

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

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

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

Revisions to the Regulations

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

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

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

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

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