

(i) Screw reference ring onto the probe until the base of the reference ring is flush with the probe bottom, then back off two turns.

(ii) Warm the equipment for at least 20 minutes.

(iii) Set up the system between 150–215 kHz.

(iv) Locate the line  $\frac{1}{4}$  from the screen bottom.

(v) Rotate the reference ring counterclockwise and observe the spike signal on the screen. Adjust the gain (using gain control) until the spike peaks to  $\frac{3}{4}$  of the screen height (from home position to  $\frac{1}{4}$  of screen from the top).

(vi) When spike signals break the centerline the threshold light must come on.

5. *Eddy Current Examination and Visual Inspection*—A written examination procedure for performing the eddy current examination and visual inspection must be kept at each facility that performs examinations under this procedure. The visual inspection procedure must be in accordance with CGA pamphlet C-6.1 (IBR; see § 171.1 of this subchapter).

At a minimum, the written examination procedure for performing the eddy current must include the following instructions:

(i) Remove the probe from the reference ring and screw probe clockwise half-way into cylinder's neck and press the sweep (e.g. NULL) button.

(ii) Continue rotating the probe clockwise until the threshold line moves off top of the screen, indicating probe is inside shoulder area (probe is in air).

(iii) Rotate probe counterclockwise towards the outlet of the cylinder until the threshold line appears on the screen indicating the probe is in the cylinder's neck.

(iv) Press the sweep (e.g. NULL) button to ensure that the line is positioned on screen, preferably at home position.

(v) Watch for spike signals indicating cracks. Mark positions with a grease pencil. When the spike occurs rotate the probe 360 degrees.

(vi) Check for successive indications at same angle indicating multiple cracks. Two successive spikes that break the threshold at the same angle indicate a two thread crack. A two thread crack is the rejection criteria.

(vii) Perform the visual inspection for confirmation.

#### 6. *Examination equipment records.*

Records of eddy current inspection shall contain the following information:

(i) Equipment manufacturer, model number and serial number.

(ii) Probe description and unique identification (e.g., serial number, part number, etc.).

#### 7. *Eddy current examination reporting and record retention requirements.*

Daily records of eddy current examinations must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. These records must be made available for inspection by a representative of the Department on request. Eddy current examination records shall contain the following information:

(i) Specification of each standard reference ring used to perform the eddy current examination.

(ii) DOT specification or exemption number, manufacturer's name or symbol, owner's name or symbol and date of manufacture.

(iii) Name of test operator performing the eddy current examination.

(iv) Date of eddy current examination.

(v) Location and type of defect on the cylinder crown or the threaded neck (e.g., 5 threads).

(vi) Acceptance/rejection results (e.g. pass or fail).

(vii) Legible identification of test operator.

Issued in Washington, DC on September 3, 2003, under authority delegated in 49 CFR part 106.

**Frits Wybenga,**

*Deputy Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 03-22808 Filed 9-9-03; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 13 and 17

**RIN 1018-A185**

#### **Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Revisions to the Regulations**

**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 enhancement of survival permits issued under the Endangered Species Act. The purpose of the proposed revisions is to revise the current implementing regulations for permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. These revisions will make Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to understand and implement.

**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, 4401 North Fairfax Drive, Room 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) (16 U.S.C. 1531 *et seq.*) 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)(A) of the Act authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(d) requires that such permits be applied for in good faith, and if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

In June of 1999, we issued two policies and revised our regulations to add two categories of permits to enhance the propagation or survival of listed, proposed, candidate, and other at-risk species. One category, called "permits for the enhancement of survival through Safe Harbor Agreements," is detailed at §§ 17.22(c) and 17.32(c), and in the Safe Harbor Policy (64 FR 32717). 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), and in the Candidate Conservation Agreements with Assurances Policy (64 FR 32726).

The purpose of the Safe Harbor Program is to promote voluntary management for listed species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. In return for the participant's efforts, the Service will authorize incidental take through an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act. In issuing such a permit, we expect a net conservation benefit will be accrued for the covered species through implementation of the Safe Harbor Agreement. The permit would allow participants to take individual listed animals to return

population levels and habitat conditions to those agreed upon as baseline.

Candidate Conservation Agreements with Assurances are voluntary agreements between us and non-Federal landowners to benefit proposed species, candidate species, and species likely to become candidates in the near future. Candidate Conservation Agreements with Assurances provide cooperators, who agree to manage their lands or waters in a manner that removes threats to at-risk species, with assurances that their conservation efforts will not result in future regulatory obligations beyond those they agreed to at the time they entered into the Agreement. In return for the participant's proactive management, we provide an enhancement of survival permit under section 10(a)(1)(A) of the Act, which, if the species were to become listed, would authorize take of individuals or the modification of habitat conditions to the levels specified in the Agreement. Our goal is that the benefits of the management activities included in the Candidate Conservation Agreement with Assurances, when combined with those benefits that would be achieved if the activities were also implemented on other necessary properties, would preclude or remove the need to list the covered species.

The objective of the proposed revisions to the Safe Harbor Agreement and Candidate Conservation Agreements with Assurances regulations is to rectify inconsistencies between the policies and their respective implementing regulations. In addition, these revisions will correct drafting errors in the regulations overlooked when the Safe Harbor and Candidate Conservation Agreements with Assurances regulations were published in 1999. Lastly, experience gained since 1999, when the policies and regulations were finalized, has shown the need to clarify ambiguities in the regulations to eliminate confusion.

### Revisions to the Regulations

The implementing regulations at § 13.25(b), which pertain to the transfer of permits to successors in interest, are inconsistent with the terms of the Safe Harbor and Candidate Conservation Agreements with Assurances policies. Part 11 of the Safe Harbor Policy and Part 10 of the Candidate Conservation Agreements with Assurances Policy require the original landowner only to notify the Service of his or her intent to transfer the property. That notification allows the Service to contact the new owner, who may, under the policies, either "agree to continue the original Agreement, or \* \* \* enter into a new

Agreement." The current regulations, however, create uncertainty as to the ability of successors in interest to assume the rights and responsibilities of the original Agreement. The regulations require the original landowner and the proposed transferee to make a "joint submission" prior to the transfer. This joint submission must convince us that the proposed transferee meets a number of requirements that the original permit holder did not have to meet to get the original permit. Specifically, the regulations require that the proposed transferee provide "adequate written assurances" that it will "provide sufficient funding for the conservation plan" and implement any "outstanding minimization and mitigation requirements." These requirements apply to and are appropriate for section 10(a)(1)(B) incidental take permits, but are not requirements for section 10(a)(1)(A) enhancement of survival permits. Accordingly, we propose to revise the regulations to make the permit transfer provisions consistent with the Safe Harbor and Candidate Conservation Agreements with Assurances policies by allowing a permit to be transferred as long as the new owner agrees to become a party to the original agreement and permit.

The Safe Harbor and Candidate Conservation Agreements with Assurances policies and implementing regulations at §§ 17.22(c)(1) and 17.32(c)(1), and §§ 17.22(d)(1) and 17.32(d)(1) indicate that Safe Harbor and Candidate Conservation Agreements with Assurances applicants should be property owners. But they refer to property owners in several different ways (e.g., "private property owners," "non-Federal property owners," "landowners," and "participating landowners") without clarifying the nature of property ownership that will qualify a person or entity to enter into a Safe Harbor Agreement or Candidate Conservation Agreement with Assurances. Property ownership can take many different forms. These forms range from fee simple ownership (i.e., complete and permanent ownership of the property), to temporary property interests, such as leases and life estates, or partial interests in property, such as right-of-way easements and rights to harvest timber or develop property. Depending on the nature of the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances, and subject to applicable State law, we believe that any holder of a property interest should be eligible to meet the requirement in the policies and implementing

regulations that the applicant must have "shown capability for and commitment to implementing all of the terms" of the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances at §§ 17.22(c)(2)(vi) and (d)(2)(vi) and 17.32(c)(2)(vi) and (d)(2)(vi). For instance, the owner of a right-of-way easement may be able to maintain a right-of-way as habitat for listed species. The holder of a lease may be able to ensure that during the period of the lease a property is managed to benefit listed species. The important consideration is not the type of non-Federal property ownership, but whether it gives the owner the power and the authority to carry out the management activities and other provisions of the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances. Therefore, we will consider any person or organization to be a potentially eligible applicant and permittee if their ownership interest gives them the authority to enter into and implement the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances on the covered property, as long as the nature of that ownership is clearly documented in permit application materials and/or administrative record materials.

Accordingly, we propose to clarify that "property owners" includes anyone with a fee-simple, leasehold, or other property interest sufficient to carry out the proposed management activities, and that such property owners may submit an application for an enhancement of survival permit.

The following proposed revision applies to Safe Harbor Agreement regulations only. Currently, both the Safe Harbor Policy and the Safe Harbor implementing regulations at §§ 17.22(c)(1)(ii) and 17.32(c)(1)(ii) require a permit applicant to include in his or her application a description of the activities for which the applicant requests incidental take authority. This requirement was unclear on two points. First, the regulation did not acknowledge that there are two broad categories of incidental take that may occur under a Safe Harbor Agreement. One category includes the incidental take that results from implementation of management activities on the covered property, such as from periodic prescribed burning to sustain high-quality habitat for the species. The other category includes incidental take that would result if the property were returned to baseline conditions, such as from removal of the vegetation planted to enhance or restore habitat. We are proposing new language that recognizes

both incidental take associated with management activities and incidental take associated with returning the property to baseline conditions. The second point that requires clarity is the requirement that the applicant describe future land use and water management activities that would result in incidental take. This requirement has been mistakenly interpreted by some as an intent by us to limit future private property use. This is not the intent of the regulations, so we propose to revise this provision to require the applicant to describe how incidental take may occur (*i.e.*, through management activities and/or return to baseline), but to eliminate any need to describe future land use or water management activities that will take place after the term of the agreement and permit.

The following proposed revision applies to Safe Harbor Agreement regulations only. The issuance criteria in the regulations at §§ 17.22(c)(2)(ii) and 17.32(c)(2)(ii) provide that the Director may issue a permit if he or she finds that the Agreement “will” provide a net conservation benefit to the covered species. This may be read to suggest that the Director must determine with complete certainty that a net conservation benefit will occur before a permit can be issued. This unrealistic standard is not the intent of either the Safe Harbor Policy or the existing rule. As indicated in the background statement to the Final Safe Harbor Policy, the net conservation benefits “should be reasonably expected to occur during the Agreement.” 64 FR 32731 (“Revisions to the Draft Policy”). Although the Policy states in Part 4 that the Director must find that there will be a net conservation benefit, it indicates that this finding is to describe the “*expected* net conservation benefits.” Similarly, the net conservation benefits requirements in Part 5(3) of the Policy require Safe Harbor Agreements to identify the actions to be “undertaken to accomplish the *expected* net conservation benefits” and the time frames within which “the *anticipated* net conservation benefits” will be achieved. The Policy thus requires that the Director must reasonably expect that a Safe Harbor Agreement will meet the net conservation benefit standard before a permit can be issued. We accordingly propose to clarify the regulations by revising the issuance criteria to state that the Director may issue the permit if the Director finds that the Safe Harbor Agreement “is reasonably expected to provide a net conservation benefit” to the covered species.

The current Safe Harbor and Candidate Conservation Agreements

with Assurances regulations, at §§ 17.22(c)(3)(ii) and 17.32(c)(3)(ii) and §§ 17.22(d)(3)(ii) and 17.32(d)(3)(ii) respectively, require a property owner to notify us at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Notification provides us with an opportunity to relocate affected individuals of the species if possible and appropriate, or to implement other conservation options that may be available to us, and with the consent of the landowner. The notification requirement is often a desirable feature of a Safe Harbor Agreement or a Candidate Conservation Agreement with Assurances. For example, in the Safe Harbor Agreement with Environmental Defense, the Cooperator agrees to notify Environmental Defense and the Fish and Wildlife Service local office not less than 60 days prior to any activity that will take the property back to baseline conditions to allow us to rescue any black-capped vireos or golden-cheeked warblers, if possible and appropriate. However, prior notice before engaging in activities that result in take is not always appropriate based on the biology of the species or the covered activities. For example, some species may not be easily captured or may not be able to survive if transplanted to another site, such as larvae or eggs of certain smaller species of butterfly. Thus, we would not be able to rescue the individuals prior to the authorized incidental taking and advanced notice of incidental taking in order to rescue the butterflies may not be appropriate. Emergency situations would not be appropriate for advanced notification as well. For example, if habitat within a Safe Harbor Agreement for the red-cockaded woodpecker were infested by pine beetle, the trees must be harvested quickly to halt the infestation. In this situation, a 60-day advanced notice would be inappropriate and shortened notice may not be sufficient time to properly capture the red-cockaded woodpeckers. Advanced notification is appropriate when such notification allows for sufficient time to ameliorate the immediate effect of the property returning to baseline conditions. The policy states “If appropriate, incorporate a notification requirement to provide the Services or appropriate State agencies with reasonable opportunity to rescue individuals of a covered species \* \* \*.” Both the Service and the property owner will determine if the Safe Harbor Agreement will include an advanced notification requirement. Therefore,

instead of requiring notification from the permittee, we propose to revise the regulations to state that, “when appropriate,” notification of at least 30 days is to be given in advance of when the permittee expects to incidentally take any listed species covered under the permit.

The existing Safe Harbor regulations state that “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 \* \* \*” (§§ 17.22(c)(5)(ii) and 17.32(c)(5)(ii)). We propose to remove the references to additional mitigation measures and to “conserved habitat areas.” Unlike the requirements for Habitat Conservation Plan permits issued under 10(a)(1)(B), there are no mitigation requirements in the Safe Harbor Policy. Therefore, it is not necessary or appropriate to authorize the imposition of “additional” mitigation measures. Also, it is confusing to reference “conserved habitat areas,” because there are no “conserved habitat areas” as defined by our regulations (50 CFR 17.3) in Safe Harbor Agreements. In addition, because these are voluntary agreements, establishing authority to require a landowner to carry out other measures that were not previously agreed to by the landowner is inappropriate.

Similarly, the Candidate Conservation Agreements with Assurances Policy does not have mitigation requirements, and does not refer to “conserved habitat areas,” as defined by our regulations (50 CFR 17.3). Therefore, we propose to delete the word “mitigation” and the phrase “conserved habitat areas” from the implementing regulations at §§ 17.22(d)(5)(i), (ii), and (iii)(B) and 17.32(d)(5)(i), (ii), and (iii)(B).

Existing regulations at §§ 17.22(c)(7) and 17.32(c)(7) and §§ 17.22(d)(7) and 17.32(d)(7) authorize us to revoke a permit issued in association with a Safe Harbor Agreement or Candidate Conservation Agreement with Assurances if we determine that “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.” Because we are concerned that this authority may create a disincentive to landowners considering development of a Safe Harbor Agreement or Candidate Conservation Agreement with Assurances, we propose to replace this provision with a statement that 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. In addition, we propose to include a provision that commits the Director to use all other available authorities to avoid revoking the permit under these circumstances. We propose to revise the existing revocation criterion by stating that, with the consent of the permittee, we will pursue all feasible and appropriate options prior to permit revocation, including extending or modifying the existing permit, capturing and relocating the species, providing compensation to the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging a third-party acquisition of an interest in the property.

#### Required Determinations

We have evaluated the effects of the revisions described in this proposed rule. We have concluded that the resulting economic benefits of the proposed rule would accrue to the persons who secure agreements with us. While the number of persons who pursue agreements may increase as a result of these proposed changes, we do not anticipate that the level of participation in the permitting programs will increase because the resources available to process permit applications will not change as a result of this rule. Therefore, we conclude that this proposed rule will not result in additional effects. 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.

(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. Because most of the proposed rule deals with revisions of current regulations, we do not anticipate that this rule will cause any significant economic changes, either positive or negative. We have concluded that this rule will have some beneficial economic effect because we are rectifying inconsistencies and drafting errors, thereby making Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to undertake and implement. The effect

would be minimal because of the small number of permits anticipated to be issued.

(b) This proposed rule is not expected to create additional inconsistencies with other agencies' actions. Although the Safe Harbor and Candidate Conservation Agreements with Assurances policies are joint policies with the National Oceanic and Atmospheric Administration Fisheries, the implementing regulations subject to this proposed rule apply to the Fish and Wildlife Service exclusively. NOAA Fisheries has not adopted similar regulations to the Fish and Wildlife Service to provide a consistent basis for the joint policy implementation.

(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 raises novel legal or policy issues. If this regulation can help facilitate wider adoption of the Safe Harbor and Candidate Conservation Agreements with Assurances programs, it could help increase private conservation efforts on behalf of listed and unlisted species, which is a key component of successful implementation of the Act.

#### 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).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a 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 application or implementation burdens. Submitting applications for enhancement of survival 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

because they clarify the regulatory requirements for obtaining enhancement of survival permits under the Act. We, therefore, do not expect these changes to affect a substantial number of small entities. To date, we have issued 16 Safe Harbor Agreement permits and 5 Candidate Conservation Agreement with Assurances permits. We expect to issue the same number of enhancement of survival permits per year. That averages approximately four Safe Harbor Agreement permits and one Candidate Conservation Agreement with Assurances permit per year. Given the low number of enhancement of survival permits expected to be issued, 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. This proposed rule is not a significant regulatory action under Executive Order 12866, and 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.*), we make the following findings:

(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; as a result, 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. The purpose of this rule is to address inconsistencies in and clarify the current regulations.

### 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 applicable Tribes and the entity that developed the permit application, and after careful consideration of the Tribes' 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 proposed rule does not contain any new collections of information 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 revises current regulations for programs permitted under 50 CFR 17.22(c) and (d), and 17.32(c) and (d). Our current application approval number, 1018-0094, which expires July 31, 2004, already accommodates this clarification and the changes proposed. 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.

### 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 proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. We have determined that this proposed 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

Although these revisions to the regulations will make enhancement of survival permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to obtain, understand, and implement, it will not change the issuance standards 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, we have determined that the present action of revising existing 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 enhancement of survival permits issued under the Act. We will consider all comments and any additional information received by the

close of the comment period (listed above in **DATES**) in making a final determination on this proposal. Comments on the proposed rule should be submitted to the Division of Conservation and Classification (*see ADDRESSES*).

Executive Order 12866 requires that each agency write regulations that are easy to understand. We invite your comments on how we might make this rule easier to understand, specifically: (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, § 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking); and (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](mailto:Exsec@ios.doi.gov)

Our practice is to make comments, including names and 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 for 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**

*50 CFR Part 13*

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

*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 13—[AMENDED]**

1. The authority citation for part 13 is revised to read as follows:

**Authority:** 16 U.S.C. 668(a), 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Amend § 13.25 by revising paragraph (b) introductory text, redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c) as set forth below:

**§ 13.25 Transfer of permits and scope of permit authorization.**

\* \* \* \* \*

(b) Permits issued under § 17.22(b) or § 17.32(b) 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:

\* \* \* \* \*

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or (d) or § 17.32(c) or (d) of this subchapter B, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

\* \* \* \* \*

**PART 17—[AMENDED]**

3. 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.

\* \* \* \* \*

4. Amend § 17.3 by revising the following definitions to read as follows:

**§ 17.3 Definitions.**

\* \* \* \* \*

*Changed circumstances* means changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by plan or agreement developers and the Service and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

\* \* \* \* \*

*Unforeseen circumstances* means changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that could not reasonably have been anticipated by plan or agreement developers and the Service at the time of the conservation plan's or agreement's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

\* \* \* \* \*

5. Amend § 17.22 by revising the first sentence of paragraph (c)(1), paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii), (c)(5)(ii), (c)(7), the first sentence of paragraph (d)(1), paragraphs (d)(3)(ii), (d)(5)(i)-(ii), (d)(5)(iii)(B), and (d)(7) to read as follows:

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

\* \* \* \* \*

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* 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 (c) 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), if the applicant wishes to engage in any activity prohibited by § 17.21.

\* \* \*

\* \* \* \* \*

(ii) A description of how incidental take of the listed species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline; and

\* \* \* \* \*

(2) \* \* \*

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the

recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

\* \* \* \* \*

(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

\* \* \* \* \*

(5) \* \* \*

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

\* \* \* \* \*

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. 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.

\* \* \* \* \*

(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).

\* \* \* \*

(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

\* \* \* \*

(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.

\* \* \* \*

(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.

\* \* \* \*

6. Amend § 17.32 by revising the first sentence of paragraph (c)(1), paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii), (c)(5)(ii), (c)(7), the first sentence of paragraph (d)(1), paragraphs (d)(3)(ii), (d)(5)(i)-(ii), (d)(5)(iii)(B), and (d)(7) to read as follows:

**§ 17.32 Permits—general.**

\* \* \* \*

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* 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 (c) 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 address see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.31.

\* \* \* \*

(ii) A description of how incidental take of the covered species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management

activities and as a result of the return to baseline;

\* \* \* \*

(2) \* \* \*

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

\* \* \* \*

(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

\* \* \* \*

(5) \* \* \*

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

\* \* \* \*

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. 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,

activities and as a result of the return to baseline;

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.

\* \* \* \* \*

(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). \* \* \*

\* \* \* \* \*

(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

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

Dated: July 21, 2003.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03-22776 Filed 9-9-03; 8:45 am]

**BILLING CODE 4310-55-P**

## 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.