

compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

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(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* A property owner (including anyone with a fee simple, leasehold, or other property interest sufficient to carry out the proposed management activities, subject to applicable State law) must submit an application for a permit under paragraph (d) of this section to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22).

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(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

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(5) * * *

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) * * *

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent

possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

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(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this subsection. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

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Dated: July 21, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH93

Revisions to the Regulations Applicable to Permits Issued Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise our regulations pertaining to permits issued under the Endangered Species Act. The

proposed revisions will refine and clarify the application requirements and issuance criteria for such permits, particularly when used in connection with projects to improve habitat for listed species. The revisions will encourage and facilitate enhancement initiatives by landowners, natural resource agencies, and others.

DATES: Comments from all interested parties must be received by November 10, 2003.

ADDRESSES: Comments or materials concerning the proposed rule should be sent to Division of Conservation and Classification, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 North Fairfax Drive, Suite 420, Arlington, Virginia 22203 (Telephone 703/358-2171, Facsimile 703/358-1735). Comments and materials received on the proposed rule will be available for inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, Fish and Wildlife Service (Telephone 703/358-2171, Facsimile 703/358-1735).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1) of the Act authorizes the Service to issue permits allowing otherwise prohibited activities for certain actions that are consistent with the purposes of the Act. Section 10(a)(1)(A) authorizes such permits for scientific research or to enhance the propagation or survival of all listed species. Generic regulations for these permits are detailed at 50 CFR 17.22(a) and 17.32(a). Section 10(a)(1)(B) authorizes permits allowing the taking of listed species incidental to otherwise lawful activities (such as land development, timber harvest). Regulations for these permits are detailed at §§ 17.22(b) and 17.32(b).

The Service issues section 10(a)(1)(A) permits for otherwise prohibited activities when the purpose of the permit is scientific or when there is a clear link between the proposed activity and the enhancement of propagation or survival of the affected species.

Scientific purposes include activities such as, but not limited to, presence/absence surveys, monitoring, and mark/recapture studies that involve Federally-listed species. Enhancement permits are issued for activities that directly aid in the recovery of endangered and threatened species. The current regulations at 50 CFR 17.22(a) and 17.32(a) refer to some of the activities that can be permitted under section 10(a)(1)(A) of the Act. The principal purpose of this proposed rule is to more explicitly describe and accommodate the different types of enhancement activities can be permitted under section 10(a)(1)(A) of the Act.

Permits to enhance the propagation or survival of listed species have most commonly been issued in connection with captive breeding efforts and research activities. The Service has recognized, however, that such permits can be used in other contexts as well. For example, in 1999, the Service revised its regulations to recognize two special categories of permits to enhance the survival of listed species. One category, called "permits for the enhancement of survival through Safe Harbor Agreements," is detailed at §§ 17.22(c) and 17.32(c). The other category, called "permits for the enhancement of survival through Candidate Conservation Agreements with Assurances," is detailed at §§ 17.22(d) and 17.32(d).

Both of the special categories of enhancement of survival permits authorize take that is incidental to beneficial management activities. The Service could have authorized such take under section 10(a)(1)(B), which authorizes permits for take incidental to any otherwise lawful activity. However, we concluded that it was more appropriate to utilize the authority of section 10(a)(1)(A) for both Safe Harbor Agreements and Candidate Conservation Agreements with Assurances because the purpose of such agreements is to enhance the survival of listed species. In addition, some of the requirements applicable to Habitat Conservation Plans and associated permits under section 10(a)(1)(B), such as mitigation, are ill-suited to the context of activities carried out for the purpose of benefitting listed and unlisted species.

As a result of the 1999 revisions, the regulations now recognize three types of enhancement of survival permits: (1) The generic category of enhancement of propagation or survival permits (§§ 17.22 and 17.32(a)), and the specific categories of permits connected with (2) Safe Harbor Agreements (§§ 17.22 and 17.32(c)) and (3) Candidate

Conservation Agreements with Assurances (§§ 17.22 and 17.32(d)). As discussed above, the generic category has historically been used principally to authorize otherwise prohibited activities in connection with captive breeding or similar activities. However, the Service recognizes that there are many other types of activities that can appropriately be authorized under the first category.

An example of such activities would be habitat management activities not associated with mitigation, such as management of parks, reserves or other conservation areas for the benefit of listed species. For example, a state natural reserve may use prescribed burning on a regular basis to maintain the habitat of a listed species such as the Karner blue butterfly. Regular prescribed burning is a beneficial management practice necessary simply for the long-term well-being of this (and many other) species, yet burning has the potential to take at least some individuals of the species, particularly in the sedentary and relatively cryptic egg, larval, or pupal life stages. The purpose of the activity is the maintenance of the species' required habitat in order to enhance the survival of the Karner blue butterfly. To authorize such activities through a Habitat Conservation Plan permit under section 10(a)(1)(B) would be inappropriate to require mitigation for impacts due to habitat management activities that enhance the propagation or survival of listed species.

It may also be inappropriate in some cases to authorize these activities under a Safe Harbor Agreement. This may be particularly true if the landowner does not wish to return the habitat to its baseline condition, which would mean that the requirement of the Safe Harbor policy to quantify baseline responsibilities would result in an unnecessary expense. For these reasons, it would be most efficient and appropriate to authorize the anticipated take, incidental or not, under the generic authority to issue permits to enhance the propagation or survival of a listed species.

The generic authority to issue permits to enhance the propagation or survival of listed species can authorize take that is intentional (as is the case with respect to removing animals from the wild in order to start a captive breeding program) and incidental (as in the prescribed burning example above). For example, a conservation initiative to improve and expand habitat for a species at a site where it currently occurs in only small numbers in degraded habitat may unavoidably result in the incidental take of some

individuals of the species. In addition, if the species (e.g., prairie dogs) has the potential to continue to expand into areas not intended for enhancement under the conservation initiative and detrimentally affect crops or livestock, the conservation initiative may include provisions to relocate or remove individuals that disperse from the habitat enhanced under the conservation initiative into nearby agricultural areas. Provided that the conservation initiative clearly meets the requirement that its overall impact would be to enhance the survival of the affected species, a permit under Section 10(a)(1)(A) could authorize both the incidental and intentional take described here. These permits could not be used to authorize past take even if conservation measures could be used to compensate for that impact to the species.

There are a number of activities that can appropriately be authorized under the first category to encourage in-situ conservation of foreign-listed species. An example would be the import of the Morelet's crocodile (*Crocodylus moreletii*) skins from ranches and populations in Mexico. As part of an overall conservation program for this species, Mexico allows a regulated removal of live specimens from the wild to establish parental stock for captive-breeding operations. A certain portion of the young produced are returned to the wild and the remainder are used to produce ranch skins that are traded internationally. This is part of a comprehensive conservation and management program for Morelet's crocodiles, which includes sustainable use of the species to encourage its conservation. As a result of this management program, Mexico has been able to register its captive-breeding facilities with the Convention on International Trade in Endangered Species for international commercial trade. However, this international trade is still excluded from the United States because of the species' endangered status under the Act. Allowing the regulated import of such skins or products could further encourage Mexico to enhance its conservation efforts for this species in the wild.

Federal agencies generally would continue to be able to obtain permits authorized through parts 17.22(a) and 17.32(a). Federal agencies may not obtain authorization for intentional take associated with a Safe Harbor Agreements and Candidate Conservation Agreements with Assurances because the Safe Harbor Agreements and Candidate Conservation Agreements with

Assurances policies expressly prohibit Federal agencies from obtaining assurances included with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances.

The Service recognizes that its existing regulations at §§ 17.22(a) and 17.32(a) do not clearly describe the full range of activities that enhance species survival. Although our current regulations authorize the permitting of take that results from any activity that meets the standard under section 10(a)(1)(A), enhancement of propagation or survival, we propose to revise §§ 17.22(a) and 17.32(a) to clarify the range of actions that may be permitted. Furthermore, we propose to clarify that these permits may also be issued in conjunction with Candidate Conservation Agreements with Assurances and Safe Harbor Agreements that contemplate intentional take.

Revisions to the Regulations

In 1999, the Service's Office of Management Authority, which is responsible for activities involving non-native listed species and the international movement of all listed species, became the Division of Management Authority. As such, § 17.8(a)(2) needs to be revised to reflect this change.

Regulations at §§ 17.22(a) (for endangered species) and 17.32(a) (for threatened species) describe application requirements and issuance criteria for permits for scientific purposes or to enhance the propagation or survival of listed species (§ 17.32(a) also covers the issuance of permits for other purposes that are allowable for threatened species). As currently written, those regulations prescribe the same application requirements and issuance criteria for all such permits, regardless of whether the purpose of the application is to conduct scientific research, import, export, conduct interstate commerce, implement captive breeding efforts, carry out habitat restoration activities to enhance the survival of species associated with that habitat, or carry out other activities designed to benefit the species' survival in the wild. Some of these provisions, particularly the application requirements, are important for only certain purposes, but not for all. We propose to revise these application requirements and issuance criteria to indicate clearly which apply to which of the different purposes for which permits are sought. Specific changes are described as follows.

Both §§ 17.22(a)(1)(i) and 17.32(a)(1)(i) require applications to

specify the number, age, and sex of animals to be covered by the permit. This information may be of considerable importance if the purpose of the permit is to acquire particular individuals from the wild for captive breeding or scientific research. It is generally not important, or determinable, in other contexts, such as when the permit applicant seeks authority to take the species incidental to carrying out habitat improvement activities to enhance the survival of the species, as in the case of prescribed burning of Karner blue butterfly habitat. Accordingly, we propose to revise this provision to require such information only insofar as it is determinable at the time of the permit application.

A resume of the applicant's attempts to obtain specimens of wildlife sought to be covered by the permit in a manner that would not cause its death or removal is required by §§ 17.22(a)(1)(iii) and 17.32(a)(1)(iii). This requirement is appropriate in those situations in which the permit applicant seeks to collect or obtain wildlife. In situations where that is not the case, such as when the applicant must inadvertently take wildlife as part of a program to enhance the species survival through habitat creation or improvement, the requirement is unnecessary. Accordingly, we propose to clarify this provision by adding a prefatory clause explaining that it applies only when an applicant seeks to obtain specimens under the permit.

The requirements, at §§ 17.22(a)(1)(v) and 17.32(a)(1)(v), that an application must include a description of an institution or facility only has relevance where the applicant intends to use, display, or maintain the covered wildlife. In other situations, such as those involving habitat restoration to enhance the survival of a species, the applicant will not use, display, or maintain the species. Accordingly, we propose to clarify this provision by adding a prefatory clause explaining that it applies only when an applicant intends to use, display, or maintain wildlife covered by the permit.

Both §§ 17.22(a)(1)(vi) and 17.32(a)(1)(vi) require an applicant to describe the facilities where wildlife covered by the permit will be housed or cared for. This provision is relevant if the applicant intends to house or care for live wildlife, but not if the applicant intends only to enhance the survival of a species through habitat improvement. Accordingly, we propose to clarify this provision by specifying that it applies only when the applicant intends to house or care for live wildlife.

At present, §§ 17.22(a)(2)(i) and 17.32(a)(2)(i) require evaluation of whether the purpose for which the permit is required is adequate to justify removing from the wild the wildlife sought to be covered under the permit or otherwise changing its status. Yet not all scientific research or enhancement of propagation or survival permits will entail removing wildlife from the wild, or changing its status. Some enhancement or research activities may take wildlife by means of harassment (such as handling individuals through banding, or disturbing individuals through habitat restoration), but will not remove it from the wild. Accordingly, we propose to revise §§ 17.22(a)(2)(i) and 17.32(a)(2)(i) to a more general statement requiring the Director to consider whether the purpose for which the permit is sought is adequate to justify the otherwise prohibited activity.

Considering whether issuance of the permit would conflict with any program to enhance the survival probabilities of the population from which the wildlife is to be removed is required by §§ 17.22(a)(2)(iii) and 17.32(a)(2)(iii). Because not all permits issued under this authority entail removing wildlife from the wild, we propose to revise this provision to state more generally that the Director must consider whether issuance of the permit would conflict with any program to enhance the survival probability of the wildlife covered by the permit.

Permits for the enhancement of survival through Safe Harbor Agreements authorized by §§ 17.22(c) and 17.32(c) only authorize take that is incidental to some otherwise lawful activity. In some limited circumstances in which a Safe Harbor Agreement would enhance the survival of a listed species by various activities, such as those discussed above, it may be appropriate to permit limited intentional taking of that species. Therefore, we propose a provision whereby a permit authorizing such intentional take associated with a Safe Harbor Agreement can be issued under §§ 17.22(a) or 17.32(a), in addition to incidental take under §§ 17.22(c) or 17.32(c), but only if the Director determines that all requirements of the Safe Harbor policy are met, other than its limitation for only incidental take. Thus, Safe Harbor Agreement permits issued under §§ 17.22(a) or 17.32(a) covering intentional take will be administered in accordance with the responsibilities and assurances stated in the Safe Harbor policy. This means that holders of these permits will have assurances that their conservation efforts will not incur future regulatory

obligations in excess of those to which they agreed. These assurances cannot be provided to Federal agencies.

Similarly, permits for the enhancement of survival through Candidate Conservation Agreements with Assurances, authorized by §§ 17.22(d) and 17.32(d), only authorize future take that is incidental to some otherwise lawful activity should the species named on the permit become listed as endangered or threatened. However, in some limited circumstances in which a Candidate Conservation Agreement with Assurances enhances the survival of an unlisted species by creating, restoring, or improving its habitat, reintroducing it, or other similar activities, it may be appropriate to permit limited intentional taking of that species to reduce damage to or destruction of agricultural crops, livestock, domestic animals, buildings or other infrastructure, or negative effects to human health or safety. Therefore, we propose a provision whereby a permit authorizing such intentional take associated with a Candidate Conservation Agreement with Assurances can be issued under §§ 17.22(a) or 17.32(a), in addition to incidental take under §§ 17.22(d) or 17.32(d), but only if the Director determines that all requirements of the Candidate Conservation Agreements with Assurances policy are met, other than its limitation for only incidental take. Thus, Candidate Conservation Agreements with Assurances permits issued under §§ 17.22(a) or 17.32(a) covering intentional take will be administered in accordance with the responsibilities and assurances stated in the Candidate Conservation Agreements with Assurances policy. This means that holders of these permits will have assurances that their conservation efforts will not incur future regulatory obligations in excess of those to which they agreed. As with Safe Harbor Agreements, these assurances cannot be provided to Federal agencies.

A notice to the Director in the event of escape of wildlife from captivity is a permit condition required by §§ 17.22(a)(3) and 17.32(a)(3). We propose to clarify that such a condition is required only in permits that authorize the keeping of wildlife in captivity. In addition, we propose to add a provision under this paragraph applicable to permits to undertake habitat creation, restoration, or improvement, reintroduction of a species, or similar activities. The Director shall condition these permits as he or she deems appropriate to ensure that the net effect of those activities,

together with any taking to be authorized by the requested permit, is reasonably expected to be beneficial to the conservation of such species.

Required Determinations

We have evaluated the effects of the proposed regulation revisions described in this rule. We have concluded that the resulting economic benefits would be limited by the number of persons obtaining permits, and that the number of permits issued would be limited by our resources available to develop and process permit applications. This proposed rule clarifies the regulations pertaining to scientific purposes or enhancement of propagation or survival permits to encourage habitat enhancement activities. Although we anticipate issuing these types of permits, we do not anticipate that the level of participation in these permitting programs will significantly increase as a result of this rule because our resources available to process permit applications will not change as a result of this rule. Therefore, we conclude that this proposed rule will have little effect. Based on this finding, we have made the following determinations for this proposed rule.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant proposed rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This proposed rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Since most of the proposed rule deals with clarification of current regulations, we do not anticipate this rule will cause any economic changes, either positive or negative. We have concluded that the portion of the proposed rule that deals with issuing permits for habitat improvement will have a beneficial economic effect, but that the effect would be small because of the small number of permits anticipated to be issued and the relatively small economic benefits that would accrue to permittees who take advantage of this provision.

(b) This proposed rule is not expected to create inconsistencies with other agencies' actions.

(c) This proposed rule is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule may raise novel legal or policy issues

and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. The proposed rule does not establish any new implementation burdens. Submitting applications for permits under the Act is voluntary, and participation in activities that enhance the survival or propagation of species is also voluntary on the part of the applicant. We expect that any impacts of this rule would be beneficial by making it easier to understand the issuance requirements for permits under the Act and particularly for undertaking enhancement of survival or propagation activities that would be beneficial for habitat restoration and improvements. While the Service currently issues a large number of permits for activities such as research and captive breeding (currently over 1,200 permits issued, with 485 permits issued in 2001) and incidental take (currently over 400 permits issued, with 141 of incidental take permits issued in 2001), we only anticipate issuing a small number of permits that take advantage of this new habitat enhancement provision. We, therefore, do not expect these changes to affect a substantial number of small entities. We expect to issue approximately 10 additional of these habitat enhancement permits per year during the first several years of the program's operation. Therefore, given the low number of habitat enhancement permits expected to be issued and the

fact that the remaining portion of this proposed rule only clarifies current regulation, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that this proposed rule will not result in any significant additional expenditures by entities that develop Agreements.

(b) This proposed rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed rule imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This proposed rule has no provision that would take private property rights. Participation in this permitting program is strictly voluntary.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with appropriate resource agencies throughout the United States.

Civil Justice Reform

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

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), E.O. 13175, and 512 DM 2, this proposed rule does not directly affect Tribal resources. The effect of this proposed rule on Native American Tribes would be determined on a case-by-case basis with individual evaluations of permit applications. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the permit application any information provided by the Tribes, through the public comment period or formal submissions, and advocate the incorporation of conservation measures that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the permit application and after careful consideration of the Tribe's concerns, we must clearly state the rationale for the recommended final decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We have not yet consulted with affected Tribes. This requirement will be addressed during individual evaluations of permit applications.

(b) We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed during individual evaluations of permit applications.

(c) We will consider Tribal views in individual evaluations of permit applications.

(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this proposed rule on Tribes. This requirement will be addressed during individual evaluations of permit applications.

Paperwork Reduction Act

This rule does not contain any new collections of information under permit application forms other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB clearance number 1018-0094. This rule clarifies the range of activities that may be permitted under 50 CFR 17.22(a) and 17.32(a). Our current application approval number

1018-0094, already accommodates this clarification and the changes proposed herein. Therefore, no change in the approved application forms is needed. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This proposed rule is being submitted to OMB for review.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Fish and Wildlife Service has determined that this rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1.

Section 7 Consultation

Though these revisions to the regulations will clarify the range of actions that may be permitted under enhancement of survival permits, it will not change the issuance standards for these enhancement of survival permits, or the manner in which the Service makes its issuance determinations. In addition, the Service will continue to consult on the issuance of each individual permit. During consultation, the potential risks to listed and proposed species and designated and proposed critical habitat areas will be evaluated. Therefore, at this time the Service has determined that the present action of revising these regulations for section 10(a)(1)(A) permits will not affect listed species or designated critical habitat.

Public Comments Solicited

We request public comments on this proposed rule to revise the regulations applicable to permits for scientific purposes or enhancement of propagation or survival. We will take into consideration all comments and any additional information received by the close of comment period (listed above in **DATES**) in making a final determination on this proposal. Comments on the proposed rule and policy changes should go to the Division of Conservation and Classification (listed above in **ADDRESSES**). Comments on the required determinations should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget via facsimile (202/395-6566), or e-mailed to

OIRA *DOCKET@omb.eop.gov*, and to the Fish and Wildlife Information Collection Officer, Room 222, 4401 N. Fairfax Drive, Arlington, VA 22203.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 17.8 Permit applications and information collection requirements.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

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

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 17

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

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.8 by revising paragraph (a)(2) to read as follows:

§ 17.8 Permit applications and information collection requirements.

(a) * * *

(2) Submit permit applications for activities affecting native endangered and threatened species in international movement or commerce, and all activities affecting nonnative endangered and threatened species, to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203.

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3. Amend § 17.22 by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* A person wishing to get a permit for an activity prohibited by § 17.21 submits an application for activities under this section. The Service provides Form 3–200 for the application to which all of the following must be attached:

(i) The common and scientific names of the species to be covered by the permit, as well as the number, age, and sex of such species, and the activity to be authorized (such as take, export, or interstate commerce). If the purpose of the permit is for habitat restoration, in-situ conservation for foreign listed species, or other such situations where this information is undeterminable, the number, age, and sex of the species may not be required;

(ii) A statement as to whether, at the time of application, the wildlife to be covered by the permit

(A) Is still in the wild,

(B) Has already been removed from the wild,

(C) Was born in captivity, or

(D) Was artificially propagated;

(iii) If the applicant seeks to obtain specimens of the wildlife to be covered

by the permit, a resume of the applicant's attempts to obtain the wildlife in a manner that would not cause the death or removal from the wild of such wildlife. If the purpose of the permit is to promote in-situ conservation of foreign-listed species, such information may not be required;

(iv) If the wildlife to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife to be covered by the permit was born in captivity or artificially propagated, the country and place where such wildlife was born or artificially propagated, as well as the name and address of the breeder;

(v) If the wildlife to be covered by the permit is to be used for scientific purposes, displayed for educational purposes, or maintained for any reason at an institution of other facility, a complete description and address of the institution or other facility;

(vi) If the applicant intends to house and/or care for live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit, including the details of the activities to be authorized by the permit; and

(viii) If the application is for the purpose of enhancement of propagation, a statement of

(A) The applicant's willingness to participate in a nationally or internationally recognized cooperative breeding program,

(B) A description of how participation in such a breeding program will be carried out,

(C) The applicant's willingness to maintain or contribute data to a studbook, and

(D) A description of how the propagation of the species will benefit the species in the wild.

(2) *Issuance criteria.*

(i) Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether the Service should issue a permit. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(A) Whether the applicant's intended purpose for which the permit is required justifies allowing the applicant to engage in an otherwise prohibited activity;

(B) The probable direct and indirect effect that issuing the permit would have on the wild populations of the wildlife to be covered by the permit;

(C) Whether the permit, if issued, would, in any way, directly or indirectly conflict with any known program intended to enhance the survival probabilities of any population of the wildlife to be covered by the permit;

(D) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife to be covered by the permit;

(E) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(F) Whether the expertise, facilities, or other resources available to the applicant appear adequate to accomplish the objectives stated in the application;

(ii) The Director may issue a permit for enhancement of survival of a species that allows the applicant to create, restore, or improve habitat, reintroduce the species, contribute to in-situ conservation of foreign-listed species, or conduct similar activities if the Director finds that the net effect of those activities, together with any incidental or other taking to be authorized by the permit, will likely be beneficial to the conservation of that species. In determining whether these actions are beneficial, the Director will consider factors including, but not limited to: whether the action is expected to increase the number of individuals or amount of suitable habitats, whether the potential benefits outweigh any negative effects associated with the action, whether the action eliminates or reduces threats to the species, and whether the duration of planned activities is sufficient to achieve the expected benefits. In the case of an application for a permit to allow intentional take of any species in association with a Safe Harbor Agreement, the Director must find that the activity will be in accordance with the terms of an associated Safe Harbor Agreement and will comply with all requirements of the Safe Harbor Agreements Policy, except for the limitation in that policy to incidental take. In the case of an application for a permit to allow intentional take of any species not yet listed at the time of the permit application, the Director must find that the activity will be in accordance with the terms of an associated Candidate Conservation Agreement with Assurances and will comply with all requirements of the

Candidate Conservation Agreements with Assurance Policy, except for the limitation in that policy to incidental take;

(3) *Permit conditions.* (i) In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section that authorizes the keeping living wildlife in captivity will be subject to the condition that the escape of wildlife covered by the permit will be immediately reported to the Service office designated in the permit;

(ii) Permits issued under this section for enhancement of survival to undertake habitat creation, restoration, or improvement, or reintroduction of a species, or similar activities will be subject to such conditions as the Director deems appropriate to ensure that the net effect of those activities, together with any incidental or intentional take to be authorized by the requested permit, will be beneficial to the conservation of such species.

* * * * *

4. Amend § 17.32 by revising paragraphs (a)(1)(i)–(viii), (a)(2), and (a)(3) to read as follows:

§ 17.32 Permits—general.

(a)(1) * * *

(i) The common and scientific names of the species to be covered by the permit, as well as the number, age, and sex of such species, and the activity to be authorized (such as take, export, or interstate commerce). If the purposes of the permit is for habitat restoration, in-situ conservation of foreign listed species, or other such situations where this information is undeterminable, the number, age, and sex of the species may not be required;

(ii) A statement as to whether, at the time of application, the wildlife to be covered by the permit

(A) Is still in the wild,

(B) Has already been removed from the wild,

(C) Was born in captivity, or

(D) Was artificially propagated;

(iii) If the applicant seeks to obtain specimens of the wildlife to be covered by the permit, a resume of the applicant's attempt to obtain the wildlife in a manner that would not cause the death or removal from the wild of such wildlife. If the purpose of the permit is to promote in-situ conservation of foreign-listed species such information may not be required.

(iv) If the wildlife to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife to be covered by the permit was born in captivity or artificially propagated, the country and place where such wildlife

was born or artificially propagated, as well as the name and address of the breeder;

(v) If the wildlife to be covered by the permit is to be used for scientific purposes, displayed for educational purposes, or maintained for any reason at an institution or other facility, a complete description and address of the institution or other facility;

(vi) If the applicant intends to house and/or care for live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit, including the details of the activities to be authorized by the permit; and

(viii) If the application is for the purpose of enhancement of propagation, a statement of

(A) The applicant's willingness to participate in a nationally or internationally recognized cooperative breeding program,

(B) A description of how participation in such a breeding program will be carried out,

(C) The applicant's willingness to maintain or contribute data to a studbook, and

(D) A description of how the propagation of the species will benefit the species in the wild.

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether the Service should issue a permit. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(A) Whether the applicant's intended purpose for which the permit is required justifies allowing the applicant to engage in an otherwise prohibited activity;

(B) The probable direct and indirect effect that issuing the permit would have on the wild populations of the wildlife to be covered by the permit;

(C) Whether the permit, if issued, would, in any way, directly or indirectly conflict with any known program intended to enhance the survival probabilities of any population of the wildlife to be covered by the permit;

(D) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife to be covered by the permit;

(E) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(F) Whether the expertise, facilities, or other resources available to the applicant appear adequate to accomplish the objectives stated in the application.

(ii) The Director may issue a permit for enhancement of survival of a species that allows the applicant to create, restore, or improve habitat, reintroduce the species, contribute to in-situ conservation of foreign-listed species, or conduct similar activities if the Director finds that the net effect of those activities, together with any incidental or other taking to be authorized by the permit, will likely be beneficial to the conservation of that species. In determining whether these actions are beneficial, the Director will consider factors including, but not limited to: whether the action is expected to increase the number of individuals or amount of suitable habitats, whether the potential benefits outweigh any negative effects associated with the action, whether the action eliminates or reduces threats to the species, and whether the duration of planned activities is sufficient to achieve the expected benefits. In the case of an application for a permit to allow intentional take of any species in association with a Safe Harbor Agreement, the Director must find that the activity will be in accordance with the terms of an associated Safe Harbor Agreement and will comply with all requirements of the Safe Harbor Agreements Policy, except for the limitation in that policy to incidental take. In the case of an application for a permit to allow intentional take of any species not yet listed at the time of the permit application, the Director must find that the activity will be in accordance with the terms of an associated Candidate Conservation Agreement with Assurances and will comply with all requirements of the Candidate Conservation Agreements with Assurances Policy, except for the limitation in that policy to incidental take.

(3) *Permit conditions.* (i) In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section that authorizes the keeping of living wildlife in captivity will be subject to the condition that the escape of wildlife covered by the permit will be immediately reported to the Service office designated in the permit.

(ii) Permits issued under this section for enhancement of survival to undertake habitat creation, restoration, or improvement, or reintroduction of a species, or similar activities will be subject to such conditions as the Director deems appropriate to ensure that the net effect of those activities, together with any incidental or intentional take to be authorized by the requested permit, will be beneficial to the conservation of such species.

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Dated: May 3, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03-22777 Filed 9-9-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980702167; I.D. 031901A]

RIN 0648-AK26

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for a mandatory, vessel-financed observer program on at-sea processing vessels. This action would require processing vessels to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under these

requirements, a fishery management plan (FMP) must adopt a standardized reporting methodology for assessing the amount and kind of bycatch occurring in the fishery. In addition, this action will benefit fisheries conservation and management by providing information needed for enforcing fishery regulations, maintaining safe and adequate working conditions for observers, and establishing certification and performance standards for observers to ensure that quality data are available for managing the fishery.

DATES: Comments on this proposed rule must be received by October 10, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, Attn: Becky Renko. Comments also may be sent via facsimile (fax) to 206-526-6736. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, or by contacting Don McIsaac at 503-326-6352. Copies may also be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to one of the NMFS addresses and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, telephone: 206-526-6140; fax: 206-526-6736; and e-mail: bill.robinson@noaa.gov or Svein Fougner, Southwest Region, NMFS, telephone: 562-980-4000; fax: 562-980-4047; and e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible via the Internet at the Office of the **Federal Register's** website at http://www.access.gpo.gov/su_docs/aces/aces140.html.

The Federal groundfish fishery off the Washington, Oregon, and California (WOC) coasts is managed pursuant to the Magnuson-Stevens Act and the