

use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

1825.970-2 Contract clause.

Insert the clause at 1825.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.225-70 is added to read as follows:

1852.225-70 Export Licenses.

As prescribed in 1825.970-2, insert the following clause:

EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, and the Export Administration Regulations (EAR), 15 CFR Parts 730-799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors. (End of clause)

ALTERNATE 1 (FEB 2000)

As prescribed in 1825.970-2, add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the

exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

RIN 1018-AD95

Additional Comments Sought on Permit Regulations Relating to Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for additional comment on final rule amending general permitting regulations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) published a final rule on June 17, 1999, amending parts 13 and 17 of title 50 of the Code of Federal Regulations (CFR). The final rule, among other things, contained a number of changes to existing Service regulations that apply to permits issued under the authority of the Endangered Species Act of 1973, as amended (Act). The changes were designed to alter the applicability of the Service's general permitting regulations in 50 CFR part 13 to permits issued under section 10 of the Act for Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances. We are seeking additional public comment on a number of the regulatory changes finalized in the June 17, 1999, rule. During the period in which additional public comments are solicited, the regulations published in the final rule of June 17, 1999, will remain in full force and effect. Based on public comments received, we will decide whether portions of the June 17, 1999 final rule should be repropounded. Aspects of the June 17, 1999 final rule that are not included in this document are unaffected.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Send any comments or materials concerning this document to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C., 20240 (Telephone 703/358-2171, Facsimile

703/358-1735). You may examine comments and materials received during normal business hours in room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT:

Nancy Gloman, Chief, Division of Endangered Species (Telephone 703/358-2171, Facsimile 703/358-1735).

SUPPLEMENTARY INFORMATION: This notice of request for additional comment on the final rule, including the background information for the rule, that amended the general permitting regulations applies to the U.S. Fish and Wildlife Service only. Therefore, the use of the terms Service and "we" in this notice refers exclusively to the U.S. Fish and Wildlife Service. The final rule was published on June 17, 1999, at 64 FR 32706. We published a correction document September 30, 1999, at 64 FR 52676 to correct certain errors that appeared in the final regulations.

Background

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, we published 50 CFR part 13 to consolidate the administration of various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. We intended the general part 13 permitting provisions to be in addition to, and not in lieu of, other more specific permitting requirements of Federal wildlife laws.

Subsequent to the 1974 publication of part 13, we added many wildlife regulatory programs to title 50 of the CFR. For example, we added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the Endangered Species Act, and added part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

In most instances, the combination of part 13's general permitting provisions and part 17's specific permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the "one size fits all" approach of part 13 has been inappropriately

constraining and narrow. These three areas involve Habitat Conservation Planning, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Congress amended section 10(a)(1) of the Act in 1982 to authorize incidental take permits associated with Habitat Conservation Plans (HCP). Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit or longer. We negotiate such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this system as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this arrangement as a problem so long as we can easily transfer incidental take authorization from one purchaser to another.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its citizens. We do not view this activity as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

The above HCP scenarios have not been easily reconcilable with certain sections of part 13. For example, 50 CFR sections 13.24 and 13.25 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they have imposed inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP have foreseen the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could have arisen in attempting to apply the general part 13 permitting requirements to permits issued under part 17 to implement Safe Harbor or Candidate Conservation Agreements with Assurances. A major incentive for property owner participation in the Safe Harbor or Candidate Conservation Agreements with Assurances programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land if it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could have viewed the limitations in several sections (*e.g.*,

sections 13.24 and 13.25) as impediments to the development of these Agreements.

Because we believed that it was appropriate to address the potential conflicts between parts 13 and 17 of the regulations, we promulgated revisions to the regulations that specifically identify in which instances the permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits will differ from the general part 13 permit procedures.

Description/Overview of the Notice Requesting Additional Comments

This notice seeks additional public comment on the specific amendments to parts 13 and 17, promulgated in the June 17, 1999, final rule, that dictate when the permitting requirements for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits will vary from the general part 13 requirements. We believe specific regulatory amendments will achieve the purpose of avoiding potential conflicts between these permits and the general part 13 requirements, while more clearly informing potential applicants and the interested public of the ways in which the requirements for HCP, Safe Harbor, and Candidate Conservation Agreements with Assurances permits differ from the general permit requirements. The specific changes on which we seek additional public comment are as follows:

1. Section 13.21(b)(4) generally prevents the Service from issuing a permit for an activity that "potentially threatens a wildlife or plant population." This provision is unnecessary and might even be confusing for issuance criteria for permits under HCPs, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances, since the HCP and Candidate Conservation Agreements with Assurances issuance criteria already incorporate a requirement that the permitted activity cannot be likely to jeopardize the continued existence of a species and since Safe Harbor Agreement permits must meet a net benefit test. The final rule therefore revised the HCP permit issuance criteria in sections 17.22(b)(2) and 17.32(b)(2) to except HCP permits from section 13.21(b)(4) and included in the final Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permit regulations a similar exception from section 13.21(b)(4) (sections 17.22(c)(2) and (d)(2) and 17.32(c)(2) and (d)(2)).

2. Section 13.23(b) generally reserves to the Service the right to amend permits "for just cause at any time." The final rule revised this provision to clarify that the Service's reserved right to amend HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits must be exercised consistently with the assurances provided to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit holders in their permits and in the HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit regulations.

3. The final rule revised section 13.24 to provide a more streamlined approach to rights of succession for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits, and revised section 13.25 to provide for greater transferability of these permits. The restrictions that sections 13.24 and 13.25 previously imposed on permit succession and transferability were justified for most wildlife permitting situations, but they were inappropriate and unnecessary for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. These permits may involve substantial long-term conservation commitments, and the Service negotiates such long-term permits recognizing that there may be succession or transfer in ownership during the term of the permit. Revised sections 13.24 and 13.25 allow this transfer as long as the successor or transferor owners meet the general qualifications for holding the permit and agree to the terms of the HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances. Under revised section 13.25(d), any person is under the direct control of a State or local governmental entity that has been issued a permit and may carry out the activity authorized by the permit if (1) that person is under the jurisdiction of the governmental entity and the permit provides that the person may carry out the authorized activity, or (2) the person has been issued a permit by the governmental entity or executed a written instrument with the governmental entity pursuant to the terms of an implementing agreement.

4. The final rule added a new subparagraph (7) to sections 17.22(b) and 17.32(b) to make clear that HCP permittees remain responsible for mitigation required under the terms of their permits even after surrendering their permits. We have required this approach in many HCPs. The general provision in section 13.26 was silent on

this issue and could have been interpreted as not requiring any further actions after surrender of an incidental take permit, even if mitigation were owed under the terms of the permit for take that had already occurred.

5. The final rule modified the permit revocation criteria in section 13.28(a) to provide that the section 13.28(a)(5) criterion shall not apply to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. The Service determined that it would be more appropriate to refer instead to the statutory issuance criterion in 16 U.S.C. 1539(a)(2)(B)(iv) that prohibits the issuance of an incidental take permit unless the Service finds the permit is not likely to jeopardize the continued existence of the species. The final rule therefore included in the specific regulations for HCP permits a provision (sections 17.22(b)(8) and 17.32(b)(8)) that allows a permit to be revoked if continuing the permitted activity would be inconsistent with 16 U.S.C. 1539(a)(2)(B)(iv). The final rule also included similar provisions for the Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits (sections 17.22(c)(7) and (d)(7), and sections 17.32(c)(7) and (d)(7)).

In keeping with the "No Surprises" rule (sections 17.22(b)(5)-(6) and 17.32(b)(5)-(6)), these provisions would allow the Service to revoke an HCP permit as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit and the Service has not been successful in remedying the situation through other means. The Service is firmly committed, as required by the No Surprises rule, to utilizing its resources to address any such unforeseen circumstances. These principles also apply to Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits.

6. The final rule revised section 13.50 to allow more flexibility where the permittee is a State or local governmental entity and has thus taken a leadership role and is assisting in implementation of the permit program.

7. The final rule added a new subparagraph (5) to sections 17.22(c) and (d) and 17.32(c) and (d) to provide the same "No Surprises" assurances for Safe Harbor Agreement and Candidate Conservation Agreement with Assurance permits that already apply to HCPs.

To ensure that we have promulgated the most effective regulations possible, we seek additional comment on the above described amendments of June 17, 1999, to Title 50, Chapter I,

subchapter B of the CFR, as set forth below for the convenience of the reader. The amendments contain the corrected language included in the September 30, 1999 correction document. Bear in mind that these changes are currently in effect, and no new revision to the CFR will result from this document.

§ 13.23 Amendment of permits.

* * * * *

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter shall be consistent with the requirements of §§ 17.22(b)(5), (c)(5), and (d)(5) or 17.32(b)(5), (c)(5), and (d)(5) of this subchapter, respectively.

* * * * *

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

- (1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or
- (2) A receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

- (1) The successor meets all of the qualifications under this part for holding a permit;
- (2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and
- (3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

- (1) The proposed transferee meets all of the qualifications under this part for holding a permit;

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

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) 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.

(d) In the case of permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter to a State or local governmental entity, a person is under the direct control of the permittee where:

- (1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or
- (2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under §§ 17.22(b) through (d) or 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

§ 13.50 Acceptance of liability.

Except as otherwise limited in the case of permits described in § 13.25 (d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

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

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an

implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5)(ii) of this section apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement 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 Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in § 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must

be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

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

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

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director 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 Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed 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 are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program

for the affected species, and maintain the original terms of the Agreement 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 Agreement without the consent of the permittee.

(C) The Director will have 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. The Director will consider, but not be limited to, the following factors:

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

(2) Percentage of range adversely affected by the Agreement;

(3) Percentage of range conserved by the Agreement;

(4) Ecological significance of that portion of the range affected by the Agreement;

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

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

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

* * * * *

§ 17.32 Permits—general.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the

general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement 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 Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from

taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in §§ 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in §§ 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* * * *

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

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

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

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director 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 Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed 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 are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement 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 Agreement without the consent of the permittee.

(C) The Director will have 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. The Director will consider, but not be limited to, the following factors:

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

(2) Percentage of range adversely affected by the Agreement;

(3) Percentage of range conserved by the Agreement;

(4) Ecological significance of that portion of the range affected by the Agreement;

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

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

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures

would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: February 1, 2000.

Donald J. Barry,

*Assistant Secretary, Fish, Wildlife, and Parks,
Department of the Interior.*

[FR Doc. 00-2870 Filed 2-10-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991210331-0017-02; I.D. 102899B]

RIN 0648-AN34

Fisheries of the Exclusive Economic Zone off Alaska; Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the American Fisheries Act (AFA); Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS published in the *Federal Register* of February 3, 2000, a document implementing an inshore fee system for all pollock harvested under the inshore component (IC) of the Bering Sea/Aleutian Islands (BS/AI)

directed fishing allowance under section 206(b)(1) of the AFA. The fee system provides the means of repaying a \$75 million loan to reduce fishing capacity in that fishery. Fees are first due and payable under the inshore fee system on February 10, 2000. Although the fee system provisions were established in a separate subpart G of part 679, the section numbering was duplicated inadvertently in another recently published BS/AI rule. The intent of this rule is to correct that error by renumbering the sections of Subpart G as §§ 679.70-679.76.

DATES: Effective February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713-2390.

SUPPLEMENTARY INFORMATION: NMFS published a document in the *Federal Register* of February 3, 2000, (65 FR 5278) establishing a new subpart G consisting of §§ 679.60-679.66 to implement an inshore fee system for all pollock harvested under the IC of the BS/AI directed fishing allowance. Less than a week earlier, NMFS had published a document in the *Federal Register* of January 28, 2000, (65 FR 4520) establishing a new subpart F consisting of §§ 679.59-679.64 to implement major provisions of the AFA including sideboard directed fishing closures. Thus, §§ 679.60-679.64 of the rule published on January 28, 2000, would be replaced by the unrelated rule published on February 3, 2000. This correction renumbers the new subpart G as §§ 679.70-679.76. In addition, the reference to the definitions section of part 679 is corrected from § 679.01 to § 679.02.

In rule FR Doc. 00-2284, published on Thursday, February 3, 2000 (65 FR 5278) make the following corrections:

1. On page 5279, in the third column, fourth complete paragraph, second line, correct “§ 679.64” to read “§ 679.74”.

2. On page 5279, in the third column, sixth complete paragraph, second line, correct “§ 679.63” to read “§ 679.73”.

3. On page 5279, in the third column, eighth complete paragraph, third line, correct “§ 679.60” to read “§ 679.70”.

4. On page 5280, in the first column, fourth complete paragraph, fourth line, correct “§ 679.64” to read “§ 679.74”.

5. On page 5280, in the first column, eighth complete paragraph, first line, correct “§ 679.60” to read “§ 679.70”.

6. On page 5280, in the first column, ninth complete paragraph, first line, correct “§ 679.61” to read “§ 679.71”.

7. On page 5280, in the first column, tenth complete paragraph, first line, correct “§ 679.63” to read “§ 679.73”.

8. On page 5280, in the first column, eleventh complete paragraph, first line, correct “§ 679.64” to read “§ 679.74”.

9. On page 5281, in the first column, correct the section numbers in the table of contents for subpart G from §§ 679.60-679.66 to §§ 679.70-679.76.

10. Sections 679.60 through 679.66 appearing on pages 5281 through 5283 are correctly designated as §§ 679.70 through 679.76.

11. On page 5281, in the first column, in corrected § 679.70, second line, correct “§ 679.1” to read “§ 679.2”.

12. On page 5282, in the second column, in corrected § 679.73(c), last line, correct “§ 679.62(b)(1)” to read “§ 679.72(b)(1)”.

Dated: February 8, 2000.

Don Knowles,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 00-3214 Filed 2-9-00; 9:10 am]

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