

§ 222.306

223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

[64 FR 14054, Mar. 23, 1999, as amended at 67 FR 57973, Sept. 13, 2002]

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised. § 222.305(a) contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade

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name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on

listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

- (1) The type of application, either:
 - (i) Application for an Individual Incidental Take Permit under the Act; or
 - (ii) Application for a General Incidental Take Permit under the Act;
- (2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;
- (3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;
- (4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;
- (5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:
 - (i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;
 - (ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;
 - (iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

- (i) The status of the affected species or stocks;
- (ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;
- (iii) The availability of effective monitoring techniques;
- (iv) The use of the best available technology for minimizing or mitigating impacts; and
- (v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

- (i) The taking will be incidental;
- (ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;
- (iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
- (iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and
- (v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and

conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with

their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMF'S will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMF'S will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the

level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation 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 conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or tribal government agency, or

a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in § 222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—

(i) Application for permit for scientific purposes under the Act; or

(ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a