

§ 17.51

50 CFR Ch. I (10–1–08 Edition)

(b) In determining whether to treat a species as Endangered or Threatened due to similarity of appearance, the Director shall consider the criteria in section 4(e) of the Act, as indicated below:

(1) The degree of difficulty enforcement personnel would have in distinguishing the species, at the point in question, from an Endangered or Threatened species (including those cases where the criteria for recognition of a species are based on geographical boundaries);

(2) The additional threat posed to the Endangered or Threatened species by the loss of control occasioned because of the similarity of appearance; and

(3) The probability that so designating a similar species will substantially facilitate enforcement and further the purposes and policy of the Act.

*Example 1.* The ABC sparrow is Endangered wildlife. The ABD sparrow is a subspecies that is so similar to the ABC sparrow that when found outside their normal habitat, the two cannot readily be distinguished by law enforcement personnel. The ABD sparrow is listed in §17.11, after following the proper procedures as follows:

SPECIES AND RANGE

Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
ABC sparrow .....	ABCus .....	NA .....	North America .....	Entire .....	E	7	NA
ABD sparrow .....	ABDus .....	NA .....	.....do .....	NA .....	E(S/A)	7	NA

*Example 2.* Suppose the ABC sparrow is listed as Endangered in only a portion of its range. Within the meaning of the Act, the ABC sparrow as defined by geographic boundaries is a species. The ABC sparrow

which occurs beyond those boundaries is a different species, even though it is identical, except in location, to the listed species. If the criteria of this section were met, the two species would be listed as follows:

SPECIES AND RANGE

Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
ABC sparrow .....	ABCus .....	Idaho .....	Idaho .....	Entire .....	E	7	NA
Do .....	.....do .....	NA .....	United States .....	NA .....	E(S/A)	7	NA

*Example 3.* The XY cactus has been determined to be an Endangered species. The XZ cactus so closely resembles the XY cactus that enforcement personnel cannot distinguish between the two. The Endangered XY cactus could be illegally sold as the non-en-

dangered XZ species, thus posing an additional threat to the Endangered species. After following the proper procedures, the XZ cactus would be placed on the list and treated as though it was an Endangered species. This entry would appear as follows:

SPECIES AND RANGE

Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules
XYum .....	XY cactus .....	Arizona .....	Entire .....	.....	E	7	NA
XZum .....	.....do .....	Arizona and Mexico.	NA .....	.....	E(S/A)	8	NA

**§ 17.51 Treatment as endangered or threatened.**

(a) Any species listed in §17.11 or §17.12, pursuant to §17.50, shall be

treated as Endangered or Threatened, as indicated in the “Status” column.

(b) All of the provisions of subparts C (Endangered Wildlife), D (Threatened

Wildlife), F (Endangered Plants) or G (Threatened Plants), as appropriate, shall apply to any such species.

**§ 17.52 Permits—similarity of appearance.**

Upon receipt of a complete application and unless otherwise indicated in a special rule, the Director may issue permits for any activity otherwise prohibited with a species designated as Endangered or Threatened due to its similarity of appearance. Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specified period of time.

(a) *Application requirements.* An application for a permit under this section must be submitted to the Director by the person who wishes to engage in the prohibited activity. The permit for activities involving interstate commerce of plants must be obtained by the seller; in the case of wildlife, the permit must be obtained by the buyer. The application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. It must include, as an attachment, all of the following information: Documentary evidence, sworn affidavits, or other information to show species identification and the origin of the wildlife or plant in question. This information may be in the form of hunting licenses, hide seals, official stamps, export documents, bills of sales, certification, expert opinion, or other appropriate information.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making his decision, the Director shall consider, in addition to the general criteria, in § 13.21(b) of this subchapter, the following factors:

(1) Whether the information submitted by the applicant appears reliable;

(2) Whether the information submitted by the applicant adequately identifies the wildlife or plant in question so as to distinguish it from any

Endangered or Threatened wildlife or plant.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) If indicated in the permit, a special mark, to be specified in the permit, must be applied to the wildlife or plant, and remain for the time designated in the permit;

(2) A copy of the permit or an identification label, which includes the scientific name and the permit number, must accompany the wildlife or plant or its container during the course of any activity subject to these regulations.

(d) *Duration of permits.* The duration of a permit issued under this section shall be designated on the face of the permit.

**Subpart F—Endangered Plants**

**§ 17.61 Prohibitions.**

(a) Except as provided in a permit issued pursuant to § 17.62 or § 17.63, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (b) through (e) of this section in regard to any Endangered plant.

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

(c) *Remove and reduce to possession.* (1) It is unlawful to remove and reduce to possession any endangered plant from an area under Federal jurisdiction.

(2) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession endangered plants from areas under Federal jurisdiction without a permit if such action is necessary to: