APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
Subpart F—Introduction of New Brake System Technology		
232.503 Process to introduce new technology:		
(b) Failure to obtain FRA approval	10,000	15,000
232.505 Pre-revenue service acceptance testing plan:		
(a) Failure to obtain FRA approval	5,000	7,500
(b) Failure to comply with plan	2,500	5,000
(f) Failure to test previously used technology	5,000	7,500

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $11,000 per day. An exception to this rule is the $15,000 penalty for willful violation of § 232.503 (failure to get FRA approval before introducing new technology) with respect to a single unit of equipment; if the unit has additional violative conditions, the penalty may routinely be aggregated to $15,000. Although the penalties listed for failure to perform the brake inspections and tests under § 232.205 through § 232.209 may be assessed for each train that is not properly inspected, failure to perform any of the inspections and tests required under those sections will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the equipment contained in the train consist. Moreover, the Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 232.15(a) will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the equipment at the time of movement.

Failure to provide any of the records or plans required by this part pursuant to § 232.19 will be considered a failure to maintain or develop the record or plan and will make the railroad liable for penalty under the particular regulatory section(s) concerning the retention or creation of the document involved.

Failure to properly perform any of the inspections specifically referenced in § 232.209, § 232.213, and § 232.217 may be assessed under each section of this part or this chapter, or both, that contains the requirements for performing the referenced inspection.

Issued in Washington, DC, on May 18, 2004.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 04–11696 Filed 5–24–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT64

Withdrawal of Regulations Governing Incidental Take Permit Revocation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) regarding the revocation of incidental take permits issued under the authority of the Endangered Species Act (ESA). On December 11, 2003, the U.S. District Court for the District of Columbia in *Spirit of the Sage Council* v. *Norton,* Civil Action No. 98–1873 (D.D.C.), invalidated 50 CFR 17.22(b)(8) and 17.32(b)(8), the regulations addressing Service authority to revoke incidental take permits under certain circumstances. The court ruled that we did not follow the public notice and comment procedures required by the Administrative Procedure Act (APA). This rule affects only 50 CFR 17.22(b)(8) and 17.32(b)(8). In the Proposed Rules section of today's **Federal Register** is a rulemaking proposal to reestablish the provisions of 50 CFR 17.22(b)(8) and 17.32(b)(8).

DATES: This rule is effective May 25, 2004.

ADDRESSES: The complete file for this rule is available, by appointment, during normal business hours, at 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. You may call 703/358–2171 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT: Rick Sayers, Chief, Branch of Consultation and Habitat Conservation Planning, at 4401 North Fairfax Drive, Room 420, Arlington, VA 22203 (Telephone 703/358–2106, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION: This rule 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.

This rule applies only to 50 CFR 17.22(b)(8) and 17.32(b)(8), which pertain to revocation of incidental take permits. Regulations in 50 CFR 17.22(c) and 17.32(c) that pertain to Safe Harbor Agreements (SHAs) and in 50 CFR 17.22(d) and 17.32(d) that pertain to Candidate Conservation Agreements with Assurances (CCAAs) are not affected by this final rule.

Background

On June 12, 1997 (62 FR 32189), we published proposed revisions to our general permitting regulations in 50 CFR part 13 to identify the situations in which permit provisions in part 13 would not apply to individual incidental take permits. On June 17, 1999 (64 FR 32706), we published final regulations that included a provision, hereafter referred to as the Permit Revocation Rule, that described circumstances under which incidental take permits could be revoked. The Permit Revocation Rule, which was codified at 50 CFR 17.22(b)(8) (endangered species) and 17.32(b)(8) (threatened species), provided that an incidental take permit ''may not be revoked * * * 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.'' The criterion in 16 U.S.C. 1539(a)(2)(B)(iv)—that ''the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild''—is substantially identical to the definition of ''jeopardize the continued existence of'' in the joint Department of the Interior/Department of Commerce regulations implementing section 7 of the Endangered Species Act (50 CFR 402.02). In essence, the Permit Revocation Rule authorized the Service to revoke an incidental take permit if continuation of the permitted activity would jeopardize the continued existence of the listed species and the

jeopardy situation is not remedied in a timely fashion. On September 30, 1999 (64 FR 52676), we published a correction to the regulations promulgated in our June 17, 1999 (64 FR 32706), final rule; however, the correction was not associated with permit revocation.

On February 11, 2000 (65 FR 6916), we published a request for additional public comment on specific regulatory changes included in the June 17, 1999 (64 FR 32706), final rule, including the Permit Revocation Rule. Based on our review of the comments we received in response to the February 11, 2000 (65 FR 6916), request for comments, we published a notice on January 22, 2001 (66 FR 6483), that affirmed the provisions of the June 17, 1999 (64 FR 32706), final rule, including the Permit Revocation Rule.

The plaintiffs in *Spirit of the Sage Council* v. *Norton,* Civil Action No. 98–1873 (D.D.C.), challenged the validity of the Permit Revocation Rule. On December 11, 2003, the court ruled that the public notice and comment procedures followed by the Service when promulgating the Permit Revocation Rule were in violation of the APA. The court vacated and remanded the Permit Revocation Rule to the Service for further consideration consistent with section 553 of the APA. In compliance with the court's order, we therefore withdraw the Permit Revocation Rule (50 CFR 17.22(b)(8) and 17.32(b)(8)).

Effective Date

In accordance with 5 U.S.C. 553(d)(3), we find good cause to make this rule effective upon publication. Moreover, in accordance with 5 U.S.C. 553(b)(3)(B), we find good cause that notice and public procedure for this rulemaking action are impracticable, unnecessary, or contrary to the public interest. We must remove the text identified in this rule from 50 CFR 17 because the December 11, 2003, court order in *Spirit of the Sage Council* v. *Norton,* Civil Action No. 98–1873 (D.D.C.) vacated this text.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ For the reasons set out in the preamble, we amend title 50, chapter I, subchapter B of the Code of Federal Regulations, as set forth below.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

§ 17.22 [Amended]

■ 2. Amend § 17.22 by removing paragraph (b)(8).

§ 17.32 [Amended]

■ 3. Amend § 17.32 by removing paragraph (b)(8).

Dated: April 12, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–11740 Filed 5–24–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 051804B]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole in the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish in the Bering Sea and Aleutian Islands management area (BSAI) to rock sole. This action is necessary to account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective May 25, 2004. Comments must be received no later than 4:30 p.m., Alaska local time, June 8, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802–1668;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK;
- Fax: 907–586–7557;
- E-mail: *bsairel04__1@noaa.gov* Include in the subject line of the e-mail comment the document identifier: bsairel04__1; or
- Webform at the Federal eRulemaking Portal: *http:www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that the initial TAC for rock sole in the BSAI, specified in the final 2004 harvest specifications (69 FR 9242, February 27, 2004) needs to be supplemented from the non-specified reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 679.20(b)(3), NMFS proposes to apportion 3,075 metric tons from the non-specified reserve to the rock sole initial TAC in the BSAI. These proposed apportionments are consistent with § 679.20(b)(1)(ii) and do not result in overfishing of a target species because the revised initial TAC is equal to or less than the specification of the acceptable biological catch (69 FR 9242, February 27, 2004).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 679.20 (b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the agency from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the reserves to the rock sole fishery, thus preventing full utilization of the TAC of rock sole,