

Form	No. of respondents	Responses per respondent	Hours per response	Total hour burden
Bi/Multilingual Services Survey	150 C/MHC Directors	1	2.5 hours	375 hours

2. Study on Ethnicity/Race of Subpopulations: User/Clients and Providers in Bureau-Supported Programs—NEW—National health statistics show that there are disproportionately high numbers of individuals from ethnic minority groups who have low incomes and limited access to health care. In addition, recent published studies indicate that cultural and linguistic barriers discourage many minority group members from seeking medical attention from certain service providers. For these reasons, and given the fact that certain diseases and disorders have a higher prevalence within particular ethnic groups, it is

important for the Bureau of Primary Health Care (BPHC) to have full understanding of the ethnicity of clients and providers at health centers supported through the Community Health Center Program, Migrant Health Center Program, Health Care for the Homeless, Primary Health Care in Public Housing, and the HIV Health Center Program. The ultimate purpose of this study is to examine subpopulation data on the service providers and users of these health care agencies supported by BPHC. In the first stage of the study, emphasis will be on gathering, organizing, analyzing, and reporting on

ethnicity/race data that are currently available. This stage will be in preparation for a mail survey of health centers who receive BPHC support (through the programs listed above) to obtain detailed data on the ethnic/racial composition of users and providers. The mail survey will also request information on their data collection processes for ethnicity and race, which will be used to guide future BPHC efforts to collect race/ethnicity subpopulation data, making maximum use of the data collection and storage methods already employed by BPHC grantees.

Type of respondent	No. of respondents	Responses per respondent	Average hours per response	Total burden hours
BPHC Grantees	800	1	1	800

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14-36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 1997.
 J. Henry Montes,
 Director, Office of Policy and Information Coordination.
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 BILLING CODE 4160-15-P

mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species Act (ESA) permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other environmental laws and executive orders.

into the Departmental Manual on April 30, 1984. Proposed revised procedures were published in the Federal Register on May 1, 1996 (61 FR 19308), for 45-day public review. The comment period closed June 17, 1996.

The final revisions update organizational changes in the Service (section 1.1); provide general guidance for NEPA compliance for Service activities (section 1.2); update guidance to State, local, and private applicants for permits and Federal assistance provided through Service-administered programs (section 1.3); update and expand the categorical exclusions to reflect increased responsibilities, including the implementation of several new programs (section 1.4); add a new section that identifies Service actions normally requiring an environmental assessment (EA) (section 1.5); and revise the list of major actions normally requiring the development of an environmental impact statement (EIS) (section 1.6). The Appendix must be read in conjunction with the Department's NEPA procedures (516 DM 1-6) and CEQ's Regulations (40 CFR 1500-1508). The Department's overall NEPA procedures were published in the Federal Register on April 23, 1980 (45 FR 27541), and were revised in 49 FR 21437, on May 21, 1984.

DEPARTMENT OF THE INTERIOR

National Environmental Policy Act Revised Implementing Procedures

AGENCY: Department of the Interior.
ACTION: Notice of Final Revised Procedures for the Fish and Wildlife Service (Service).

SUMMARY: This notice announces final revised procedures for implementing the National Environmental Policy Act (NEPA) for actions implemented by the Fish and Wildlife Service in Appendix 1 in the Department of the Interior's (Departmental) Manual (516 DM 6). The revisions update the agency's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the revisions reflect new initiatives and Congressional

EFFECTIVE DATE: January 16, 1997.
FOR FURTHER INFORMATION CONTACT: Don Peterson, Environmental Coordinator, Fish and Wildlife Service, at (703) 358-2183.
SUPPLEMENTARY INFORMATION: The Service's existing procedures for implementing NEPA with regard to actions proposed to be carried out by the Service appear in Appendix 1 to Chapter 6, Part 516, of the Departmental Manual (516 DM 6, Appendix 1). These procedures are consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (Regulations). These procedures (Appendix 1) were previously published in the Federal Register on July 1, 1982 (47 FR 28841), and were incorporated

RESPONSE TO COMMENTS: A total of eight responses were received during the public comment period. As a result of

these comments and other internal Service input, several technical changes were made to refine the final revised procedures. The following is the Service's response to substantive comments.

Streamlining, Increased Inter-Agency Cooperation, and Early Coordination To Resolve Issues and To Integrate NEPA are Supported

Many commenters supported the changes, particularly those efforts to integrate Service programs, such as integrating the section 10(a)(1)(B) incidental take process, with NEPA. We are also encouraged by widespread support for increasing Service involvement in cooperative efforts with other agencies and for promoting early coordination with Federal agencies and Tribal, State, and local governments. Additional language was added to section 1.2 to further encourage cooperative and early coordination efforts.

There Should be Consistency Between the Service and the National Marine Fisheries Service in Developing NEPA Procedures for Implementing The Endangered Species Act

One commenter stated that there should be consistency between the Service and the National Marine Fisheries Service (NMFS) in developing NEPA procedures for implementing the provisions of ESA. The Service and NMFS share in the responsibility of implementing many of the provisions of ESA. In that regard, the Service and NMFS are working together, to the extent practicable, given different agency missions and objectives, to seek consistency in applying NEPA to ESA activities.

An EA Must Be Prepared Prior to Finalizing the Revisions

One commenter stated that the Service must prepare an EA prior to finalizing these procedural changes. The final NEPA procedures are considered categorically excluded under an existing Departmental categorical exclusion (516 DM 2, Appendix 1.10), which applies to procedures where the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Individual Service actions are subject later to the NEPA process, pursuant to these procedures, either collectively or on a case-by-case basis.

Regional Directors Should Be Responsible for Contacting State, Tribal, and Local Governments When Initiating an Action

One commenter stated that language should be added to section 1.1E to require each Regional Director to be responsible for contacting State, Tribal, and local governments when initiating an action. Numerous Service guidance documents (e.g., 30 AM 3) already require the Service to coordinate with the effected public when the Service proposes actions requiring an EA or EIS. However, to strengthen this important requirement of the CEQ Regulations, additional language has been added to section 1.1E.

Executive Order 12996 on "Management and General Public Use of the National Wildlife Refuge System" Should be Referenced in the Procedures

One commenter stated that the recently published Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System" should be cited in this section. We concur and have added appropriate language to section 1.3A(2).

The NEPA Procedures are Confusing as to Whether they Apply to Service Actions or to the Service Review of Other Agency Activities

One commenter stated that the Service's revised NEPA procedures, particularly section 1.3B, are confusing as to whether they apply to Service actions or to the review of other Federal agency activities. We agree that the revised procedures are not clear on this point. These procedures apply to Service actions only, including, but not limited to, proposed construction, changes in land or human use, issuance of grants, issuance of permits, etc. Section 1.3 provides guidance to permittees who receive permits, grants, or technical assistance on how to assist the Service meet its requirements under NEPA, other Federal laws, and the executive orders. To clarify these procedures, minor language changes have been made in sections 1.2 and 1.3, including the deletion of section 1.3B, which primarily deals with the review of other agency environmental documents.

Terminology to Define Categorical Exclusions is Vague and Undefined and Could Result in Avoiding EAs and EISs

Several commenters suggested that the Service's use of terminology such as "no or minor change", "negligible environmental disturbance", and "suitable habitat", for example, for the

categorical exclusions (section 1.4), should be further defined. Although the use of this terminology may at times seem vague, to define limits such as the size of the structure, extent of acreage involved, number of trees removed, etc., is generally not useful as a NEPA trigger. Predetermined limits of physical factors often have little relationship to the actual impact of the action. For example, a proposal to acquire a 1,000-acre parcel from a willing seller as an addition to a national wildlife refuge with little or no changes in management may be categorically excluded because no change in the environmental conditions is proposed or would occur; whereas, the acquisition of a 1,000-acre in-holding which could terminate a popular, locally-significant recreational use, would likely require the preparation of an EA or EIS. Under the CEQ Regulations, it is the level of impact or an established need to determine the level of impact that triggers the preparation of an EA or EIS. In other words, Service managers make NEPA decision based on the level of anticipated impact, or uncertainty of the impact of the action, not merely on the physical size of the action. Service decision makers are given a reasonable amount of flexibility to make these decisions based on their consideration of relevant biophysical factors that could result in anticipated or possible impacts. General guidance is provided in the Departmental NEPA procedures (516 DM 2, Appendix 2) to help Service decisionmakers determine when exceptions to a normally categorically excluded action could occur, thus requiring the preparation of an EA or EIS. Service guidance is also provided in 30 AM 3.9. The Service will continue to rely on this guidance and process to ensure proper compliance with NEPA, consistent with CEQ's Regulations.

The Service is Categorically Excluding Actions That may Require the Preparation of an EA or EIS

Several commenters were concerned that when impacts of actions, normally categorically excluded, are substantial, the Service would not prepare an EA or EIS (section 1.4). Commenters mentioned such actions as the construction of new structures or improvements, section 10 permits, land acquisition, and fire management. An important factor for determining when an action can fit an established categorical exclusion is whether the action could have a significantly impact, either individually or cumulatively. Departmental procedures (preamble to section 1.4) clearly state that if there is an exception to the categorically

exclusion, an EA or EIS must be prepared. The Departmental procedures state that categorically exclusions are not the equivalent of statutory exemptions. Exceptions to the categorical exclusions are found in the Departmental Manual (516 DM 2, Appendix 2). In the past, environmental documents have been prepared for the construction of new or improved structures and for fire-related activities. These procedures continue to require the preparation of an EA or EIS, when required. To ensure coordination, compliance, and consistency with other affected Federal agencies and State, Tribal, and local governments, language to this affect has been inserted at the beginning of section 1.4B.

The Service has no Mechanisms to Assess the Cumulative Impacts of its Actions

Several commenters stated that the Service has not mechanism to assess cumulative impacts of categorically excluded actions (section 1.4), such as multiple minor modifications to existing land use as a result of land acquisition, section 10(a)(1)(B) incidental take permits under ESA, listings, designation of critical habitats, or recovery plans and actions. For land acquisition actions, categorically excluded activities must meet the three criteria set forth in section 1.4A(4). In most cases, the land acquisition action covers the administrative action of transferring title from an owner to the Service. Specific guidance on land acquisition and the application of NEPA to land acquisition actions is found Service guidance (341 FW 2). The land acquisition planning process does not, nor is it intended to, fully address the impacts of future management decisions for refuge. The Service believes that aggregate land acquisition actions, per se, when executed under the Service's current policies and guidelines, are not causing significant impacts. The future development of refuge comprehensive management plans and any step-down management plans, however, are subject to NEPA compliance. The NEPA documents prepared pursuant to these actions are to address all relevant impacts, including cumulative impacts associated with the proposed management of the lands and waters. Specific guidance regarding the development of these plans and the application of NEPA to the development of management plans is found in other Service guidance (602 FW 1-3).

One commenter stated that the number of habitat conservation plans (HCP) prepared pursuant to section 10(a)(1)(B) of the ESA contradicts the

Service's assertion that the impacts of such activities would be minor or negligible because of the total number of permits issued by the Service. The commenter combined all HCPs into a single action that was considered to be inevitably "significant." It was also implied that these permits are being issued without reference to any legal or biological standards that mitigate their effects. None of these assertions are true. Each permit application is evaluated to determine the effect on individual species or groups of species and the habitat on which they depend. Mitigation measures are then incorporated into the HCP and permit, as appropriate, to ensure that there is not adverse effect on the species. In some cases, the permit conditions may result in enhancing the species or its habitat. The cumulative impacts from categorically excluded low-effect HCPs are considered when the Service performs internal section 7 (ESA) consultation on the proposed action, pursuant to 50 CFR 402. Under section 7, the cumulative impacts analysis includes the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the action area. Past activities that may affect the environmental baseline are also considered. This process will be described in the final Section 7 Handbook and will be referenced in the final Section 10 Handbook, both to be released in the near future. We believe this process is adequate for ensuring the consideration of potential cumulative impacts of multiple low-effect HCPs within the same geographic area.

Regarding listing actions, CEQ has determined that these actions may be exempt from the requirements of NEPA, including an assessment of cumulative impacts. This assessment is based, in part, on the ESA amendments of 1982, which clearly restrict the information upon which the Secretary of the Interior may make listing decisions. Only scientific, biological criteria can be considered. The Service published this finding in the Federal Register on October 1, 1984 (49 FR 38908).

Regarding the cumulative impacts of the designation of critical habitat and the development of recovery plans, the Service believes that these activities do not constitute a proposal under NEPA and, therefore, do not warrant the preparation of an EA or EIS, including an evaluation of cumulative impacts. Implementation of recovery actions, however, is subject to NEPA, including the consideration of cumulative impacts, as appropriate. Refer to other responses below.

The use of Categorical Exclusions Effectively Precludes Public Involvement in Service Decisions

One commenter stated that categorical exclusions (section 1.4) effectively preclude public involvement in Service decisions. The CEQ Regulations clearly focus on those actions with significant impacts on the quality of the human environment or on those actions whereby such a determination must be determined (i.e., the EA), from which a better environmental decision can be encouraged. Categorical exclusions are categories of similar actions identified by agencies that normally do not require the preparation of an EA or EIS because the actions do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). A major purpose of categorical exclusions is to preclude such actions from undergoing detailed NEPA examinations or public review. However, this does not preclude the Service from involving the affected public in the planning and implementation of such decision. In some cases, it is mandatory, such as for recovery plan development. In other cases, the Service routinely includes the affected public in decisions, such as land acquisition actions, and issuance of special use permits, where the actions are normally categorically excluded.

At a Minimum, an EA Should be Prepared for Land Acquisition Actions

One commenter stated that, at a minimum, the Service should prepare an EA for all land acquisitions in cooperation with State, Tribal, and local governments [section 1.4A(4)]. All land acquisition proposals for the establishment or major expansion of national wildlife refuges are completed with the Service's full consideration of NEPA during the detailed pre-acquisition planning phase of a proposal. At that time, the Service considers the environmental impacts of the acquisition of lands within a proposed acquisition boundary. Proposals for the establishment of refuges involve appropriate coordination with Federal agencies and affected State, Tribal, and local governments. Either an EA or EIS is normally prepared, depending on the significance of impacts and/or controversy surrounding the proposal (refer to section 1.5A). The categorical exclusion for land acquisition in section 1.4A(4) is utilized for land acquisition within approved established refuges or for minor adjustments to the acquisition boundary of an existing refuge. Specific guidance on land acquisition and the

application of the NEPA process is found in Service guidance (341 FW 2).

Concerns Were Raised Regarding the Categorical Exclusion for the Reintroduction of Native, Formerly Native, or Established Species

Several commenters raised concerns regarding this categorical exclusion [section 1.4B(6)]. These concerns are fueled, in part, by controversy over the reintroductions of the gray wolf, proposed reintroduction of the Mexican wolf, and debate over the reintroduction of hatchery-raised fish. One commenter recommended that the categorical exclusion be deleted.

The Service is involved in numerous reintroductions through various grants programs (e.g., Federal Aid in Fish and Wildlife Restoration Acts), recovery actions under ESA, and the Service's Fisheries Program. The categorical exclusion for this activity applies only when there are no significant impacts associated with the proposal. The categorical exclusions must be read in context with the Departmental Manual, 516 DM 2, Appendix 2, which identifies exceptions to the categorical exclusions. When an exception applies, such as an action with highly controversial environmental effects, an EA or EIS must be prepared. In a number of recent reintroductions, such as the reintroduction of the gray wolf in Yellowstone National Park and central Idaho, and the proposed reintroduction of the Mexican Wolf in Arizona and New Mexico, an EIS was prepared due to the controversy over environmental effects associated with the proposals.

Several commenters raised specific concerns about the use of this categorical exclusion for the release of hatchery propagated fish. The Service's National Fish Hatchery System produces various species of fish for a variety of purposes. Numerous legislative authorities, such as the Atlantic Striped Bass Conservation Act, Great Lakes Fishery Act, New England Fishery Resources Restoration Act, Sikes Act, and the Water Resources Development Act of 1976, to name a few, direct the Service's Fisheries Program. While it is true that fishery managers in the past sometimes favored using Federal hatcheries to produce and stock non-native fishes, these kinds of activities are very limited today. The Service's Fisheries Program focuses its resources on restoring depleted native populations of fishes, recovering threatened and endangered fishes, and maintaining the health and abundance of inter jurisdictional fish populations. The service uses non-native fish primarily in waterways grossly altered

by water projects and in artificial impoundments and sterile waterbodies. Any reintroduction activity covered under this categorical exclusion, whether it involves native or non-native species, will be subject to the exceptions procedures in the Departmental Manual (516 DM 2, Appendix 2). Additional language has been added to this categorical exclusion to clarify that such reintroductions can be categorically excluded only when no or negligible environmental disturbances are anticipated.

The categorical Exclusions are attempting to Bypass the Assessment of Impacts for the Issuance of Permits

Several commenters suggest that the Service, through its categorical exclusions [sections 1.4C(1) and (2)], is attempting to bypass the assessment of impacts from the issuance of permits for endangered and threatened species, species listed under the Convention on International Trade on Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

Although some ESA permits can be issued which involve the killing, removal from natural habitat, or permanent impairment of reproductive capability of species under this revised categorical exclusion, the permit can be issued only if it poses no jeopardy to the species. To ensure this standard, permits include appropriate minimization and mitigation actions in the conditions of the permit. If these actions are not feasible or the conditions are not acceptable to the applicant, the permit application will be denied.

Under the categorical exclusion 1.4C(1) and (2), section 10(a)(1)(B) incidental takes permits and the preparation of accompanying HCPs can now be categorically excluded if the expected impacts are minor or negligible. This standard for "low-effect" HCPs was not included under the previous categorical exclusions, where any permit, for example, involving incidental take, required the preparation of an EA or EIS. The previous language was a far more rigorous standard than required under NEPA. For example, under the previous procedures, incidental take of a listed species would require the preparation of an EA or EIS even when the service established that there was only a minor or negligible effect. The revised language is consistent with NEPA in that the level of impact is the trigger for determining when to prepare an EA or EIS, thus allowing the implementation of a more flexible, efficient section

10(a)(1)(B) permit program. Additional Service guidance on how to determine when a permit proposal will be "low-effect" will be included in the final Section 10 Handbook.

For species listed under CITES, the Wild Bird Conservation Act, and the Marine Mammal Protection Act, the Service carefully reviews possible effects of the proposed activity on the wildlife before issuing a permit. For species listed as injurious wildlife, the Service reviews whether provisions are in place to ensure that wildlife cannot escape and potentially harm native wildlife. The permit review process includes consulting with appropriate State and Federal agencies and species experts. The Services makes a decision to issue a permit only after issuance criteria are met. These are specific to the provisions of the law or treaty. For example, under CITES, the Service's Office of Scientific Authority must make a finding that the import or export would not be detrimental to the survival of the species. If the Service anticipates that a permit may have an incidental environmental impact, the Service would require the preparation of an EA or EIS.

Under the Migratory Bird Treaty Act (MBTA), the Service thoroughly reviews and considers anticipated effects on migratory bird populations before issuing a permit allowing the take of a protected species. Permits are issued at the Regional level pursuant to regulations and requirements (50 CFR 210 and are only issued after careful review by the Region's Permit Review Committee. Like the MBTA, the Bald and Golden Eagle Protection Act (BGEPA) prohibits the taking of bald and golden eagles, except as otherwise permitted pursuant to regulations (50 CFR 22.21 through 22.25). Under MBTA, BGEPA, and applicable regulations, no permits can be issued for actions that would cause harm to the species. If there are incidental impacts as a result of the issuance of the proposed issuance of a permit that are or may be significant, such permits would require the preparation of an EA or EIS.

If any permit action, that normally would be categorically excluded, meets one or more of the exceptions to the categorical exclusion in 516 DM 2, Appendix 2, an EA or EIS is required. This requirement is to ensure that proposals with significant impacts or with impacts that may be significant undergo the NEPA documentation and decisionmaking process.

The Habitat Conservation Plan Process Serves Essentially the Same Purpose as the NEPA Process

One commenter suggested that the HCP process, authorized under section 10(a)(1)(B) of the ESA, serves essentially the same purpose as the NEPA analysis in an EA or EIS. We agree that there are some similarities in the content of the HCP and the NEPA document, such as the identification of alternative, evaluation of impacts, and public review. However, some of these features can differ substantially, depending on the proposal. For example, section 10(a)(1)(B) and subsequent Service guidance limits the analysis of impacts in the HCP to affected listed and proposed species by minimizing and mitigating the incidental take of a listed species. The purpose of the HCP process is to provide an incidental take permit to the applicant that authorizes the incidental take of federally listed species in the context of an HCP. The HCP specifies the impacts that will likely result from the incidental taking, what steps the applicant will take to minimize and mitigate such impacts, what alternative actions are not being utilized, and such other measures as may be required by the Service.

When considering the NEPA analysis as it relates to an incidental take permit and the HCP, it is important to be precise about the nature of the underlying action. The scope of the NEPA analysis covers the direct, indirect, and cumulative effects of the proposed incidental take and the mitigation and minimization measures proposed from the implementation of the HCP. The specific scope of the NEPA analysis will vary depending on the nature of the scope of activities described in the HCP. In some cases, the anticipated environmental effects in the NEPA documents that address the HCP may be confined to effects on endangered species and other wildlife and plants, simply because there are no other important effects. In many cases, the NEPA analysis will focus on the effects of the minimization and mitigation actions on other wildlife and plants and will examine any alternatives or conservation strategies that might not otherwise have been considered. In other cases, the minimization and mitigation activities proposed in the HCP may affect a wider range of impacts analyzed under NEPA, such as cultural resources and water use. It is important to keep in mind, however, that the NEPA analysis for an HCP should be directed towards analyzing direct, indirect, and cumulative effects that would be caused by the approval of the

HCP, that are reasonably foreseeable, and that are potentially significant.

Refuge Actions Determined to be Compatible Would not be Subject to Qualitative and Quantitative Evaluations

One commenter suggests that if the Service made a determination of compatibility, that would be sufficient to qualify the issuance or reissuance of refuge special use permit as a categorical exclusion, thus avoiding any qualitative or quantitative assessment of impacts. The categorical exclusion 1.4C(5) requires that three criteria be met before a Refuge action requiring the issuance or reissuance of a permit can apply: the use must be compatible, must contribute to the purposes of the refuge, and result in no or negligible anticipated environmental disturbances. The compatibility criteria is one of three that must be met before this categorical exclusion can be used. This categorical exclusion cannot be used unless it meets the requirements of both the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA (40 CFR 1508.4).

An EA or EIS Should be Prepared for the Preparation of Recovery Plans

One commenter stated that the preparation of recovery plans should require the preparation of an EA or EIS (section 1.4D). Another commenter stated that recovery plans should not be categorically excluded because the issue is currently in litigation. However, several commenters also stated that recovery plans are not "action" documents, and therefore do not constitute a Federal action under NEPA. The Service continues to consider recovery plans categorically excluded under section 1.4B(8), as well as under 516 DM 2, Appendix 1.10. Recovery plans are considered to be advisory in nature and provide technical assistance. These plans merely provide planning strategies and identify possible recovery actions and/or tasks that can be implemented at a later time to help recover the species. The recovery tasks identified in the plan are discretionary. The plans do not authorize, fund, or implement a specific task. Through section 1003 of the ESA amendments of 1988, the Secretary of the Interior provides the public an opportunity to review and comment on draft recovery plans. The NEPA process will be applied at the time specific tasks are proposed to be implemented. The relationship of NEPA to recovery planning will be clarified in revisions to the Service Recovery Manual.

The Service Should Maintain the Flexibility To Issue EAs and FONSI's Without Public Review

One commenter stated that the language in section 1.5C indicates that public review is required for an EA and that this is inconsistent with CEQ's Regulations, which require review of the FONSI only when an action is similar to one which normally requires an EIS or when the nature of the action is without precedent [40 CFR 1501.4(e)(2)]. We agree that this language is inconsistent and it is also somewhat confusing. The language in section 1.5C has been revised to indicate that it is not the EA/FONSI, but the notice of intent to prepare an EIS that is to be made available to the affected public when an EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment.

Although CEQ's Regulations do not normally require public review of EAs, such review is encouraged. The Service routinely involves the public in the review of EAs in conjunction with HCPs. The ESA requires the Service to publish a Notice, called the Notice of Receipt, when a HCP permit application is received. The final Section 10 Handbook will provide guidance encouraging Service personnel to publish a joint notification of the permit application, HCP, and the EA for public review. In practice, the Service normally provides the public an opportunity to review the EA along with the HCP to facilitate the planning and implementation of the incidental take permit.

Designation of Critical Habitat Should Require the Preparation of an EIS

One commenter stated that the designation of critical habitat should require the preparation of an EIS. The Department's NEPA procedures do not specifically state that the designation of critical habitat is categorically excluded. The Service has maintained that these designations are exempt from NEPA and therefore, do not require the preparation of an EA or EIS in conjunction with regulations adopted pursuant to section 4(a) of the ESA, as amended. A notice outlining the Service's reason was published in the Federal Register on October 25, 1983 (48 FR 49244). As the commenter notes, two Federal Circuit Courts have disagreed on this issue (9th and 10th Circuits). Pending resolution of this issue by the Courts, the Service will not prepare environmental documents in the 9th Circuit or in other parts of the United States, consistent with our current position, but the

Service will prepare EAs for any designations proposed in areas subject to the 10th Circuit. This admittedly inconsistent approach to the application of NEPA for the designation of critical habitat will likely continue until resolved by the Courts.

Departmental Manual

516 DM 6 Appendix 1

Fish and Wildlife Service

1.1 NEPA Responsibility

A. The Director is responsible for NEPA compliance for Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on Environmental Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC—Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the environmental review and analysis of documents prepared by other agencies and environmental statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office Environmental Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of Environmental Policy and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with 516 DM 6.2.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decisionmakers in his/her area of responsibility contact affected Federal agencies and State, Tribal and local governments when initiating an action subject to an EA or EIS. An individual in each Regional Office,

named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office Environmental Coordinator, in accordance with 516 DM 6.2.

1.2 General Service Guidance

Service guidance on internal NEPA matters is found in 30 AM 2-3 (organizational structure and internal NEPA compliance), 550 FW1-3 (in preparation), 550 FW 3 (documenting and implementing Service decisions on Service actions), and 550 FW 1-2 (replacement to 30 AM 2-3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating the NEPA process with other Service programs, environmental laws, and executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decisionmaking activities. Service program guidance on NEPA matters must be consistent with the Service Manual on NEPA guidance and Departmental NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521-523 FW), refuge planning guidance (602 FW 1-3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation Act Grant Application Instructions.

1.3 Guidance to Applicants

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service-administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General

Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4), and the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh-3233, 43 U.S.C. 1602-1784). inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the Service Manual (602 FW 1-3). Reference to this and other National Wildlife Refuge System requirements are found in the Code of Federal Regulations, Title 50 parts 25-29, 31-36, 60, and 70-71. Under these regulations, these protections are extended to all Service-administered lands, including the National Fish Hatchery System.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the Anadromous Fish Conservation Act (CFDA #15.600); North American Wetlands Conservation Act; Fish and Wildlife Act of 1956; Migratory Bird Conservation Act; Food Security Act of

1985; Food, Agriculture, Conservation and Trade Act of 1990; Partnerships for Wildlife Act of 1992; and Consolidated Farm and Rural Development Act. The Service administers financial assistance to States under the Sport Fish Restoration Act (CFDA #15.605), Wildlife Restoration Act (CFDA #15.611), Endangered Species Act (CFDA #15.612 and 15.615), Coastal Wetlands Planning Protection and Restoration Act (CFDA #15.614), and Clean Vessel Act of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the Anadromous Fish Conservation Act may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the North American Wetlands Conservation Act may be obtained through the North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the departmental categorical exclusions cannot be used. In addition to the actions listed in the departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.

(2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do

not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

- i. The installation of fences.
- ii. The construction of small water control structures.
- iii. The planting of seeds or seedlings and other minor revegetation actions.
- iv. The construction of small berms or dikes.
- v. The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when

conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with departmental and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible

effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:

- (a) Assessment of civil penalties.
- (b) Forfeiture of property seized or subject to forfeiture.

(C) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.

D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2.

1.5 Actions Normally Requiring an EA

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the Federal Register and by other appropriate means to notify the affected public.

1.6 Major Actions Normally Requiring an EIS

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the environmental effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

Dated: January 13, 1997.

Willie Taylor,

Director, Office of Environmental Policy and Compliance, Office of the Secretary, U.S. Department of the Interior.

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Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain

activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-822203

Applicant: Louisiana Purchase Gardens and Zoo, Monroe, LA.

The applicant requests a permit to purchase a female captive-bred jaguar (*Panthera onca*) from Marion Nature Park, Bellview, Florida, for the purpose of enhancement of the species through captive propagation.

PRT-824037

Applicant: Siegfried & Roy Enterprises, Inc., Las Vegas, NV.

The applicants request a permit to import 2 pair of tigers (*Panthera tigris tigris*) born in captivity from Guadalajara Zoo, Guadalajara, Mexico for survival of the species through propagation and conservation education.

PRT-824036

Applicant: Charles Sammut, Salinas, CA.

The applicant requests a permit to export and reimport one male captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT-823928

Applicant: Plumpton Park Zoo, Rising Sun, MD.

The applicant requests a permit to import one female Siberian tiger (*Panthera tigris altaica*) born in captivity at the Greater Vancouver Zoological Centre, Canada, to enhance the survival of the species through conservation education.

PRT-823832

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport captive-born tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities done by the applicant over a three year period.

PRT-823896

Applicant: The Jane Goodall Institute's Center for Primate Studies, St. Paul, MN.