by contacting NRCS or the U.S. Fish and Wildlife Service, Louisiana Ecological Services Office, 200 Dulles Drive, Lafayette, LA 70506; 337-291-3101; 337-291-3139.

(19) Comment: One commenter requested that captive-bred Louisiana pinesnake be exempted from take prohibitions in the 4(d) rule to allow unfettered continuation of captive breeding, pet ownership, and trade.

Our response: Louisiana pinesnakes acquired before May 7, 2018, the effective date of the final listing rule for this species, may be legally held and bred in captivity as long as laws regarding this activity within the State in which they are held are not violated. This would include snakes acquired pre-listing by pet owners, researchers, and zoological institutions. Future sale of captive-bred Louisiana pinesnakes borne from pre-listing-

acquired parents within the State of their origin would be regulated by applicable laws of that State. If individuals wish to purchase captive-bred snakes outside the snake's State of origin, they would first have to acquire a section 10(a)(1)(A) interstate commerce permit from the Service (website: <http://www.fws.gov/forms/3-200-55.pdf>). Information about the purpose for purchasing a Louisiana pinesnake is required because using federally threatened species as pets is not consistent with the purposes of the Act, which is intended to support the conservation of species and recovery of wild populations. However, an animal with threatened-species status may be legally kept in captivity if it is captive-bred and used for educational or breeding purposes consistent with this intent. Through the permit process, we are able to track and monitor the trade in captive-bred listed species. For this reason, excepting this activity from the take prohibition in the 4(d) rule would not be appropriate, as it would not meet the standard of providing for the conservation of the species.

(20) Comment: One commenter stated that the 4(d) rule should incentivize management of open-canopy forest in order to get people to participate in conservation of the species.

Our response: This 4(d) rule offers incentives for conservation by providing exceptions from the incidental take prohibitions. We encourage any landowners that may have a listed species on their properties, and who think they may conduct activities that negatively affect that species, to work with the Service to find ways to avoid impacts. The Service's Partners for Fish and Wildlife Program and various programs administered by the NRCS may provide financial assistance to eligible landowners who implement management activities that benefit the habitat for a listed species, including the Louisiana

pinenake. Private landowners may contact their local Service field office to obtain information about these programs and permits.

Summary of Changes from the Proposed Rule

After reviewing the information provided during the public comment period, we have made the following changes to the rule language in this final rule:

- With respect to comments requesting either the exemption of specific forestry-related activities or further explanation of our intended exempted activities, we added maintenance of existing forest roads, skidding logs and use of loading decks, and adherence to BMPs recommended by State forestry agencies to the list of excepted activities. These activities were implicitly included in the proposed rule as excepted forestry activities especially as they relate to harvesting, and we had already recommended in the proposed rule that landowners follow BMPs of certification programs or from State agencies.
- With respect to comments that roller chopping and ripping are sometimes necessary to control midstory shrub species such as yaupon holly (*Ilex vomitoria*) that inhibit pine seedling growth, and to prepare former pastures for planting, we added language indicating that limited take due to use of those techniques is not prohibited.
- With respect to comments that food plot establishment requires relatively little area and can avoid gopher mound complexes, and that the vegetation commonly used are herbaceous plants that could be used as forage by pocket gophers, we added limited size food plot establishment to the list of excepted activities.
- With respect to comments requesting further explanation of exempted activities, we

specified that hand- and machine-planting were forestry activities conducted in areas outside of the EOHAs that were excepted when we used the terms “planting” and “replanting.” We also added language to the additional conditions for areas meeting the criteria that would indicate that the take prohibition would not apply to machine-planting under specific circumstances.

- With respect to comments that stated that the 4-inch limit of subsurface disturbance could prohibit machine- and hand-planting and other forestry activities, even for forest restoration efforts, we removed the 4-inch limitation for subsurface disturbance in the additional conditions of the exceptions for activities within EOHAs.
- With respect to comments that stated that exemptions should be more broad in areas that do not contain preferable or suitable soils, and comments that we should clarify the phrase “and that result in the establishment and maintenance of open canopy conditions through time across the landscape,” we changed the language pertaining to activities that, when conducted in areas within the range of the Louisiana pinesnake, on preferred or suitable soils, result in the establishment and maintenance of open-canopy pine-dominated forest stands “over” time across the landscape.
- The Louisiana pinesnake is highly associated with pocket gophers and their burrows. Research shows that Louisiana pinesnakes are most often found in pocket gopher burrow systems, and, therefore, in areas where Louisiana pinesnakes are known to occur, these burrows, indicated by dirt mounds, are in need of greater protections. Accordingly, we added, “where Baird’s pocket gopher mounds are present or” after “Within any known EOHAs” and before “on lands with suitable or preferable soils” in the paragraph preceding the additional conditions for lands within EOHAs.

- With respect to a comment about the entanglement hazard of erosion control netting and its potential effects on the Louisiana pinesnake, which we had identified as a potential threat in the final listing rule, we added, “Those activities do not involve the use of plastic mesh in erosion control and stabilization devices, mats, blankets, or channel protection” to the list of additional conditions for lands within the EOHAs.

Provisions of Section 4(d) of the Act

Section 4(d) of the Act contains two sentences. The first sentence states that the “Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation” of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.” Additionally, the second sentence of section 4(d) of the Act states that the Secretary “may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or 9(a)(2), in the case of plants.” Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also approved 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising its authority under section 4(d) of the Act, the Service has developed a final rule for the Louisiana pinesnake that is designed to address the species’ specific threats and conservation needs. Although the statute does not require the Service to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this final 4(d) rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Louisiana pinesnake. As discussed above, the Service has concluded that the Louisiana pinesnake is in danger of becoming an endangered species within the foreseeable future primarily due to the continuing loss and degradation of the

open pine forest habitat that supports the Baird's pocket gopher. The provisions of this final 4(d) rule would promote conservation of the Louisiana pinesnake by encouraging management of the landscape in ways that meet land management considerations while meeting the conservation needs of the Louisiana pinesnake. The provisions of this final 4(d) rule are one of many tools that the Service will use to promote the conservation of the Louisiana pinesnake.

Final 4(d) Rule for the Louisiana Pinesnake

This final 4(d) rule would provide for the conservation of the Louisiana pinesnake by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce. We also include several standard exceptions to these prohibitions, which are set forth under **Final Regulation Promulgation**, below.

Under the Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating intentional and incidental take under this final 4(d) rule would help preserve the species' remaining populations; enable beneficial management actions to occur; and decrease synergistic, negative effects from other stressors.

Under this final 4(d) rule, the following exceptions from prohibitions will apply to

the Louisiana pinesnake:

Outside of any known EOHAs, the following activities will not be subject to the section 9 prohibitions:

Activities that maintain existing forest lands in forest land use, and that when conducted in areas within the range of the Louisiana pinesnake, on preferred or suitable soils, result in the establishment and maintenance of open-canopy pine-dominated forest stands over time across the landscape. These activities include:

- (a) Tree thinning, harvest (including clearcutting), planting and replanting pines (by hand or by machine).
- (b) Prescribed burning, including all firebreak establishment and maintenance actions, as well as actions taken to control wildfires.
- (c) Herbicide application that is generally targeted for invasive plant species control and midstory and understory woody vegetation control, but is also used for site preparation when applied in a manner that minimizes long-term impact to noninvasive herbaceous vegetation. These provisions include only herbicide applications conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions and herbicide application guidelines as prescribed by manufacturers.
- (d) Skidding logs and use of loading decks that avoid gopher mound complexes.
- (e) Maintenance of existing substandard (dirt, unsurfaced) forest roads and trails used for access to timber being managed.
- (f) Implementation of mandated and State-recommended forestry BMPs, including but not limited to, those necessary to protect riparian (e.g., streamside management zone)

and other habitats from erosional sediment deposition, prevent washout of forest roads, and impacts to vegetation.

- (g) Food plot establishment for game animals, when it does not destroy existing native herbaceous vegetation, avoids gopher mound complexes, and does not exceed 1 acre in size.

Although these management activities may result in some minimal level of harm or temporary disturbance to the Louisiana pinesnake, overall these activities benefit the pinesnake by contributing to conservation and recovery. With adherence to the limitations described in the preceding paragraph, these activities will have a net beneficial effect on the species by encouraging active forest management that creates and maintains the herbaceous plant conditions needed to support the persistence of Baird's pocket gopher populations, which is essential to the long-term viability and conservation of the Louisiana pinesnake.

Applying the prohibitions will minimize threats that could cause further declines in the status of the species. Additionally, the species needs active conservation to improve the quality of its habitat. By excepting from prohibitions incidental take resulting from certain activities, these provisions can encourage cooperation by landowners and other affected parties in implementing conservation measures. This cooperation will allow for use of the land while at the same time ensuring the preservation of suitable habitat and minimizing impacts on the species.

When practicable and to the extent possible, the Service encourages managers to conduct such activities in a manner to maintain suitable Louisiana pinesnake habitat in large tracts; minimize ground and subsurface disturbance; and promote a diverse, abundant

herbaceous groundcover. Prescribed fire is an important tool to effectively manage open-canopy pine habitats to establish and maintain suitable conditions for the Louisiana pinesnake, and the Service strongly encourages its use over other methods (mechanical or chemical) wherever practicable. The Service also encourages managers, when practicable and to the extent possible, to (1) enroll their lands into third-party forest certification programs such as the Sustainable Forest Initiative, Forest Stewardship Council, and American Tree Farm System; and (2) conduct any activities under such programs using BMPs as described and implemented through the respective programs, or by others such as State forestry agencies, the U.S. Department of Agriculture (the Forest Service's Forest Stewardship Program or the Natural Resources Conservation Service's Conservation Practices Manual), or the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program.

As noted above, the management activities discussed above are excepted from the incidental take prohibition outside of known EOHAs. Within any known EOHAs, where Baird's pocket gopher mounds are present or on lands with suitable or preferable soils, that are forested, undeveloped, or non-farmed (i.e., not cultivated on an annual basis) and adjacent to forested lands, the management activities discussed above would also be excepted from the incidental take prohibitions, but only if the following additional conditions are met:

- (h) Those activities do not cause subsurface disturbance, including but not limited to subsurface disturbance caused by: wind-rowing, stumping, disking (except during firebreak creation or maintenance), root-raking, drum chopping (except for single pass with the lightest possible weighted drums and only when the soil is not wet, when used

to control hardwoods and woody shrub species detrimental to establishment of pine-forested land), shearing that penetrates the soil surface, ripping (except when restoring pine forest in compacted soil areas such as former pastures), bedding, new road construction, and commercial or residential development. Machine-planting, using the shallowest depth possible, would be allowed in areas where pocket gophers are not present and only for planting pine tree species. In former pastures or highly degraded areas with no herbaceous vegetation and poor planting conditions, subsurface disturbance shall be allowed only for activities that contribute to reforestation that is consistent with the conservation of the species.

- (i) Those activities do not inhibit the persistence of suitable pocket gopher and Louisiana pinesnake habitat (described previously in the **Background** section).
- (j) Those activities do not involve the use of plastic mesh in erosion control and stabilization devices, mats, blankets, or channel protection.

These additional conditions on when the prohibitions would not apply within known EOHAs are reasonable because the actual likelihood of encountering individuals of the species is higher within the EOHAs.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the

Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve Louisiana pinesnake that may result in otherwise prohibited take without additional authorization.

Nothing in this final 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Louisiana pinesnake. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service.

Anyone undertaking activities that are not covered by the provisions, including the additional conditions, and that may result in take would need to ensure, in consultation

with the Service, that those activities are not likely to jeopardize the continued existence of the species where the entity is a Federal agency or there is a Federal nexus, or consider applying for a permit before proceeding with the activity (if there is no Federal nexus). A map of the currently known EOHAs is found in the proposed listing rule (81 FR 69461, October 6, 2016). The Service intends to update maps identifying the locations of Louisiana pinesnake EOHAs and make them available to the public in the docket on *www.regulations.gov* as new information becomes available. Alternatively, you may contact the Louisiana Ecological Services Field Office (see **ADDRESSES**).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition of a species through listing it results in public awareness, and leads Federal, State, Tribal, and local agencies, private organizations, and individuals to undertake conservation. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. Information about the protection required by Federal agencies, and the prohibitions against certain activities, and recovery planning and implementation and interagency consultation, are discussed in the final listing rule.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill,

trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. The Act authorizes the Secretary to apply any of the prohibitions of section 9(a)(1) of the Act to threatened wildlife. This rulemaking applies the prohibitions under section 9(a)(1) to the threatened Louisiana pinesnake, with specified exceptions.

As described in the final listing rule, it is our policy to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the listed species. Since the Louisiana pinesnake is a threatened species and this final rule applies the protections outlined in section 9(a)(1) of the Act to the Louisiana pinesnake, we are identifying those activities that would or would not constitute a violation of either section 9(a)(1) or this final 4(d) rule. Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act or this final rule; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the Louisiana pinesnake, including interstate transportation across State lines and import or export across international boundaries, except for properly documented antique specimens at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Introduction of nonnative animal species that compete with or prey upon

the Louisiana pinesnake.

(3) Introduction of invasive plant species that contribute to the degradation of the natural habitat of the Louisiana pinesnake.

(4) Unauthorized destruction or modification of suitable occupied Louisiana pinesnake habitat that results in damage to or alteration of desirable herbaceous (non-woody) vegetation or the destruction of Baird's pocket gopher burrow systems used as refugia by the Louisiana pinesnake, or that impairs in other ways the species' essential behaviors such as breeding, feeding, or sheltering.

(5) Unauthorized use of insecticides and rodenticides that could impact small mammal prey populations, through either unintended or direct impacts within habitat occupied by Louisiana pinesnakes.

(6) Unauthorized actions that would result in the destruction of eggs or cause mortality or injury to hatchling, juvenile, or adult Louisiana pinesnakes.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Louisiana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We completed an environmental assessment of this action under the authority of the National Environmental Policy Act of 1969. We notified the public of the availability of the draft environmental assessment on the internet at <https://www.fws.gov/lafayette/>. We have carefully considered all comments received and addressed them in this rule. The

environmental assessment is available in the docket for this rulemaking action at <http://www.regulations.gov>.

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), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. There are no tribal lands located within the range of the Louisiana pinesnake.

References Cited

A list of the references cited in this final rule may be found in the docket in www.regulations.gov.

Authors

The primary authors of this final rule are the staff members of the Louisiana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

Accordingly, for the reasons just described, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend §17.11 in paragraph (h) by revising the entry for “Pinesnake, Louisiana” in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *	* *			
REPTILES				
* * * * *	* *			
Pinesnake, Louisiana	<i>Pituophis ruthveni</i>	Wherever found	T	83 FR 14958, April 6, 2018; 50 CFR 17.42(i). ^{4d}
* * * * *	* *			

3. Amend § 17.42 by adding paragraph (i) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(i) Louisiana pinesnake (*Pituophis ruthveni*)—(1) *Definitions*. The following definitions apply only to terms used in this paragraph (i) for activities affecting the Louisiana pinesnake.

(i) *Estimated occupied habitat area (EOHA)*. Areas of land where occurrences of Louisiana pinesnakes have been recorded and that are considered by the Service to be occupied by the species. For current information regarding the EOHAs, contact your local Service Ecological Services office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed in 50 CFR 2.2.

(ii) *Suitable or preferable soils*. Those soils in Louisiana and Texas that generally have high sand content and a low water table and that have been shown to be selected by Louisiana pinesnakes (Natural Resources Conservation Service soil survey hydrologic group, Categories A and B).

(2) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Louisiana pinesnake. Except as provided at paragraph (i)(3) of this section and § 17.4, 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 cause to be committed, any of the following acts in regard to this species::

(i) Import or export, as set forth for endangered wildlife at § 17.21(b).

(ii) Take, as set forth for endangered wildlife at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth for endangered wildlife at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth for endangered wildlife at § 17.21(e).

(v) Sale or offer for sale, as set forth for endangered wildlife at § 17.21(f).

(3) *Exceptions from the prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit issued under § 17.32.

(ii) Take, as set forth for endangered wildlife at § 17.21(c)(2) through (c)(4).

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken Louisiana pinesnakes, as set forth for endangered wildlife at § 17.21(d)(2).

(v) Take incidental to an otherwise lawful activity caused by:

(A) *Outside any known EOHAs*—Activities that maintain existing forest lands in forest land use and that, when conducted in areas within the range of the Louisiana pinesnake, on preferred or suitable soils, result in the establishment and maintenance of open-canopy pine-dominated forest stands over time across the landscape. These activities include:

(1) Tree thinning, tree harvest (including clearcutting), and planting and replanting pines (by hand or by machine).

(2) Prescribed burning, including all firebreak establishment and maintenance actions, as well as actions taken to control wildfires.

(3) Herbicide application that is generally targeted for invasive plant species control and midstory and understory woody vegetation control, but is also used for site preparation

when applied in a manner that minimizes long-term impact to noninvasive herbaceous vegetation. These provisions include only herbicide applications conducted in a manner consistent with Federal and applicable State laws, including Environmental Protection Agency label restrictions and herbicide application guidelines as prescribed by manufacturers.

(4) Skidding logs and use of loading decks that avoid mound complexes of Baird's pocket gophers (*Geomys breviceps*).

(5) Maintenance of existing substandard (dirt, unsurfaced) forest roads and trails used for access to timber being managed.

(6) Implementation of mandated and State-recommended forestry best management practices, including, but not limited to, those necessary to protect riparian (e.g., streamside management zone) and other habitats from erosional sediment deposition, and prevent washout of forest roads and impacts to vegetation.

(7) Food plot establishment for game animals, when it does not destroy existing native herbaceous vegetation, avoids Baird's pocket gopher mound complexes, and does not exceed 1 acre in size.

(B) *Within any known EOHA*s where Baird's pocket gopher mounds are present or on lands that have suitable or preferable soils and that are forested, undeveloped, or non-farmed (i.e., not cultivated on an annual basis) and adjacent to forested lands—Activities described in paragraphs (i)(3)(v)(A)(1) through (7) of this section provided that those activities do not:

(1) Cause subsurface disturbance, including, but not limited to, wind-rowing, stumping, disking (except during firebreak creation or maintenance), root-raking, drum

chopping (except for single pass with the lightest possible weighted drums and only when the soil is not wet, when used to control hardwoods and woody shrub species detrimental to establishment of pine-forested land), shearing that penetrates the soil surface, ripping (except when restoring pine forest in compacted soil areas such as former pastures), bedding, new road construction, and commercial or residential development. Machine-planting, using the shallowest depth possible, would be allowed in areas where pocket gophers are not present and only for planting pine tree species. In former pastures or highly degraded areas with no herbaceous vegetation and poor planting conditions, subsurface disturbance will be allowed only for activities that contribute to reforestation that is consistent with the conservation of the species.

(2) Inhibit the persistence of suitable Baird's pocket gopher and Louisiana pinesnake habitat, which consists of open-canopy forest situated on well-drained sandy soils with an abundant herbaceous plant community, a nonexistent or sparse midstory, and a low pine basal area.

(3) Involve the use of plastic mesh in erosion control and stabilization devices, mats, blankets, or channel protection.

Dated: January 30, 2020.

Aurelia Skipwith

Director, U.S. Fish and Wildlife Service.

Billing Code 4333-15

