

obligations in excess of those to which they agreed. These assurances cannot be provided to Federal agencies.

Similarly, permits for the enhancement of survival through Candidate Conservation Agreements with Assurances, authorized by §§ 17.22(d) and 17.32(d), only authorize future take that is incidental to some otherwise lawful activity should the species named on the permit become listed as endangered or threatened. However, in some limited circumstances in which a Candidate Conservation Agreement with Assurances enhances the survival of an unlisted species by creating, restoring, or improving its habitat, reintroducing it, or other similar activities, it may be appropriate to permit limited intentional taking of that species to reduce damage to or destruction of agricultural crops, livestock, domestic animals, buildings or other infrastructure, or negative effects to human health or safety. Therefore, we propose a provision whereby a permit authorizing such intentional take associated with a Candidate Conservation Agreement with Assurances can be issued under §§ 17.22(a) or 17.32(a), in addition to incidental take under §§ 17.22(d) or 17.32(d), but only if the Director determines that all requirements of the Candidate Conservation Agreements with Assurances policy are met, other than its limitation for only incidental take. Thus, Candidate Conservation Agreements with Assurances 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 Candidate Conservation Agreements with Assurances policy. This means that holders of these permits will have assurances that their conservation efforts will not incur future regulatory obligations in excess of those to which they agreed. As with Safe Harbor Agreements, these assurances cannot be provided to Federal agencies.

A notice to the Director in the event of escape of wildlife from captivity is a permit condition required by §§ 17.22(a)(3) and 17.32(a)(3). We propose to clarify that such a condition is required only in permits that authorize the keeping of wildlife in captivity. In addition, we propose to add a provision under this paragraph applicable to permits to undertake habitat creation, restoration, or improvement, reintroduction of a species, or similar activities. The Director shall condition these permits as he or she deems appropriate to ensure that the net effect of those activities,

together with any taking to be authorized by the requested permit, is reasonably expected to be beneficial to the conservation of such species.

Required Determinations

We have evaluated the effects of the proposed regulation revisions described in this rule. We have concluded that the resulting economic benefits would be limited by the number of persons obtaining permits, and that the number of permits issued would be limited by our resources available to develop and process permit applications. This proposed rule clarifies the regulations pertaining to scientific purposes or enhancement of propagation or survival permits to encourage habitat enhancement activities. Although we anticipate issuing these types of permits, we do not anticipate that the level of participation in these permitting programs will significantly increase as a result of this rule because our resources available to process permit applications will not change as a result of this rule. Therefore, we conclude that this proposed rule will have little effect. 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 and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(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. Since most of the proposed rule deals with clarification of current regulations, we do not anticipate this rule will cause any economic changes, either positive or negative. We have concluded that the portion of the proposed rule that deals with issuing permits for habitat improvement will have a beneficial economic effect, but that the effect would be small because of the small number of permits anticipated to be issued and the relatively small economic benefits that would accrue to permittees who take advantage of this provision.

(b) This proposed rule is not expected to create inconsistencies with other agencies' actions.

(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 may raise novel legal or policy issues

and, as a result, this rule has undergone OMB review.

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). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the 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 implementation burdens. Submitting applications for 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 by making it easier to understand the issuance requirements for permits under the Act and particularly for undertaking enhancement of survival or propagation activities that would be beneficial for habitat restoration and improvements. While the Service currently issues a large number of permits for activities such as research and captive breeding (currently over 1,200 permits issued, with 485 permits issued in 2001) and incidental take (currently over 400 permits issued, with 141 of incidental take permits issued in 2001), we only anticipate issuing a small number of permits that take advantage of this new habitat enhancement provision. We, therefore, do not expect these changes to affect a substantial number of small entities. We expect to issue approximately 10 additional of these habitat enhancement permits per year during the first several years of the program's operation. Therefore, given the low number of habitat enhancement permits expected to be issued and the