

Assurances policies expressly prohibit Federal agencies from obtaining assurances included with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances.

The Service recognizes that its existing regulations at §§ 17.22(a) and 17.32(a) do not clearly describe the full range of activities that enhance species survival. Although our current regulations authorize the permitting of take that results from any activity that meets the standard under section 10(a)(1)(A), enhancement of propagation or survival, we propose to revise §§ 17.22(a) and 17.32(a) to clarify the range of actions that may be permitted. Furthermore, we propose to clarify that these permits may also be issued in conjunction with Candidate Conservation Agreements with Assurances and Safe Harbor Agreements that contemplate intentional take.

Revisions to the Regulations

In 1999, the Service's Office of Management Authority, which is responsible for activities involving non-native listed species and the international movement of all listed species, became the Division of Management Authority. As such, § 17.8(a)(2) needs to be revised to reflect this change.

Regulations at §§ 17.22(a) (for endangered species) and 17.32(a) (for threatened species) describe application requirements and issuance criteria for permits for scientific purposes or to enhance the propagation or survival of listed species (§ 17.32(a) also covers the issuance of permits for other purposes that are allowable for threatened species). As currently written, those regulations prescribe the same application requirements and issuance criteria for all such permits, regardless of whether the purpose of the application is to conduct scientific research, import, export, conduct interstate commerce, implement captive breeding efforts, carry out habitat restoration activities to enhance the survival of species associated with that habitat, or carry out other activities designed to benefit the species' survival in the wild. Some of these provisions, particularly the application requirements, are important for only certain purposes, but not for all. We propose to revise these application requirements and issuance criteria to indicate clearly which apply to which of the different purposes for which permits are sought. Specific changes are described as follows.

Both §§ 17.22(a)(1)(i) and 17.32(a)(1)(i) require applications to

specify the number, age, and sex of animals to be covered by the permit. This information may be of considerable importance if the purpose of the permit is to acquire particular individuals from the wild for captive breeding or scientific research. It is generally not important, or determinable, in other contexts, such as when the permit applicant seeks authority to take the species incidental to carrying out habitat improvement activities to enhance the survival of the species, as in the case of prescribed burning of Karner blue butterfly habitat. Accordingly, we propose to revise this provision to require such information only insofar as it is determinable at the time of the permit application.

A resume of the applicant's attempts to obtain specimens of wildlife sought to be covered by the permit in a manner that would not cause its death or removal is required by §§ 17.22(a)(1)(iii) and 17.32(a)(1)(iii). This requirement is appropriate in those situations in which the permit applicant seeks to collect or obtain wildlife. In situations where that is not the case, such as when the applicant must inadvertently take wildlife as part of a program to enhance the species survival through habitat creation or improvement, the requirement is unnecessary. Accordingly, we propose to clarify this provision by adding a prefatory clause explaining that it applies only when an applicant seeks to obtain specimens under the permit.

The requirements, at §§ 17.22(a)(1)(v) and 17.32(a)(1)(v), that an application must include a description of an institution or facility only has relevance where the applicant intends to use, display, or maintain the covered wildlife. In other situations, such as those involving habitat restoration to enhance the survival of a species, the applicant will not use, display, or maintain the species. Accordingly, we propose to clarify this provision by adding a prefatory clause explaining that it applies only when an applicant intends to use, display, or maintain wildlife covered by the permit.

Both §§ 17.22(a)(1)(vi) and 17.32(a)(1)(vi) require an applicant to describe the facilities where wildlife covered by the permit will be housed or cared for. This provision is relevant if the applicant intends to house or care for live wildlife, but not if the applicant intends only to enhance the survival of a species through habitat improvement. Accordingly, we propose to clarify this provision by specifying that it applies only when the applicant intends to house or care for live wildlife.

At present, §§ 17.22(a)(2)(i) and 17.32(a)(2)(i) require evaluation of whether the purpose for which the permit is required is adequate to justify removing from the wild the wildlife sought to be covered under the permit or otherwise changing its status. Yet not all scientific research or enhancement of propagation or survival permits will entail removing wildlife from the wild, or changing its status. Some enhancement or research activities may take wildlife by means of harassment (such as handling individuals through banding, or disturbing individuals through habitat restoration), but will not remove it from the wild. Accordingly, we propose to revise §§ 17.22(a)(2)(i) and 17.32(a)(2)(i) to a more general statement requiring the Director to consider whether the purpose for which the permit is sought is adequate to justify the otherwise prohibited activity.

Considering whether issuance of the permit would conflict with any program to enhance the survival probabilities of the population from which the wildlife is to be removed is required by §§ 17.22(a)(2)(iii) and 17.32(a)(2)(iii). Because not all permits issued under this authority entail removing wildlife from the wild, we propose to revise this provision to state more generally that the Director must consider whether issuance of the permit would conflict with any program to enhance the survival probability of the wildlife covered by the permit.

Permits for the enhancement of survival through Safe Harbor Agreements authorized by §§ 17.22(c) and 17.32(c) only authorize take that is incidental to some otherwise lawful activity. In some limited circumstances in which a Safe Harbor Agreement would enhance the survival of a listed species by various activities, such as those discussed above, it may be appropriate to permit limited intentional taking of that species. Therefore, we propose a provision whereby a permit authorizing such intentional take associated with a Safe Harbor Agreement can be issued under §§ 17.22(a) or 17.32(a), in addition to incidental take under §§ 17.22(c) or 17.32(c), but only if the Director determines that all requirements of the Safe Harbor policy are met, other than its limitation for only incidental take. Thus, Safe Harbor Agreement permits issued under §§ 17.22(a) or 17.32(a) covering intentional take will be administered in accordance with the responsibilities and assurances stated in the Safe Harbor policy. This means that holders of these permits will have assurances that their conservation efforts will not incur future regulatory