TABLE 36—EPA-APPROVED TUOLUMNE COUNTY AIR DISTRICT REGULATIONS

District citation	Title/subject	State effective date	EPA approval date	Additional explanation
[Reserved]				

TABLE 37—EPA-APPROVED TUOLUMNE COUNTY AIR DISTRICT REGULATIONS

District citation	Title/subject	State effective date	EPA approval date	Additional explanation
[Reserved]				

TABLE 38—EPA-APPROVED VENTURA COUNTY AIR DISTRICT REGULATIONS

District citation	Title/subject	State effective date	EPA approval date	Additional explanation
[Reserved]				

TABLE 39—EPA-APPROVED YOLO-SOLANO AIR DISTRICT REGULATIONS

District citation	Title/subject	State effective date	EPA approval date	Additional explanation
[Reserved]				

(d) *EPA-approved source-specific requirements.* [Reserved]

(e) *EPA-approved California nonregulatory provisions and quasi-regulatory measures.* [Reserved]

[FR Doc. 2016–12380 Filed 5–25–16; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 735]

Revision to the Surface Transportation Board's CFR Chapter Heading Pursuant to the Surface Transportation Board Reauthorization Act of 2015

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is revising the heading to its CFR chapter, pursuant to the Surface Transportation Board Reauthorization Act of 2015.

DATES: Effective May 26, 2016.

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm: (202) 245–0391. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: On December 18, 2015, the *Surface Transportation Board Reauthorization Act of 2015,* Public Law 114–110, 129 Stat. 2228 (2015) (STB Reauthorization Act), was enacted into law, removing the Board from the United States Department of Transportation (DOT), where it had been administratively housed, and establishing it as an independent Federal agency. 49 U.S.C. 701 (2012); STB Reauthorization Act section 3. Because 49 CFR chapter X is titled ''Surface Transportation Board, Department of Transportation,'' the Board is revising it to ''Surface Transportation Board'' to reflect the agency's independent status.

As this change is not substantive, we find good cause to dispense with notice and comment under the Administrative Procedure Act (APA).[1] 5 U.S.C. 553(b)(3)(A)–(B).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

It is ordered:

1. The rule modifications set forth below are adopted as final rules.

2. This decision is effective on May 26, 2016.

[1] Board procedures allow for the issue of final rules without notice or comment when those rules are interpretive, general statements of policy, or relate to organization, procedure, or practice before the Board. See 49 CFR 1110.3(a).

Decided: May 19, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Marline Simeon,

Clearance Clerk.

For the reasons set forth in the preamble, under the authority of 49 U.S.C. 1321, the heading for title 49, chapter X, is revised to read as follows:

CHAPTER X—SURFACE TRANSPORTATION BOARD

[FR Doc. 2016–12346 Filed 5–25–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 140725620–6418–02]

RIN 0648–BE43

Endangered and Threatened Species: Designation of Experimental Populations Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue final regulations to amend the Code of Federal Regulations (CFR) to implement the Endangered Species Act (ESA)

regarding experimental populations. This rule amends the CFR to establish definitions and procedures for: Establishing and/or designating certain populations of species otherwise listed as endangered or threatened as experimental populations; determining whether experimental populations are ''essential'' or ''nonessential;'' and promulgating appropriate protective measures for experimental populations.

DATES: The final rule is effective June 27, 2016.

ADDRESSES: Supplementary information used in the development of this rule, including the public comments received, may be viewed online at *http://www.regulations.gov* at FDMS Docket No. NOAA–NMFS–2014–0104.

FOR FURTHER INFORMATION CONTACT: Heather Coll, NMFS, Office of Protected Resources, (301) 427–8455.

SUPPLEMENTARY INFORMATION:

Background

Section 10(j)(1) of the ESA (16 U.S.C. 1539(j)(1)) defines an experimental population as a population that has been authorized for release by the Secretary of Commerce (Secretary) or Secretary of the Interior, but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species. The Secretary may authorize the release (and related transportation) of any experimental population (including eggs, propagules, or individuals) of a listed species outside of the species' current range if the Secretary determines that the release would ''further the conservation of'' the listed species (16 U.S.C. 1539(j)(2)(A)). Section 10(j)(2)(B) also requires that, before authorizing the release of an experimental population, the Secretary ''identify'' the experimental population by regulation and determine, based on the best available information, whether the experimental population is ''essential to the continued existence'' of the listed species (16 U.S.C. 1539(j)(2)(B)).

Section 10(j) of the ESA further provides that each member of an experimental population shall be treated as a threatened species under the ESA, with two exceptions that apply if an experimental population is determined to be not essential to the listed species' continued existence (*i.e.,* is nonessential): (1) A nonessential experimental population (NEP) shall be treated as a species proposed for listing for purposes of section 7 of the ESA, except when the NEP occurs in an area within the National Wildlife Refuge System or the National Park System; and (2) critical habitat shall not be designated for a NEP. Treatment of an experimental population as ''threatened'' under the ESA enables the Secretary to issue regulations under the authority of section 4(d) of the ESA that he or she deems necessary and advisable to provide for the conservation of the species, which may be less restrictive than taking prohibitions that apply to endangered species under ESA section 9.

We have developed regulations providing NMFS's interpretation of, and procedures for, implementing ESA section 10(j). In developing our regulations, we reviewed the ESA, legislative history of the 1982 ESA amendments, existing U.S. Fish and Wildlife Service (USFWS) ESA section 10(j) regulations, public comments from the USFWS rulemaking to develop their ESA section 10(j) regulations, and public comments from our own recent experimental population designations; and consulted with USFWS staff. We then convened a group of NMFS staff with experience in ESA section 10(j) designations to draft our own 10(j) regulations.

We strove to maintain consistency between our regulations and the USFWS regulations as much as possible to provide for consistent implementation of ESA section 10(j) between the agencies. We are finalizing regulations that we believe are necessary to implement the statutory requirements in a manner appropriate for species under NMFS' jurisdiction, while also clarifying our interpretation of ESA section 10(j).

We published our proposed rule in the **Federal Register** for public comment, and after considering public comments, are issuing our final rule with four changes from the proposed rule (80 FR 45924; August 3, 2015). First, pertaining to listing at 50 CFR 222.502(c)(1), we removed the words ''if appropriate'' to describe what a listing regulation shall provide when an experimental population designation is made. Also regarding listing at 50 CFR 222.502(e), we added ''local government entities'' to the last sentence, which describes the entities that are part of the agreement when a regulation is promulgated for an experimental population. Regarding interagency cooperation at 50 CFR 222.504(a) and (b), we removed the language ''designated for a listed species'' because it was redundant, and because removing it makes the sentence simpler. This change is not intended to make our regulation functionally different than USFWS' corresponding regulation. Finally, also regarding interagency cooperation at 50 CFR 222.504, we added a paragraph (c), with the following language, to provide guidance and clarity in ESA section 7 consultations: ''For purposes of section 7 of the Act, any consultation on a proposed Federal action that may affect both an experimental and a nonexperimental population of the same species should consider that species' experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under section 7 of the Act.''

We provide a summary of public comments and our responses below.

Summary of Comments

In our proposed regulations (80 FR 45924, August 3, 2015), we requested written comments from the public for 60 days, ending October 2, 2015, and we received nine comments. We received one request to extend the public comment period but did not do so, because we believe the 60-day comment period provided adequate time for comment. We considered all substantive information provided during the comment period and, where appropriate, incorporated explanations here and into the Background and Summary of Final Rule sections of this final rule.

We received seven substantive comments supporting the intent of our proposed regulations, agreeing with the overall rulemaking, and expressing appreciation for framing the NMFS ESA section 10(j) regulations in a manner that is consistent with FWS regulations. More specifically, most were very supportive of our: (1) Expansion of the stakeholder consultation and collaboration provision; and (2) our decision to explain the relationship between ESA sections 10(j) and 4(d). In addition to providing overall support for the proposed rule, the seven substantive commenters requested further clarification on several issues, and in some cases, requested specific language changes for the regulations. We summarize those comments and requests and provide our responses.

Comment 1: We received several comments related to proposed section 222.502(e). A few commenters requested that we clarify to what extent an experimental population designation is an ''agreement'' between interested parties. One commenter requested that we seek concurrence before a material change is made to an experimental population designation or ESA section 4(d) rule. One commenter requested that we specify that we would not proceed with a reintroduction if an interested party refuses to cooperate because of the

determination regarding whether an experimental population is essential.

Response 1: The regulatory text at issue, as revised in this final rule, provides, ''[a]ny regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the National Marine Fisheries Service, the affected State and Federal agencies, tribal governments, local government entities, and persons holding any interest in land or water which may be affected by the establishment of an experimental population.'' We strongly believe that working with affected parties is critical to the success of experimental population designations and our intent is to reach agreement with all interested parties on these designations. The phrase ''to the maximum extent practicable'' is necessary, however, because within the process of trying to reach agreement, there are many potential stakeholders with different interests and perspectives and it is conceivable that, while most stakeholders are in agreement, there may be others who are not.

We foresee that material changes to an ESA section 10(j) rule would be rare, however, it is possible that they could be needed in rare circumstances in response to changed circumstances that we did not foresee or consider at the time we developed the ESA section 10(j) rule. In this case, we would seek input from all interested parties and obtain an agreement, to the maximum extent practicable, to move forward with that change. After receiving comments from the interested parties on a potential material change, we will decide whether to move forward with the change. Additionally, because we must promulgate a regulation in order to make the designation, we would provide the public an opportunity to comment on the proposed rulemaking to amend the designation.

Regarding the commenter's request that we would not proceed with a reintroduction if an interested party refuses to cooperate because of a disagreement regarding the determination whether the population is essential, it is our intention, as noted above, to reach agreement with all parties. If consensus is not possible, we must still proceed to make a determination as to whether an experimental population is essential based upon the best available information.

Comment 2: A few commenters requested that we clarify whether we intend to include local governments as interested parties we will work with toward agreement in an experimental population designation, and one commenter suggested specific language for including local governments.

Response 2: As provided in our proposed regulations, local governmental entities are among the entities we will consult with in developing and implementing experimental population rules. For this final rule, we added ''local government entities'' to the last sentence in 50 CFR 222.502(e), which describes the entities that are part of the agreement when a regulation is promulgated for an experimental population.

Comment 3: Many commenters supported the expansion of the stakeholder consultation provision to include those persons holding an interest in water. In addition, commenters requested we place this expansion within the regulatory text, as the commenters asserted it was only stated in the preamble of the proposed rule. Some commenters wanted us to further describe what we meant by interest in water and to list specific entities that would participate as stakeholders.

Response 3: The provision expanding stakeholder consultation to include those persons holding an interest in water was in the proposed regulatory text. It is included in the final regulation (50 CFR 222.502(e)).

We decline to further define ''interest in water.'' As stated above, we strongly believe that consultations with affected parties are critical to the success of experimental population designations and our intent is to reach agreement with all interested parties on all aspects of these experimental population designations. We intend the universe of stakeholders in the consultation process to be inclusive and do not want to predefine who may be a stakeholder. The reason for this is that we consider ''persons holding any interest in . . . water'' to be broad and diverse, and to include, for example, those who have a legal, financial, cultural, aesthetic, or other interest.

Comment 4: One commenter asked us to elaborate on the interaction between this rule and our recent regulations modifying the definition of adverse modification and the procedures and standards used for critical habitat designation.

Response 4: We published a final rule to revise the Endangered Species Act (ESA) section 7(a)(2) regulatory definition of ''destruction or adverse modification'' that codifies the current policy and practice of the National Marine Fisheries Service and the Fish and Wildlife Service (81 FR 7214; February 11, 2016). We also published a final rule that amends portions of 50 CFR part 424 to clarify procedures for designating and revising critical habitat (81 FR 7413; February 11, 2016). This amendment made minor edits to the scope and purpose, added and removed some definitions, and clarified the criteria for designating critical habitat.

Our revisions to the procedures for designating and revising critical habitat are not expected to impact future ESA section 10(j) designations. Critical habitat cannot be designated for nonessential experimental populations. In the event that we identify critical habitat for an essential experimental population under ESA section 10(j), then these regulations would apply to the designation and resulting section 7 consultations.

Comment 5: One commenter requested that we include the same provision as USFWS related to analyses under ESA section 7 involving an experimental population, that we should consider any experimental and nonexperimental populations to constitute a single listed species for the purpose of conducting analyses under ESA section 7.

Response 5: We have added a provision related to analyses under ESA section 7 involving an experimental population to provide guidance and clarity. The final regulation (50 CFR 222.504(c)) states: ''For purposes of section 7 of the Act, any consultation on a proposed Federal action that may affect both an experimental and a nonexperimental population of the same species should consider that species' experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under section 7 of the Act.'' Though this language differs from USFWS' language, none of the differences are intended to cause our regulation to functionally differ from USFWS's corresponding regulation.

Comment 6: One commenter requested that we include the same provision as USFWS regarding clarification of how critical habitat would be designated for an area of overlap between a nonexperimental population and an experimental population.

Response 6: This concern would only apply to essential experimental populations, because we cannot designate critical habitat for nonessential populations. The USFWS language the commenter refers to is: ''[i]n those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat

shall be designated for the area of overlap.'' 50 CFR 17.81(f). We believe this language is unnecessary and could be misinterpreted to mean that there should be no critical habitat designated for either experimental or nonexperimental populations, which is not correct. Section 10(j) of the ESA states that populations will be recognized as experimental only when they are wholly separate geographically from nonexperimental populations. Thus, at times and locations where there is overlap, any critical habitat designation for the nonexperimental population will apply to the experimental population.

Comment 7: One commenter requested that we reconsider the 12-year expiration in the final rule designating Middle Columbia River steelhead trout as an experimental population.

Response 7: We have designated three experimental populations of salmonids based on the specific and unique circumstances for those populations. As we stated in the proposed regulations, we do not intend the final implementing regulations herein to require us to review or revise those existing designations. The implementing regulations we are finalizing in this rule do not alter the findings we made in our prior designations and rulemakings. Therefore, the existing designations will not change as a result of finalizing this rule.

With respect to future designations, we anticipate that designations having an expiration date will be rare. It is our intent that future experimental population designations will remain in place until the species is delisted. For further detail on delisting and revising experimental populations, see Response 11.

Comment 8: One commenter asked us to expand on the reasoning for removing ''natural'' as a qualifier from the term ''current range'' and asked whether this would increase or decrease areas where experimental populations could be established.

Response 8: ESA section 10(j)(2)(A) uses the phrase ''outside the current range'' rather than ''outside the current natural range,'' which is used in the USFWS regulations, to identify the geographic area in which an experimental population is authorized for release. There is no definition of ''range,'' ''current range,'' or ''current natural range'' in the ESA or 50 CFR parts 222 (NMFS ESA implementing regulations) or 424 (Joint NMFS/USFWS ESA implementing regulations). The USFWS ESA section 10(j) regulations at 50 CFR 17.80 through 17.83 also do not define ''natural.'' For this reason, including the word ''natural'' in the phrase ''outside the current range'' could be confusing. Removing the word ''natural'' eliminates this confusion. The term ''current range'' means the geographic area where the species is at the time of the designation. We do not anticipate that this will, as a general matter, increase or decrease areas where experimental populations could be established.

Comment 9: One commenter requested that we provide an example of when listing proposed location, migration, number of specimens to be released, as well as other criteria appropriate to identify experimental populations would not be appropriate to include in the rule designating the experimental population.

Response 9: In rules designating experimental populations, we will provide all of the best available information at that time for identifying the population. Over the course of implementing the rules, more specific information could emerge that was not available at the time of the rulemaking. For example, it is possible that not all of the information regarding proposed location, migration, number of specimens to be released, and other criteria appropriate to identify that experimental population would be available at the time of designating an experimental population.

For the final regulation we deleted the clause ''if appropriate'' because it appeared to apply to just the number of specimens released or to be released, whereas we intend that any means used to identify the experimental population would need to be appropriate to the specific scenario. The final regulation states: ''. . . Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location; actual or anticipated migration; number of specimens released or to be released; and other criteria appropriate to identify the experimental population(s)'' (50 CFR 222.502(c)(1)).''

Comment 10: One commenter asked us to clarify that hatchery stocks not currently listed under the ESA will not be treated as threatened or as a species proposed for listing if an experimental population is established in the same area.

Response 10: If an unlisted hatchery stock co-occurs in the same geographic area as an experimental population, that hatchery stock's status would not change and it would not be treated as threatened or proposed for listing simply because it co-occurs with an experimental population.

Comment 11: One commenter requested that we clarify that an experimental population will retain that designation until the donor species is delisted because of recovery, asserting that the change would remove ambiguity about whether NMFS would remove a designation under section 10(j) of the ESA if the donor species is delisted due to extinction. Another commenter asked us to explain our position on revising the designation of an experimental population.

Response 11: As we stated in the preamble to the proposed rule, NMFS' intent when designating an experimental population under ESA section 10(j) is that the population will retain that designation until the donor species is delisted, or until, for some unforeseen reason, the experimental population fails, for example, due to lack of donor stock or problems with implementation (80 FR 45924; August 3, 2015). A species (here, donor species) is delisted either because of extinction, recovery, or because the original data for classification was in error (50 CFR 424.11(d)). In any decision to change the donor species' status, we would consider the role of experimental populations in contributing to the conservation of the species. This also clarifies our intent with regard to revising experimental population designations. Our intent is that experimental populations retain their designations until the donor species is delisted. We do have the authority to revise experimental population designations and, while we cannot predict all future circumstances, at this time we do not anticipate making such revisions. However, NMFS has the authority to revise experimental population designations and may need to do so if there is a substantial change in the circumstances that led to determinations in the original experimental population designation. In that case, NMFS would need to revise the rule designating the experimental population, which would be subject to the same rulemaking procedures as the original experimental population designation.

Comment 12: We received several comments voicing concern that no experimental populations have been designated as essential even though some experimental populations have ''carried the future of the species on their backs.'' These commenters also urged us to include criteria, develop policy, or develop guidance on when an experimental population would be deemed essential.

Response 12: While we have not yet proposed designating any experimental

population as essential, the statute and these regulations provide the potential for future opportunities to do so. We believe there is appropriate guidance laid out in the regulations, including the definition of ''essential experimental population,'' and statute to designate an experimental population that we determine to be an essential experimental population.

Comment 13: One commenter stated that non-listed populations should not be used as sources to establish new populations that would be afforded any ESA protection (threatened or proposed). The commenter wanted to see more explicit language addressing this issue.

Response 13: ESA section 10(j) authorizes us to establish experimental populations of endangered or threatened species. It does not allow us to designate populations of non-listed species as experimental populations under ESA section 10(j). Therefore we do not believe additional language pertaining to non-listed species is necessary.

Comment 14: One commenter asked that we remove provisions that the commenter believed encourage restrictions on movement of experimental populations and suggested alternative regulatory text. Specifically, the commenter asserted that the language at 50 CFR 222.502(c)(3), ''Management restrictions, protective measures, or other special management concerns of that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from nonexperimental populations,'' would send a signal to the public that rules under section 10(j) of the ESA should always include specific measures to isolate/contain populations.

Response 14: We do not believe nor do we intend that our regulations encourage restrictions on movement of experimental populations. The language, ''which may include, but are not limited to, measures to isolate and/or contain the experimental population designation,'' is language from the USFWS regulations that provides an example. We are trying to keep our changes from the USFWS regulations to a minimum; and we do not feel it is necessary to eliminate the subject language. At the time of experimental population designation, we will develop management restrictions, protective measures, and other special management concerns that are specific to the subject experimental population.

Required Determinations

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (Section 515 of Pub. L. 106–554), which was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. There are no documents supporting this rule that meet this criteria.

Executive Order 12866

This rule has been determined to be not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notification of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy at the Small Business Administration during the proposed rule stage that this action would not have a significant economic effect on a substantial number of small entities. There were no comments received regarding the certification. The following discussion explains our rationale.

The final regulations clarify how we implement the provisions of section 10(j) of the ESA. The final regulations do not materially alter our current practices or expand our reach. We are the only entity that is directly affected by this final rule because we are the only entity that can designate experimental populations of threatened or endangered species under NMFS jurisdiction. No external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts from this final rule. Therefore, the only potential effect on any external entities large or small would likely be positive, through reducing any uncertainty on the part of the public about our process for designating experimental populations by formalizing our practices and procedures.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This rule will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the regulation will not place additional requirements on any city, county, or other local municipalities.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This regulation would not impose any additional management or protection requirements on the States or other entities.

Executive Order 12630

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required because this rulemaking: (1) Would not effectively compel a property owner to have the government physically invade property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rulemaking would substantially advance a legitimate government interest (conservation and recovery of listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Executive Order 13132

In accordance with E.O. 13132, we have determined that this rule does not have federalism implications as that term is defined in E.O. 13132.

Civil Justice Reform (E.O. 12988)

This rule will not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988. This rule clarifies how the Services will make designations under section 10(j) of the ESA: (1) Establishing and/or designating certain populations of species listed as endangered or threatened as experimental populations; (2) determining whether experimental populations are ''essential'' or ''nonessential;'' and (3) promulgating appropriate protective measures for experimental populations.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NOAA's Administrative Order regarding NEPA compliance (NAO 216–6 (May 20, 1999)).

We have determined that this rule is categorically excluded from NEPA documentation requirements, consistent with 40 CFR 1508.4. We have determined that this action satisfies the standards for reliance upon a categorical exclusion under NOAA Administrative Order (NAO) 216–6. Specifically, this action fits within the categorical exclusion for ''policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' NAO 216–6, section 6.03c.3(i). This action would not trigger an exception precluding reliance on the categorical exclusion because it does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, will not result in uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not have significant cumulative impacts, and will not have any adverse effects upon endangered or threatened species or their habitats (*Id.* sec. 5.05c). As such, it is categorically excluded from the need to prepare an Environmental Assessment. In addition, we find that because this rule will not result in any effects to the physical environment, much less any adverse effects, there would be no need to prepare an Environmental Assessment even aside from consideration of the categorical exclusion. See, *e.g., Oceana, Inc.* v. *Bryson,* 940 F. Supp. 2d 1029 (N.D. Cal. April 12, 2013). Issuance of this rule does not alter the legal and regulatory status quo in such a way as to create any environmental effects. See, *e.g., Humane Soc. of U.S.* v. *Johanns,* 520 F. Supp. 2d. 8 (D.D.C. 2007).

Government-to-Government Relationship With Tribes (E.O. 13175)

E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If we issue a regulation with tribal implications (defined as having a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes), we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

We invited all interested tribes to discuss the rule with us at their convenience should they choose to have a government-to-government consultation. We received no such request for government-to-government consultation.

Environmental Justice (E.O. 12898)

E.O. 12898, Environmental Justice, requires that Federal actions address environmental justice in the decision-making process. This rule is not expected to have a disproportionately high effect on minority populations or low-income populations.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

This rule has been determined not to be a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 222

Endangered and threatened species.

Dated: May 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, part 222, of chapter II, title 50 of the Code of Federal Regulations, is amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

■ 2. Add subpart E to read as follows:

Subpart E—Experimental Populations

Sec.

Subpart E—Experimental Populations

§ 222.501 Definitions.

(a) The term *experimental population* means any introduced and/or designated population (including any off-spring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart but only when, and at such times as, the population is wholly separate

geographically from nonexperimental populations of the same species. Where part of an experimental population overlaps with nonexperimental populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; *e.g.,* fixed migration patterns, natural or man-made barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.

(b) The term *essential experimental population* means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as *nonessential.*

§ 222.502 Listing.

(a) The Secretary may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable habitat outside the species' current range, subject to the further conditions specified in this section; *provided,* that all designations of experimental populations must proceed by regulation adopted in accordance with 5 U.S.C. 553 and the requirements of this subpart.

(b) Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Secretary must find by regulation that such release will further the conservation of the species. In making such a finding, the Secretary shall utilize the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future;

(3) The effects that establishment of an experimental population will have on the recovery of the species; and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

(c) Any regulation promulgated under paragraph (a) of this section shall provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location; actual or anticipated migration; number of specimens released or to be released; and other criteria appropriate to identify the experimental population(s);

(2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild;

(3) Management restrictions, protective measures, or other special management concerns of that population, as appropriate, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from nonexperimental populations and protective regulations established pursuant to section 4(d) of the Act; and

(4) A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

(d) The Secretary may issue a permit under section 10(a)(1)(A) of the Act, if appropriate, to allow acts necessary for the establishment and maintenance of an experimental population.

(e) The National Marine Fisheries Service shall consult with appropriate State fish and wildlife agencies, affected tribal governments, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. When appropriate, a public meeting will be conducted with interested members of the public. Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the National Marine Fisheries Service, the affected State and Federal agencies, tribal governments, local government entities, and persons holding any interest in land or water which may be affected by the establishment of an experimental population.

(f) Any population of an endangered species or a threatened species determined by the Secretary to be an experimental population in accordance with this subpart shall be identified by special rule in part 223 as appropriate and separately listed in 50 CFR 17.11(h) (wildlife) or 17.12(h) (plants) as appropriate.

(g) The Secretary may designate critical habitat as defined in section (3)(5)(A) of the Act for an essential experimental population as determined pursuant to paragraph (c)(2) of this section. Any designation of critical habitat for an essential experimental population will be made in accordance with section 4 of the Act. No designation of critical habitat will be made for nonessential experimental populations.

§ 222.503 Prohibitions.

(a) Any population determined by the Secretary to be an experimental population shall be treated as if it were listed as a threatened species for purposes of establishing protective regulations under section 4(d) of the Act with respect to such population.

(b) Accordingly, when designating, or revising, an experimental population under section 10(j) of the Act, the Secretary may also exercise his or her authority under section 4(d) of the Act to include protective regulations necessary and advisable to provide for the conservation of such species as part of the special rule for the experimental population. Any protective regulations applicable to the species from which the experimental population was sourced do not apply to the experimental population unless specifically included in the special rule for the experimental population.

§ 222.504 Interagency cooperation.

(a) Any experimental population determined pursuant to paragraph (c) of this section not to be essential to the survival of that species and not occurring within the National Park System or the National Wildlife Refuge System, shall be treated for purposes of section 7 of the Act (other than subsection (a)(1) thereof) as a species proposed to be listed under the Act as a threatened species, and the provisions of section 7(a)(4) of the Act shall apply.

(b) Any experimental population that either has been determined pursuant to paragraph (c) of this section to be essential to the survival of that species, or occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted, shall be treated for purposes of section 7 of the Act as a threatened species, and the provisions of section 7(a)(2) of the Act shall apply.

(c) For purposes of section 7 of the Act, any consultation on a proposed Federal action that may affect both an experimental and a nonexperimental

population of the same species should consider that species' experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under section 7 of the Act.

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