

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 13 and 17**

RIN 1018-AD95

**Safe Harbor Agreements and
Candidate Conservation Agreements****AGENCY:** Fish and Wildlife Service,
Interior.**ACTION:** Proposed rule.

SUMMARY: This proposed rule contains the U.S. Fish and Wildlife Service's (Service) proposed regulatory changes to 50 CFR part 17 necessary to implement two draft policies developed by the Service and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (Act)—the Safe Harbor and Candidate Conservation Agreement policies which are published elsewhere in this issue of the **Federal Register**. NMFS will develop separate regulatory changes to implement these policies. In addition, the Service proposes technical amendments to its general regulations (50 CFR part 13) which are applicable to all of its various permitting programs. These proposed revisions would clarify the application of existing general permit conditions to the permitting procedures associated with Habitat Conservation Plans, Safe Harbor Agreements and Candidate Conservation Agreements issued under section 10 of the Act.

DATES: Comments on the proposed rule must be received by August 11, 1997.

ADDRESSES: Send any comments or materials concerning the proposed rule to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C. 20240 (Telephone 703/358-2171, Facsimile 703/358-1735). You may examine comments and materials received during normal business hours in room 452, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species (Telephone (703/358-2171).

SUPPLEMENTARY INFORMATION:**Background**

These proposed regulations only apply to the U.S. Fish and Wildlife Service and in no way apply to the National Marine Fisheries Service. Therefore, the use of the term Service within these proposed regulatory changes refers to the U.S. Fish and Wildlife Service exclusively.

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

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

In most instances, the combination of Part 13's general permitting provisions and Part 17's specific Act permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the "one size fits all" approach of part 13 is inappropriately constraining and narrow. These three areas involve Habitat Conservation Planning, "Safe Harbor" Agreements, and Candidate Conservation Agreements.

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

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its

citizens. The Service again does not view this as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

While the above HCP scenarios are proper and consistent with the requirements of section 10(a) of the Act and part 17, they are not as easily reconcilable with certain sections of part 13. For example, sections 13.24 and 13.25 of Title 50 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they impose inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP foresee the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could arise under Part 13 under so-called "Safe Harbor" or Candidate Conservation Agreements (see draft Safe Harbor and Candidate Conservation Agreement policies also published in today's **Federal Register**). A major incentive for property owner participation in the Safe Harbor or Candidate Conservation programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land when it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could view the present limitations in several sections (e.g., section 13.24 and 13.25) as impediments to the development of these agreements. In light of potential problems such as these, the Service is proposing to modify Part 13 to redefine its relationship with HCP permits and Safe Harbor and Candidate Conservation "enhancement of survival" permits under Part 17.

To address these issues, the Service proposes several changes in Part 13. First, the Service proposes to modify section 13.3 by identifying and clarifying that, in case of a conflict between general permit provisions in part 13 and more specific terms or conditions in a HCP permit and its accompanying habitat conservation plan or implementation agreement, the more specific provisions in the HCP permit and accompanying documents would control. Similarly, in the case of a conflict between general provisions in part 13 and terms or conditions under a Safe Harbor or Candidate Conservation Agreement and its accompanying part

17 "enhancement of survival" permit, the provisions of the part 17 "enhancement of survival" permit and the Agreement would control. Thus, while part 13 would generally apply to HCP and enhancement of survival permits, the more detailed and specific terms and conditions of a permit issued under part 17 would apply when there is a conflict.

Reviewers should note that the Service proposed amendments to section 13.3 (Scope of Regulations) on September 5, 1995 (60 FR 46087). Those changes, among other things, provided an explanation of the term "permit" (needed to reference the requirements applicable to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) correctly), to state the scope of its requirements clearly, and to ensure that the titles of several parts of Title 50 of the Code of Federal Regulations are up-to-date. However, the September 5, 1995, proposal did not deal with the potential conflicts between the general provisions included in part 13 with specific provisions for incidental take and enhancement of survival permits under part 17. The present proposal in no way amends the language included in the September 5, 1995, proposal.

The Service also proposes to add four new sub-sections to part 17. These sub-sections would provide specific guidance for the issuance of endangered or threatened species enhancement of survival permits under section 10(a)(1)(A) of the Act for activities conducted under Safe Harbor or Candidate Conservation Agreements. This would avoid confusion with any other type of permits issued under part 17 and provides clear guidance on the specific applicable criteria for Safe Harbor and Candidate Conservation Agreements through the enhancement of survival provisions of the Act. The Act requires the Secretary of Interior to establish and implement programs to conserve declining species of fish, wildlife, and plants so as to prevent their extinction. The proposed regulations for Safe Harbor and Candidate Conservation Agreements are aimed at implementing such programs. The proactive nature of these programs, the regulatory certainty they provide participating property owners, and their conservation benefits truly reflect the overall purposes of the Act and fall within the Service's responsibilities for utilizing its authorities and responsibilities to further the conservation mandate of the Act. Section 10(a)(1)(A) enhancement of survival permits provide the best mechanism for implementing the Safe

Harbor and Candidate Conservation Agreement programs.

Overview of Safe Harbor and Candidate Conservation Programs

The information below briefly describes these two programs. For more details on these two programs see the two draft policies also published elsewhere in this issue of the **Federal Register**.

Much of the nation's current and potential habitat for listed, proposed, and candidate species exists on non-Federal lands, owned by private citizens, States, municipalities, Native American Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal lands are critical to the long-term conservation of many declining species. More importantly, a collaborative stewardship approach is critical for the success of such an initiative. Many property owners are willing to voluntarily manage their lands to benefit fish, wildlife, and plants, especially those that are declining. Such voluntary management actions are not required by the Act. Thus, failure to conduct such management would not violate any of the Act's provisions. Beneficial management could include actions to maintain habitat or improve habitat (e.g., restoring fire by prescribed burning, restoring properly functioning hydrological conditions). Property owners are particularly concerned about possible future uncertainty relative to land-use restrictions that may result if listed species colonize their lands or increase in numbers or distribution because of the property owners' conservation efforts or if species subsequently become listed as a threatened or endangered species. Concern centers primarily on the applicability of the section 9 "take" prohibitions if listed species occupy their lands and on future land-use restrictions that may result from their conservation-oriented land management actions if other species are listed. The potential for future restrictions has led property owners to avoid or limit land or water management practices that could enhance or maintain habitat and benefit or attract fish and wildlife that are listed or may be listed in the future.

The purpose of the Safe Harbor Policy is to ensure consistency in the development of Safe Harbor Agreements. Safe Harbor Agreements encourage proactive conservation efforts for listed species by private and other non-Federal property owners while providing property owners certainty relative to future property-use restrictions if their efforts attract listed

species onto their properties or areas affected by actions undertaken on their property or increase the numbers or distribution of listed species already present on their properties. These voluntary Safe Harbor Agreements will be developed between the Services and private and other non-Federal property owners. The Services will closely coordinate development of Safe Harbor Agreements with the appropriate State fish and wildlife or other agencies and any affected Native American Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the critical partnership between the Service and the States in recovering listed species. Under a Safe Harbor Agreement, participating property owners would voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting federally listed species.

The ultimate goal of Candidate Conservation Agreements is, to the extent feasible and controllable by the property owner, to remove enough threats to the covered species so as to nullify the need to list them as threatened or endangered under the Act. Proposed and candidate species may be the subject of a Candidate Conservation Agreement. Certain other unlisted species that may become a candidate or proposed species in the near future may also be the subject of a Candidate Conservation Agreement. These Agreements are different from Safe Harbor Agreements (which require the presence of at least one listed species) in that they provide conservation benefits exclusively to candidate and proposed species of fish, wildlife, and plants. The substantive requirements of activities carried out under Candidate Conservation Agreements, if undertaken on a broad enough scale by other property owners similarly situated, should be expected to preclude the need for listing species covered by the Agreement as threatened or endangered under the Act.

Required Determinations

A major purpose of this proposed rule is the facilitation of voluntary cooperative programs for the proactive management of non-Federal lands and waters for the benefit of candidate, proposed, and listed species. From the Federal government's perspective, implementation of this rule would result in minor expenditures (e.g., providing technical assistance in the development of site-specific management plans). The benefits derived from such management actions on non-Federal lands and waters would

significantly advance the recovery of listed species or remove threats to candidate, proposed, or other unlisted species. Non-Federal program participants would be provided regulatory certainty as a result of their voluntary management actions. In some cases, such participants may incur minor expenditures to carry out some management actions on their lands or involving their water. The Service has determined that the proposed rule would not result in significant costs of implementation to the Federal government or to non-Federal program participants.

The Assistant Secretary for the Department of Interior certified to the Chief Counsel for Advocacy of the Small Business Administration that a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which includes businesses, organizations, or governmental jurisdictions. Because of the completely voluntary nature of the Safe Harbor or Candidate Conservation program, no significant effects are expected on non-Federal cooperators exercising their option to enter into a Safe Harbor or Candidate Conservation Agreement. Therefore, this rule would have minimal effect on such entities. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The Department has determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service is submitting the necessary paperwork to OMB for renewal of approval number 1018-0022, which expires July 31, 1997 to collect this information. The Service will not continue to collect the information until approved by OMB and a final regulation is published. The proposed information collection requirement will be used to administer these programs and, particularly in the issuance of permits. The Service intends to collect the information through the use of the Federal Fish and Wildlife Permit Application, Service form number 3-200.54, which the Service modified

pursuant to 50 CFR 13.21(b) to address the specific requirements of the proposed rule, and at the request of OMB. The information requested in the application form will be required to obtain a benefit, and to determine if the applicant meets all the permit issuance criteria.

The applicants will be non-Federal property owners, working with Federal officials, wishing to manage their lands or waters to provide a conservation benefit to endangered and threatened species, but who also do not want to incur future additional regulatory requirements as a result of their conservation-oriented activities. The annual number of applicants is estimated to be 50. The public reporting burden for this collection of information is estimated to average two and one-half hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information, yielding an annual burden of 125 hours.

Comments are invited from the public on: (1) Whether the collection of information is necessary for the proper performance of the function of the Service, including whether the information will have practical utility; (2) the accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Public Comments Solicited

The Service submits for public comment this proposed rule. Particularly, comments are sought on:

(1) The proposed procedures or methods for implementing the Service's Safe Harbor and Candidate Conservation policies to further the purposes of the Act;

(2) Alternative means for providing regulatory assurances to property owners who enter Safe Harbor or Candidate Conservation Agreements; and

(3) The proposed regulatory changes to 50 CFR parts 13 and 17.

The Service is also requesting comments on the revised Federal Fish and Wildlife Permit Application, Service form number 3-200.54. Copies of the proposed information collection requirements, related forms, and

explanatory material may be obtained from, and comments should be submitted to the Service's Information Collection Clearance Officer at the U.S. Fish and Wildlife Service, MS 224-ARLSQ, 1849 C Street, NW., Washington, D.C., 20240; or by calling and requesting information at 703/358-1943.

The Service will take into consideration the comments and any additional information received by the Service by August 11, 1997, and such will be considered in the development of a final rule.

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, Export, Import, 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 Federal Code of Regulations, as set forth below:

PART 13—[AMENDED]

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

Authority: 16 U.S.C. 668a; 704, 712; 742 j-1; 1382; 1538(d); 1539, 1540(f); 3374; 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

2. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife" (part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23) except as provided in § 13.22(c). However, in the case of a conflict between general provisions of this part and specific provisions, conditions, or procedures contained in either an incidental take permit and its accompanying habitat conservation plan

or agreement under § 17.22(b) or 17.32(b) of this title, or in a safe harbor agreement through an enhancement of survival permit under § 17.22(c) or 17.32(c) or candidate conservation agreement through an enhancement of survival permit under § 17.22(d) or 17.32(d) of this title, the specific provisions, conditions, or procedures of the incidental take permit and its accompanying habitat conservation plan or agreement, or the safe harbor or candidate conservation agreements through an enhancement of survival permit and accompanying document, will control. As used in this part 13 the term "permit" will refer to a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies.

PART 17—[AMENDED]

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

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

2. § 17.22 is amended by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) 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.* You must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed activity is to occur (for appropriate addresses see 50 CFR 10.22) if you wish to engage in any activity prohibited by § 17.21. You must submit an official application form (3–200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization and the agreed upon baseline conditions;

(iii) A description of management activities that the applicant will voluntarily undertake or forgo that will provide a net conservation benefit to covered species and a description of

how such activities will provide a net conservation benefit to the affected species by contributing to the recovery of listed species covered by the permit; and,

(iv) A description of regulatory assurances requested by the applicant.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and be in accordance with the terms of the safe harbor agreement;

(ii) The implementation of the terms of the safe harbor agreement will provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the safe harbor agreement is consistent with applicable State laws and regulations;

(v) Implementation of the terms of the safe harbor agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the safe harbor agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a safe harbor agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, 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 translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the safe harbor agreement.

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

(5) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the safe harbor agreement.

(d)(1) *Application requirements for permits for the enhancement of survival through candidate conservation agreements.* You must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed activity is to occur (for appropriate addresses see 50 CFR 10.22). You must apply for an enhancement of survival permit application when the agreement is finalized, not at the time of species' listing, if you wish to engage in any activity prohibited by § 17.21 after a candidate, proposed, or other unlisted species likely to become a candidate or proposed species in the near future and are covered in a candidate conservation agreement is listed as an endangered species. You must submit an official application form (3–200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization;

(iii) A description of the conservation and enhancement activities to be voluntarily undertaken by the permit applicant and how those activities are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species in the near future and are covered by the candidate conservation agreement if such actions were undertaken by other property owners similarly situated within the range of the species; and

(iv) A description of regulatory assurances requested by the applicant.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and to be in accordance with the terms of the candidate conservation agreement;

(ii) The implementation of the terms of the candidate conservation agreement are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species in the near future and are covered by the agreement if such actions were undertaken by other property owners similarly situated within the range of the species. This does not mean that an individual permittee is responsible for bearing the entire conservation needs of covered species included in an enhancement of survival permit; rather, if similarly situated property owners undertook the same sort of conservation activities within the range of the species, the need to list would be obviated.

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the candidate conservation agreement will not be in conflict with any ongoing conservation programs for species covered by the permit;

(v) Implementation of the terms of the candidate conservation agreement is consistent with applicable State laws and regulations; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the candidate conservation agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a candidate conservation agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate

affected individual of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the candidate conservation agreement.

(4) *Duration of the Candidate Conservation Agreement.* The duration of a candidate conservation agreement covered by a permit issued under this paragraph (d) must be sufficient to remove threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species in the near future and are covered by a candidate conservation agreement. The duration of the candidate conservation agreement can vary, however, assurances are only provided when the agreement is in effect.

(5) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a candidate conservation agreement on the effective date of a final rule that lists a covered species as endangered.

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Subpart D—Threatened Wildlife [Amended]

3. In section 17.32 paragraphs (c) and (d) are added to read as follows:

§ 17.32 Permits—general.

* * * * *

(c)(1) *Application requirements for permits for the enhancement of survival through safe harbor agreements.* You must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed action is to occur (for appropriate addresses see 50 CFR 10.22) if you wish to engage in any activity prohibited by § 17.31. You must submit an official application form (3–200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization and the agreed upon baseline conditions;

(iii) A description of management activities that the applicant will voluntarily undertake or forgo that will provide a net conservation benefit to covered species; and,

(iv) A description of regulatory assurances requested by the applicant.

(2) *Public review.* The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(3) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and to be in accordance with the terms of the safe harbor agreement;

(ii) The implementation of the terms of the safe harbor agreement will provide a net conservation benefit to the affected species by contributing to the recovery included in the permit;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the safe harbor agreement is consistent with applicable State laws and regulations;

(v) Implementation of the terms of the safe harbor agreement will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the safe harbor agreement.

(4) *Permit conditions.* In addition to any applicable general permit conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a safe harbor agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individual of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary

or appropriate to carry out the purposes of the permit and the safe harbor agreement.

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

(6) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for a species covered by the safe harbor agreement.

(d)(1) *Application requirements for permits for the enhancement of survival through candidate conservation agreements.* You must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed activity is to occur (for appropriate addresses see 50 CFR 10.22). You must apply for an enhancement of survival permit application when the agreement is finalized, not at the time of species' listing, if you wish to engage in any activity prohibited by § 17.31 after a candidate, proposed, or other unlisted species that may become listed in the near future and are covered in a candidate conservation agreement is listed as a threatened species. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. You must submit an official application form (3-200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization;

(iii) A description of the conservation and enhancement activities to be

voluntarily undertaken by the permit applicant and how those activities are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species and are covered by the candidate conservation agreement, if such action were undertaken by other property owners similarly situated within the range of the species; and,

(iv) A description of the regulatory assurances requested by the applicant.

(2) *Public review.* The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(3) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and to be in accordance with the terms of the candidate conservation agreement;

(ii) The implementation of the terms of the candidate conservation agreement are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species and are covered by the agreement if such actions were undertaken by other property owners similarly situated within the range of the species. This does not mean that an individual permittee is responsible for bearing the entire conservation needs of a proposed, candidate, or other covered unlisted species included in an enhancement of survival permit; rather, if similarly situated property owners undertook the same sort of conservation actions within the range of the species, the need to list would be obviated.

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the candidate conservation agreement will not be in conflict with any ongoing conservation programs for species covered by the permit;

(v) Implementation of the terms of the candidate conservation agreement is consistent with applicable State laws and regulations; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the candidate conservation agreement.

(4) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a candidate conservation agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individual of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the candidate conservation agreement.

(5) *Duration of the Candidate Conservation Agreement.* The duration of a candidate conservation agreement covered by a permit issued under this paragraph (d) must be sufficient to remove threat(s) to proposed, candidate, or other unlisted species covered by a candidate conservation agreement. The duration of the candidate conservation agreement can vary, however, assurances are only provided when the agreement is in effect.

(6) *Permit effective date.* Permits issued under this paragraph (d) become effective on the effective date of a final rule that lists a species covered by a candidate conservation agreement and included in a permit as threatened.

Dated: May 23, 1997.

Donald J. Barry,

Acting Assistant Secretary, Fish, Wildlife, and Parks, Department of Interior.

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