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The complete file for this proposed rule, including public comments, is available, by appointment, during normal business hours at the same address. You may call 703/358-2329 to make an appointment to view the files.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

In implementing its responsibilities under the Endangered Species Act of 1973, as amended (ESA), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Migratory Bird Treaty Act (MBTA), and other wildlife laws, the Service issues permits and certificates that authorize the holders to engage in certain wildlife-related activities that are regulated by international treaty or laws of the United States. The Service charges user fees to offset the cost of processing applications for these permits and certificates, as well as the cost of monitoring and maintaining active permit files.

The general statutory authority to charge fees for applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." The authority to charge fees is also found under various wildlife laws. Specifically, the ESA, 16 U.S.C. Sec. 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the Government connected with permits or certificates authorized by [the ESA] including processing applications." The Marine Mammal Protection Act (MMPA), 16 U.S.C. Sec. 1374(g), also provides that the "Secretary shall establish and charge a reasonable fee for permits" issued pursuant to the MMPA.

Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A-25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public. Some of the Service's permit programs receive no designated budget appropriations. Others receive some funding, but not enough to cover costs.

Our ability to effectively provide these special services depends in large part on user fees. We are proposing that the standard permit application fee, which has not been revised since 1982, be increased in order to recoup more of the costs associated with providing permitting services.

The current schedule of permit application fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). The Service set what it calculated to be a reasonable standard fee in 1982 dollars to help defray the costs of processing permit applications, and monitoring and maintaining active permits. However, the standard \$25 fee was not large enough to recover the total cost of administering the Service's permit programs, even when it was set in 1982.

In response to cost of living increases, average Federal Government salaries have increased by 128% since 1982, according to the Bureau of Labor Statistics Employment Cost Index. This means that labor costs, which constitute the major expense incurred in administering permit programs, have more than doubled during the 21 years since the standard fee was established.

Furthermore, during that time, the average permit application has become more complex and time consuming to process. For example, migratory bird depredation permit applications are increasing in both frequency and complexity as greater numbers of people have more frequent interactions with migratory birds, resulting in more extensive, and different types of, property damage. Before issuing these permits, the Service must document that it considered and complied with the requirements of the National Environmental Policy Act (NEPA). As part of NEPA compliance, some of these permit issuances require preparation of environmental assessments. For migratory bird rehabilitation, permit conditions and criteria have had to become more complex to keep pace with an expanding and evolving profession, as larger, better-equipped facilities open, providing greater numbers of birds with more sophisticated treatment. In general, permit administration today requires more coordination between Service programs, other Federal programs, and State governments than it did 2 decades ago, in order to comply with the growing body of wildlife regulations needed to address the increasing impacts of an expanding human society. This increased complexity and workload of permit administration results in larger costs to the Service.

**Proposed Revised Fee Schedule**

Given the shortfall between program costs and fee collection, the Service is proposing to implement a new permit application fee schedule. The Service proposes to replace the current standard and nonstandard fees with a new table of fees to be designated under title 50 of the Code of Federal Regulations (CFR) at § 13.11(d)(4). This rule does not affect permit application fees for migratory bird banding and marking permits, which are issued by the U.S. Geological Survey, Bird Banding Laboratory.

The proposed fee structure is what the Service deems to be reasonable based on the nature of the activities being permitted, as well as the level of complexity and time required to process applications and maintain active permit files. Greater complexity results in greater workload and costs to the Federal Government for providing these special services. For example, fees for marine mammal public display permits are set at the rate of \$300 since they are among the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission, as well as publication of notices in the **Federal Register** on receipt of an application and issuance of the permit. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix-I import permit and are significantly more complex to process than, for example, a simpler CITES Appendix-II permit application.

While cost considerations were important in developing the new fee structure, the Service does not intend this fee schedule to precisely mirror the actual cost of processing and maintaining the various types of permits we issue. For some types of permits, the cost of processing applications and monitoring active permits far exceeds what the Service can reasonably expect the applicant to pay, and thus the proposed permit application fee defrays only a minor portion of the actual cost to the Service. The proposed fee structure is a compromise between charging permit applicants the entire cost of providing these special services and the need to establish a uniform, straightforward fee schedule that reflects a reasonable cost for processing applications and maintaining active files.

In addition to cost, the Service considered several other factors in developing the new permit application