

would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. In addition, we propose to include a provision that commits the Director to use all other available authorities to avoid revoking the permit under these circumstances. We propose to revise the existing revocation criterion by stating that, with the consent of the permittee, we will pursue all feasible and appropriate options prior to permit revocation, including extending or modifying the existing permit, capturing and relocating the species, providing compensation to the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging a third-party acquisition of an interest in the property.

#### Required Determinations

We have evaluated the effects of the revisions described in this proposed rule. We have concluded that the resulting economic benefits of the proposed rule would accrue to the persons who secure agreements with us. While the number of persons who pursue agreements may increase as a result of these proposed changes, we do not anticipate that the level of participation in the permitting programs will increase because the resources available to process permit applications will not change as a result of this rule. Therefore, we conclude that this proposed rule will not result in additional effects. Based on this finding, we have made the following determinations for this proposed rule.

#### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant proposed rule.

(a) This proposed rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Because most of the proposed rule deals with revisions of current regulations, we do not anticipate that this rule will cause any significant economic changes, either positive or negative. We have concluded that this rule will have some beneficial economic effect because we are rectifying inconsistencies and drafting errors, thereby making Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to undertake and implement. The effect

would be minimal because of the small number of permits anticipated to be issued.

(b) This proposed rule is not expected to create additional inconsistencies with other agencies' actions. Although the Safe Harbor and Candidate Conservation Agreements with Assurances policies are joint policies with the National Oceanic and Atmospheric Administration Fisheries, the implementing regulations subject to this proposed rule apply to the Fish and Wildlife Service exclusively. NOAA Fisheries has not adopted similar regulations to the Fish and Wildlife Service to provide a consistent basis for the joint policy implementation.

(c) This proposed rule is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule raises novel legal or policy issues. If this regulation can help facilitate wider adoption of the Safe Harbor and Candidate Conservation Agreements with Assurances programs, it could help increase private conservation efforts on behalf of listed and unlisted species, which is a key component of successful implementation of the Act.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice 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).

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 following discussion explains our determination.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. The proposed rule does not establish any new application or implementation burdens. Submitting applications for enhancement of survival permits under the Act is voluntary, and participation in activities that enhance the survival or propagation of species is also voluntary on the part of the applicant. We expect that any impacts of this rule would be beneficial

because they clarify the regulatory requirements for obtaining enhancement of survival permits under the Act. We, therefore, do not expect these changes to affect a substantial number of small entities. To date, we have issued 16 Safe Harbor Agreement permits and 5 Candidate Conservation Agreement with Assurances permits. We expect to issue the same number of enhancement of survival permits per year. That averages approximately four Safe Harbor Agreement permits and one Candidate Conservation Agreement with Assurances permit per year. Given the low number of enhancement of survival permits expected to be issued, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 13211

On May 18, 2001, the President issued an Executive Order (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 certain actions. This proposed rule is not a significant regulatory action under Executive Order 12866, and is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### 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.), we make the following findings:

(a) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that this proposed rule will not result in any significant additional expenditures by entities that develop Agreements.

(b) This proposed rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; as a result, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed rule imposes no obligations on State or local governments.

#### Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This proposed rule has no provision that would take private property rights. Participation in this permitting program is strictly voluntary.