

compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

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(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* A property owner (including anyone with a fee simple, leasehold, or other property interest sufficient to carry out the proposed management activities, subject to applicable State law) must submit an application for a permit under paragraph (d) of this section to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22).

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(3) \* \* \*

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) 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 relocate affected individuals of the species, if possible and appropriate; and

\* \* \* \* \*

(5) \* \* \*

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) \* \* \*

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent

possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

\* \* \* \* \*

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this subsection. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity 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. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

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Dated: July 21, 2003.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AH93

#### Revisions to the Regulations Applicable to Permits Issued Under the Endangered Species Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to revise our regulations pertaining to permits issued under the Endangered Species Act. The

proposed revisions will refine and clarify the application requirements and issuance criteria for such permits, particularly when used in connection with projects to improve habitat for listed species. The revisions will encourage and facilitate enhancement initiatives by landowners, natural resource agencies, and others.

**DATES:** Comments from all interested parties must be received by November 10, 2003.

**ADDRESSES:** Comments or materials concerning the proposed rule should be sent to Division of Conservation and Classification, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 North Fairfax Drive, Suite 420, Arlington, Virginia 22203 (Telephone 703/358-2171, Facsimile 703/358-1735). Comments and materials received on the proposed rule will be available for inspection, by appointment, during normal business hours, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chris Nolin, Chief, Division of Conservation and Classification, Fish and Wildlife Service (Telephone 703/358-2171, Facsimile 703/358-1735).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Endangered Species Act (Act) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1) of the Act authorizes the Service to issue permits allowing otherwise prohibited activities for certain actions that are consistent with the purposes of the Act. Section 10(a)(1)(A) authorizes such permits for scientific research or to enhance the propagation or survival of all listed species. Generic regulations for these permits are detailed at 50 CFR 17.22(a) and 17.32(a). Section 10(a)(1)(B) authorizes permits allowing the taking of listed species incidental to otherwise lawful activities (such as land development, timber harvest). Regulations for these permits are detailed at §§ 17.22(b) and 17.32(b).

The Service issues section 10(a)(1)(A) permits for otherwise prohibited activities when the purpose of the permit is scientific or when there is a clear link between the proposed activity and the enhancement of propagation or survival of the affected species.