



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In reply refer to:
81420-2008-F-0946

MAY 20 2009

Memorandum

To: Deputy Manager, Pacific Southwest Region, Sacramento, California
(ATTN: Sheila Larsen)

From: *Carly C. Mond*
Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California

Subject: Submission of Final Documents for Issuance of an Amended Section 10(a)(1)(B)
Incidental Take Permit for the San Bruno Mountain HCP, San Mateo County,
California

Attached are documents required to complete processing of Amendment 5 of the San Bruno Mountain Habitat Conservation Plan (HCP), San Mateo County, California. This office has determined that further solicitor review is not necessary as solicitor guidance was previously provided and incorporated. This package consists of the Findings and Recommendations, draft Terms and Conditions, the signed Intra-Service Section 7 Biological Opinion on the issuance of the permit, and Finding of No Significant Impact (FONSI) and attached Final Environmental Assessment. Electronic copies of the FONSI, Findings and Recommendations, and permit Terms and Conditions are included with this submittal on CD. No changes to the existing Implementing Agreement (IA) have been made.

The 60-day public comment period on the EA and Amended HCP closed on July 16, 2008. We received 57 public comments during this 60-day period.

The enclosed documents should fulfill all information requirements needed to complete the review and processing of this amended permit application. Please contact Eric Tattersall (Division Chief Conservation Planning and Recovery) or Mike Thomas (Conservation Planning) at (916) 414-6680 if you have questions regarding this HCP package.

Attachments

TAKE PRIDE
IN AMERICA 



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

SAN BRUNO MOUNTAIN HCP PERMITTEES
SEE ATTACHMENT A
, CA
U.S.A.

2. AUTHORITY-STATUTES
16 USC 1539(a)
16 USC 1533(d)

REGULATIONS (Attached)
50 CFR 17.22
50 CFR 17.32

50 CFR 13

3. NUMBER
TE215574-5 **AMENDMENT**

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE

7. EXPIRES
03/31/2013

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
SEE ATTACHMENT A

9. TYPE OF PERMIT
THREATENED AND ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

San Bruno Mountain, County of San Mateo, California
Permit amended to: 1) add the Callippe Silverspot Butterfly and the Bay Checkerspot Butterfly; 2) adjust the permit boundary - Northeast Ridge parcel; 3) eliminate Unit II Neighborhood I development; 4) provide supplemental funding

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE.
 - c.1. Permit Number 2-9818 issued on March 4, 1983, changed to Permit Number TE215574-5
 - a. County of San Mateo
 - b. City of Brisbane
 - c. City of Daly City
 - d. City of South San Francisco
- D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

Margaret J. Kalar

TITLE

DEPUTY REGIONAL DIRECTOR, PACIFIC SOUTHWEST REGION

DATE

05/28/2009

SPECIAL TERMS AND CONDITIONS FOR
FEDERAL FISH AND WILDLIFE PERMIT **TE1215574-5**
U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO FISH AND WILDLIFE OFFICE,
SACRAMENTO, CALIFORNIA

- E. Acceptance of this permit serves as evidence that the Permittee and its designated agents agree to abide by the terms of this permit and all sections of *Title 50 Code of Federal Regulations*, part 13 and 17, pertinent to issued permits. Section 11 of the Endangered Species Act of 1973, as amended, provides of civil and criminal penalties for failure to comply with permit conditions. *Title 50 Code of Federal Regulations*, part 13 and part 17.32 regarding threatened species are attached.
- F. The authorization granted by this permit is subject to compliance with and implementation of the final San Bruno Mountain Area Habitat Conservation Plan as amended (HCP), which is hereby incorporated into the permit.
- G. The permittee or designated agents are authorized to conduct ground disturbance on the project site upon receipt of this permit.
- H. The permittee and designated agents are authorized under the Federal Endangered Species Act of 1973, as amended (Act), to incidentally take (injure, kill, harass, harm) the endangered San Bruno elfin butterfly (*Incisalia mossii bayensis*), endangered mission blue butterfly (*Icaricia icarioides missionensis*), endangered callippe silverspot butterfly (*Speyeria callippe callippe*), endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and the threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) (collectively referred to as Covered Species) and habitat, consisting of approximately 19.64 acres on the Northeast Ridge and 2,800 acres that will be managed and monitored at the project site. Take is authorized to the extent that take of this species would otherwise be prohibited under section 9 of the Act and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. Take must be incidental to otherwise lawful activities associated with construction of the reconductoring activities as described in the HCP, and as conditioned herein.
- I. Upon finding any dead, injured, or sick individual of the Covered Species or unanticipated harm associated with project authorized under this incidental take permit, the permittee or designated agents must notify the Service's Sacramento Fish and Wildlife Office within three working days. The Service contact person for this is the Chief of the Conservation Planning Branch, Sacramento Fish and Wildlife Office, at (916) 414-6600.

All observations of the Covered Species - live, injured, sick, or dead - shall be recorded on California Natural Diversity Data Base field sheets and sent to the California Department of Fish and Game, Wildlife and Data Analysis Branch, 1807 13th Street, Sacramento, California 95814.

- J. Any other federally listed or proposed species found on or adjacent to the site must be reported within three working days of its finding. The Service contact for this information is the Chief of the Conservation Planning Branch at the number above.

SPECIAL TERMS AND CONDITIONS FOR
FEDERAL FISH AND WILDLIFE PERMIT **TE1215574-5**
U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO FISH AND WILDLIFE OFFICE,
SACRAMENTO, CALIFORNIA

K. A final report shall be prepared as described in the HCP.

One copy of the report shall be submitted to each of the following entities: (1) the Service's Sacramento Fish and Wildlife Office, Assistant Field Supervisor for Endangered Species – Coast Bay Delta and Forest Foothills, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825; (2) California Department of Fish and Game, Supervisor, Environmental Services, 1416 Ninth Street, Sacramento, CA 95814; and (3) Staff Zoologist, California Natural Diversity Database, California Department of Fish and Game, Wildlife and Data Analysis Branch, 1807 13th Street, Sacramento, CA 95814.

L. A copy of this permit must be in the possession of the permittee and designated agents while conducting taking activities. Please refer to the permit number in all correspondence concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Sacramento Fish and Wildlife Office.

Attachments

Attachment 1

50 CFR 13.1 to 13.50

50 CFR 17.22

50 CFR 17.32

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(g) If the Solicitor decides that relief should not be granted, the Solicitor shall so notify the petitioner in writing, stating in the notification the reasons for denying relief. The petitioner may then file a supplemental petition, but no supplemental petition shall be considered unless it is received within 60 days from the date of the Solicitor's notification denying the original petition.

[45 FR 17864, Mar. 19, 1980, as amended at 47 FR 56861, Dec. 31, 1982]

§ 12.42 Recovery of certain storage costs.

If any wildlife, plant, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling, or storage of such property. If any fish, wildlife or plant is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 9371, *et seq.*, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Service shall send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill shall contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment. Payment shall be made in accordance with the bill. The recipient of any assessment of costs under this section who has an objection to the reasonableness of the costs described in the bill may, within 30 days of the date on which he received the bill, file written objections with the Regional Director of the Fish and Wildlife Service for the Region in which the seizure occurred. Upon receipt of the written objections, the appropriate Regional Director will promptly review them and within 30 days mail his final decision to the party who filed objections. In all cases, the Regional Director's decision

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shall constitute final administrative action on the matter.

[47 FR 56861, Dec. 31, 1982]

Subpart F—Return of Property.

§ 12.51 Return procedure.

If, at the conclusion of the appropriate proceedings, seized property is to be returned to the owner or consignee, the Solicitor or Service shall issue a letter or other document authorizing its return. This letter or other document shall be delivered personally or sent by registered or certified mail, return receipt requested, and shall identify the owner or consignee, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter or other document and proper identification, and the signing of a receipt provided by the Service, the seized property is authorized to be released, provided it is properly marked in accordance with applicable State or Federal requirements.

PART 13—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

Sec.

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AUTHORITY: 16 U.S.C. 666a, 704, 712, 742-1, 1374(g), 1382, 1532(d), 1539, 1540(f), 1374, 4801-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

SOURCE: 39 FR 1161, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this subchapter must make application for such permit in accordance with the requirements of this part 13 and the other regulations in this subchapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.

The regulations contained in this part provide uniform rules, conditions, and procedures for the application for and the issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this subchapter B.

[54 FR 26147, Sept. 14, 1989]

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife"

(part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered and Threatened Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23). As used in this part 13, the term "permit" will refer to a license, permit, certificate, letter of authorization, or other document as the context may require, and to all such documents issued by the Service or other authorized U.S. or foreign government agencies.

[70 FR 18317, Apr. 11, 2005]

§ 13.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this subchapter B, and will not be unlawful.

§ 13.5 Information collection requirements.

(a) The Office of Management and Budget approved the information collection requirements contained in this part 13 under 44 U.S.C. and assigned OMB Control Number 1018-0092. The Service may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. We are collecting this information to provide information necessary to evaluate permit applications. We will use this information to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial permits. You must respond to obtain or retain a permit.

(b) We estimate the public reporting burden for these reporting requirements to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing

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and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018-0092), Washington, DC 20603.

[63 FR 52834, Oct. 1, 1998]

Subpart B—Application for Permits

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless you have filed an application under the following procedures:

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3-200) or as otherwise specifically directed by the Service.

(b) *Forwarding instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) You may obtain applications for migratory bird banding permits (50 CFR 21.22) by writing to: Bird Banding Laboratory, USGS Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708-4037. Submit completed permit applications to the same address.

(2) You may obtain applications for designated port exception permits and import/export licenses (50 CFR 14) by writing to the Special Agent in Charge (SAC) of the Region in which you reside (see 50 CFR 2.2 or the Service Web site, <http://www.fws.gov>, for addresses and boundaries of the Regions). Submit completed permit applications to the same address.

(3) You may obtain applications for Wild Bird Conservation Act permits (50 CFR 15); injurious wildlife permits (50 CFR 16); captive-bred wildlife registrations (50 CFR 17); permits authorizing import, export, or foreign commerce of endangered and threatened species; and interstate commerce of non-native endangered or threatened species (50 CFR 17); marine mammal permits (50 CFR 18); and permits and certificates for im-

port, export, and reexport of species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (50 CFR 23) from: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 709, Arlington, Virginia 22203-1610. Submit completed permit applications to the same address.

(4) You may obtain Endangered Species Act permit applications (50 CFR 17) for activities involving native endangered and threatened species, including incidental take, scientific purposes, enhancement of propagation or survival (i.e., recovery), and enhancement of survival by writing to the Regional Director (Attention: Endangered Species Permits) of the Region where the activity is to take place (see 50 CFR 2.2 or the Service Web site, <http://www.fws.gov>, for addresses and boundaries of the Regions). Submit completed applications to the same address (the Regional office covering the area where the activity will take place). Permit applications for interstate commerce for native endangered and threatened species should be obtained by writing to the Regional Director (Attention: Endangered Species Permits) of the Region that has the lead for the particular species, rather than the Region where the activity will take place. You can obtain information on the lead Region via the Service's Endangered Species Program Web page (<http://endangered.fws.gov/wildlife.html>) by entering the common or scientific name of the listed species in the Regulatory Profile query box. Send interstate commerce permit applications for native listed species to the same Regional Office that has the lead for that species. Endangered Species Act permit applications for the import or export of native endangered and threatened species may be obtained from the Division of Management Authority in accordance with paragraph (b)(3) of this section.

(5) You may obtain applications for bald and golden eagle permits (50 CFR 22) and migratory bird permits (50 CFR 21), except for banding and marking permits, by writing to the Migratory Bird Permit Program, Office in the Region in which you reside. For mailing

addresses for the Migratory Bird Regional Permit Offices, see below, or go to: <http://permits.fws.gov/mbpermits/addresses.html>. Send completed applications to the same address. The mailing addresses for the Regional Migratory Bird Permit Offices are as follows:

Region 1 (CA, HI, ID, NV, OR, WA).

U.S. Fish and Wildlife Service, Migratory Bird Permit Office, 811 NE 11th Avenue, Portland, OR 97232-4181.

Region 2 (AZ, NM, OK, TX): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 709, Albuquerque, NM 87103.

Region 3 (IA, IL, IN, MN, MO, MI, OH, WI): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, One Federal Drive, Fort Snelling, MN 55111.

Region 4 (AR, FL, GA, KY, LA, MS, NC, SC, TN, PR, VI): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 49208, Atlanta, GA 30359.

Region 5 (CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 778, Hadley, MA 01035-0778.

Region 6 (CO, KS, MT, ND, NE, SD, UT, WY): U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 25486, DFC (60130), Denver, CO 80226-0486.

Region 7 (AK): U.S. Fish and Wildlife Service, Migratory Bird Permit Office (MS-201), 1011 E. Tudor Road, Anchorage, AK 99503.

(c) *Time notice.* The Service will process all applications as quickly as possible. However, we cannot guarantee final action within the time limit you request. You should ensure that applications for permits for marine mammals and/or endangered and threatened species are postmarked at least 90 calendar days prior to the requested effective date. The time we require for processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Submit applications for all other permits to the issuing/reviewing office and ensure they are postmarked at least 60 calendar days prior to the requested effective date. Our processing time may be increased by the procedural require-

ments of the National Environmental Policy Act (NEPA), the requirement to publish a notice in the FEDERAL REGISTER requesting a 30-day public comment period, when we receive certain types of permit applications, and/or the time required for extensive consultation within the Service, with other Federal agencies, and/or State or foreign governments. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the procedural requirements of NEPA.

(d) *Fees.* (1) Unless otherwise exempted under this subsection, you must pay the required permit processing fee at the time that you apply for issuance or amendment of a permit. You must pay by check or money order made payable to the "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if we have processed the application. However, we may return the application fee if you withdraw the application before we have significantly processed it.

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity in accordance with § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each permitted activity. Where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted.

(3) Circumstances under which we will not charge a permit application fee are as follows:

(1) We will not charge a permit application fee to any Federal, tribal, State, or local government agency or to any individual or institution acting on behalf of such agency. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

(II) As noted in paragraph (d)(4) of this section.

(III) We may waive the fee on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approves the waiver.

(4) *User fees.* The following table identifies specific fees for each permit ap-

plication or amendment to a current permit. If no fee is identified under the Amendment Fee column, this particular permit either cannot be amended and a new application, and application fee, would need to be submitted or no fee will be charged for amending the permit (please contact the issuing office for further information).

Type of permit	CFR citation	Fee	Amendment fee
Migratory Bird Treaty Act			
Migratory Bird Import/Export	50 CFR 21	\$75	
Migratory Bird Banding or Marking	50 CFR 21		550
Migratory Bird Scientific Collecting	50 CFR 21	100	
Migratory Bird Taxidermy	50 CFR 21	75	
Waterfowl Sale and Disposal	50 CFR 21		
Species Canada Goose	50 CFR 21	75	
Migratory Bird Special Purpose/Education	50 CFR 21	75	
Migratory Bird Special Purpose/Salvage	50 CFR 21	75	
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	100	
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100	
Falconsry	50 CFR 21	100	
Raptor Propagation	50 CFR 21	50	
Migratory Bird Rehabilitation	50 CFR 21	100	50
Migratory Bird Depredation	50 CFR 21	50	
Migratory Bird Depredation-Homeowner	50 CFR 21	50	
Bald and Golden Eagle Protection Act			
Eagle Scientific Collecting	50 CFR 22	100	50
Eagle Exhibition	50 CFR 22	75	
Eagle Falconry	50 CFR 22	100	
Eagle—Native American Religious	50 CFR 22	100	50
Eagle Depredation	50 CFR 22	100	50
Golden Eagle Nest Take	50 CFR 22	75	
Eagle Transport—Scientific or Exhibition	50 CFR 22	(1)	(1)
Eagle Transport—Native American Religious Purposes	50 CFR 22		
Endangered Species Act/CITES/Lacey Act			
ESA Recovery	50 CFR 17	100	50
ESA Interstate Commerce	50 CFR 17	100	50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50	25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100	50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100	50
ESA and CITES Museum Exchange	50 CFR 17	100	100
ESA Captive-bred Wildlife Registration	50 CFR 17	200	
—Renewal of Captive-bred wildlife registration	50 CFR 17	100	50
CITES Import (including trophies under ESA and MMPA)	18, 23,		
	50 CFR 23	100	50
CITES Export	50 CFR 23	75	40
CITES Pre-Convention	50 CFR 23	75	40
CITES Certificate of Origin	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	50	
CITES Reimport Effects and Pet Export/Re-Export	50 CFR 23	100	50
CITES Appendix II Export (native herbivores and ungulates—excluding live animals)	50 CFR 23	200	100
CITES Master File (includes fees for artificial propagation, biomedical, etc. and re-exports import, export, and re-export documents)	50 CFR 23	100	
—Renewal of CITES Master File	50 CFR 23	75	
—Single-use permits issued on Master File	50 CFR 23	50	
CITES Annual Program File	50 CFR 23	25	
—Single-use permits issued under Annual Program	50 CFR 23	50	50
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	75	
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	100	
CITES/ESA Passport for Traveling Exhibitions	50 CFR 14	100	50
Import/Export License	50 CFR 14	100	50
Designated Port Exception			

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Type of permit	CFR citation	Fee	Amendment fee
Injurious Wildlife Permit	50 CFR 16	100	50
Transport Authorization for Injurious Wildlife	50 CFR 16	25	
Wild Bird Conservation Act (WBCA)			
Personal Pet Import	50 CFR 15	50	
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100	50
WBCA Approval of Cooperative Breeding Programs	50 CFR 15	200	100
Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50	
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	250	
Marine Mammal Protection Act			
Marine Mammal Public Display	50 CFR 16	300	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Territory	50 CFR 16	150	75
Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Territory	50 CFR 16	75	

¹ No fee
² Each
³ Per animal
⁴ Per species.

(5) We will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee is generally half the original fee assessed at the time that the permit is processed; see paragraph (d)(4) of this section for the exact amount. Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under 13.23(c), and we will not charge a fee for such amendments.

(6) Except as specifically noted in paragraph (d)(4) of this section, a permit renewal is an issuance of a new permit, and applicants for permit renewal must pay the appropriate fee listed in paragraph (d)(4) of this section.

(e) *Abandoned or incomplete applications.* If we receive an incomplete or improperly executed application, or if you do not submit the proper fees, the issuing office will notify you of the deficiency. If you fail to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, we will consider the application abandoned. We will not refund any fees for an abandoned application.

[70 FR 18317, Apr. 11, 2005]

§ 13.12 General information requirements on applications for permits.

(a) General information required for all applications. All applications must contain the following information:

(1) Applicant's full name, mailing address, telephone number(s), and:

(i) If the applicant is an individual, the date of birth, height, weight, hair color, eye color, sex, and any business or institutional affiliation of the applicant related to the requested permitted activity; or

(ii) If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and of the registered agent for the service of process;

(2) Location where the requested permitted activity is to occur or be conducted;

(3) Reference to the part(s) and section(s) of this subchapter B as listed in paragraph (b) of this section under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);

(4) If the requested permitted activity involves the import or re-export of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of

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wildlife or plants, documentation as indicated in § 14.52(c) of this subchapter B:

(5) Certification in the following language.

I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

(6) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(7) Date;

(8) Signature of the applicant; and

(9) Such other information as the Director determines relevant to the processing of the application, including, but not limited to, information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 6, Appendix 1.3A.

(b) Additional information required on permit applications. As stated in paragraph (a)(3) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

Type of permit	Section
Importation of nondesignated parts	
Scientific	14.31
Disturbance prevention	14.32
Economic hardship	14.33
Marking of package or container	
Symbol marking	14.53
Import/export permits	14.59
Feather import quota: importation or entry	15.21
Injurious wildlife: importation or shipment	16.22
Endangered wildlife and plant permits	
Similarity of appearance	17.52
Scientific: enhancement of propagation of survival, incidental taking for wildlife	17.22
Scientific: propagation, or survival for plants	17.62
Economic hardship for wildlife	17.23
Economic hardship for plants	17.53
Threatened wildlife and plant permits	
Similarity of appearance	17.52
General for wildlife	17.32
American eagle-buyer or runner	17.42(a)
General for plants	17.72

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Type of permit	Section
Mammal permits:	
Scientific research	16.31
Public display	16.31
Migratory bird permits:	
Banding or marking	21.22
Scientific collecting	21.23
Transportation	21.24
Wildlife sale and disposal	21.25
Special aviculturist	21.26
Special purpose	21.27
Falconry	21.28
Reptile propagation permit	21.30
Disturbance control	21.41
Eagle permits:	
Scientific or exhibition	22.21
Indian religious use	22.22
Disturbance control	22.23
Falconry purposes	22.24
Take of golden eagle nests	22.25
Endangered Species Convention permits	23.15

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 16465, Feb. 22, 1977; 42 FR 32377, June 24, 1977, 44 FR 54006, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56673, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 45 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57300, Dec. 29, 1983; 50 FR 39887, Sept. 20, 1985; 50 FR 45408, Oct. 31, 1985; 54 FR 36147, Sept. 14, 1989; 70 FR 18318, Apr. 11, 2005]

Subpart C--Permit Administration

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application:

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) *Disqualifying factors.* Any one of the following will disqualify a person from receiving permits issued under this part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

(3) The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgment, disqualifies such person from receiving or exercising the privileges of a permit as long as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

(4) The failure to submit timely, accurate, or valid reports as required may disqualify such person from receiving or exercising the privileges of a permit as long as the deficiency exists.

(d) *Use of supplemental information.* The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea of guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law

or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(e) *Conditions of issuance and acceptance.* (1) *Conditions of issuance and acceptance.* Any permit automatically incorporates within its terms the conditions and requirements of subpart D of this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued, as well as any other conditions deemed appropriate and included on the face of the permit at the discretion of the Director.

(2) Any person accepting and holding a permit under this subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this subchapter B; and any wildlife or plants kept under authority of the permit.

(f) *Term of permit.* Unless otherwise modified, a permit is valid during the period specified on the face of the permit. Such period shall include the effective date and the date of expiration.

(g) *Denial.* The issuing officer may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested.

[39 FR 1151, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 32126, Sept. 14, 1989, 70 FR 18313, Apr. 11, 2005]

§ 13.22 Renewal of permits.

(a) *Application for renewal.* Applicants for renewal of a permit must submit a written application at least 30 days

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prior to the expiration date of the permit. Applicants must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.

(b) *Renewal criteria.* The Service shall issue a renewal of a permit if the applicant meets the criteria for issuance in § 13.21(b) and is not disqualified under § 13.21(c).

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal.

(d) *Denial.* The issuing officer may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part, or in the part(s) or section(s) specifically governing the activity for which the renewal is requested.

[54 FR 38148, Sept. 14, 1989]

§ 13.23 Amendment of permits.

(a) *Permittee's request.* Where circumstances have changed so that a permittee desires to have any condition of his permit modified, such permittee must submit a full written justification and supporting information in conformity with this part and the part under which the permit was issued.

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter shall be consistent with the requirements of § 17.22(b)(5), (c)(5) and (d)(5) or § 17.32(b)(5), (c)(5) and (d)(5) of this subchapter, respectively.

(c) *Change of name or address.* A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the

conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

[54 FR 38148, Sept. 14, 1989, as amended at 64 FR 32711, June 17, 1999]

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

[64 FR 32711, June 17, 1999]

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under § 17.22(b) or § 17.32(b) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or (d) or § 17.32 (c) or (d) of this subchapter B, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

(d) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

(e) In the case of permits issued under § 17.22(b)-(d) or § 17.32(b)-(d) of this subchapter to a State or local governmental entity, a person is under the direct control of the permittee where:

(1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or

(2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

[54 FR 32711, June 17, 1989, as amended at 64 FR 52676, Sept. 30, 1999; 69 FR 24092, May 3, 2004]

§ 13.26 Discontinuance of permit activity.

When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office. No refund of any fees paid for issuance of the permit or for any other fees or costs associated with a permitted activity shall be made when a permit is surrendered for cancellation for any reason prior to the expiration date stated on the face of the permit.

[54 FR 38149, Sept. 14, 1989]

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing officer may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties or costs owed to the Government. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

(b) *Procedure for suspension.* (1) When the issuing officer believes there are valid grounds for suspending a permit the permittee shall be notified in writing of the proposed suspension by certified or registered mail. This notice shall identify the permit to be suspended, the reason(s) for such suspension, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension. The issuing officer may amend any notice of suspension at any time.

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar

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days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation.

(2) A decision on the suspension shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefor. The issuing officer shall also provide the applicant with the information concerning the right to request reconsideration of the decision under § 13.29 of this part and the procedures for requesting reconsideration.

[54 FR 38149, Sept. 14, 1989]

§ 13.28 Permit revocation.

(a) *Criteria for revocation.* A permit may be revoked for any of the following reasons:

(1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or

(2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or

(3) The permittee becomes disqualified under § 13.21(c) of this part; or

(4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(5) Except for permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

(b) *Procedure for revocation.* (1) When the issuing officer believes there are valid grounds for revoking a permit, the permittee shall be notified in writing of the proposed revocation by certified or registered mail. This notice shall identify the permit to be revoked, the reasons for such revocation, the proposed disposition of the wildlife, if any, and inform the permittee of the

right to object to the proposed revocation. The issuing officer may amend any notice of revocation at any time.

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.

(3) A decision on the revocation shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefor, together with the information concerning the right to request and the procedures for requesting reconsideration.

(4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

[54 FR 38149, Sept. 14, 1989, as amended at 64 FR 32711, June 17, 1999]

§ 13.29 Review procedures.

(a) *Request for reconsideration.* Any person may request reconsideration of an action under this part if that person is one of the following:

(1) An applicant for a permit who has received written notice of denial;

(2) An applicant for renewal who has received written notice that a renewal is denied;

(3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or

(4) A permittee who has a permit issued or renewed but has not been

granted authority by the permit to perform all activities requested in the application, except when the activity requested is one for which there is no lawful authority to issue a permit.

(b) *Method of requesting reconsideration.* Any person requesting reconsideration of an action under this part must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.

(2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

(3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(4) The request for reconsideration shall contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) *Inquiry by the Service.* The Service may institute a separate inquiry into the matter under consideration.

(d) *Determination of grant or denial of a request for reconsideration.* The issuing officer shall notify the permittee of the Service's decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reasons for the decision, and shall contain a description of the evidence which was relied upon by the issuing officer. The notification shall also provide information concerning the right to appeal, the official to whom an appeal may be ad-

ressed, and the procedures for making an appeal.

(e) *Appeal.* A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing office is located, or to the Director for offices which report directly to the Director. An appeal must be submitted within 45 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) *Decision on appeal.* (1) Before a decision is made concerning the appeal the appellant may present oral arguments before the Regional Director or the Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Service shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant notified of the extension.

(3) The decision of the Regional Director or the Director shall constitute the final administrative decision of the Department of the Interior.

[54 FR 38149, Sept. 14, 1989]

Subpart D—Conditions

§ 13.41 Humane conditions.

Any live wildlife possessed under a permit must be maintained under humane and healthful conditions.

[54 FR 38160, Sept. 14, 1989]

§ 13.42 Permits are specific.

The authorizations on the face of a permit that set forth specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out; describe certain circumscribed transactions; or otherwise allow a specifically limited matter, are to be strictly interpreted and will not be interpreted to permit similar or related

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matters outside the scope of strict construction.

[70 FR 16320, Apr. 11, 2005]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records shall be legibly written or reproducible in English and shall be

maintained for five years from the date of expiration of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 54 FR 38150, Sept. 14, 1989]

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.48 Compliance with conditions of permit.

Any person holding a permit under subchapter B and any person acting under authority of such permit must comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity.

[54 FR 38150, Sept. 14, 1989]

§ 13.49 Surrender of permit.

Any person holding a permit under subchapter B shall surrender such permit to the issuing officer upon notification that the permit has been suspended or revoked by the Service, and all appeal procedures have been exhausted.

[54 FR 38150, Sept. 14, 1989]

§ 13.50 Acceptance of liability.

Except as otherwise limited in the case of permits described in § 13.25(d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

[54 FR 32711, June 17, 1989]

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

Subpart A—Introduction

- Sec.
14.1 Purpose of regulations
14.2 Scope of regulations.

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560—59 FR 59177, November 16, 1994.
 564—59 FR 60568, November 25, 1994.
 565—59 FR 62352, December 08, 1994.
 567—59 FR 64523, December 15, 1994.
 570—60 FR 61, January 3, 1995.
 572—60 FR 3582, January 18, 1995.
 575—60 FR 6584, February 3, 1995.
 578—60 FR 12495, March 7, 1995.
 641—61 FR 10597, March 15, 1996.
 584—61 FR 11058, June 19, 1996.
 585—61 FR 41033, August 7, 1996.
 587—61 FR 43189, August 21, 1996.
 589—61 FR 52984, October 7, 1996.
 590—61 FR 53058, October 10, 1996.
 591—61 FR 53107, October 10, 1996.
 592—61 FR 53123, October 10, 1996.
 593—61 FR 53130, October 10, 1996.
 594—61 FR 53137, October 10, 1996.
 595—61 FR 53152, October 10, 1996.
 596—61 FR 54358, October 18, 1996.
 599—61 FR 67497, December 23, 1996.
 600—62 FR 888, January 6, 1997.
 601—62 FR 1647, January 10, 1997.
 603—62 FR 1694, January 13, 1997.
 605—62 FR 4182, January 29, 1997.
 608—62 FR 6561, February 6, 1997.
 611—62 FR 14361, March 25, 1997.
 615—62 FR 31748, June 11, 1997.
 619—62 FR 33037, June 18, 1997.
 620—62 FR 33373, June 19, 1997.
 623—62 FR 40973, July 31, 1997.
 624—62 FR 42702, August 8, 1997.
 625—62 FR 54807, October 22, 1997.
 627—62 FR 61925, November 20, 1997.
 635—63 FR 19849, April 22, 1998.
 640—63 FR 43119, August 12, 1998.
 641—63 FR 44594, August 20, 1998.
 643—63 FR 49034, September 14, 1998.
 644—63 FR 49021, September 14, 1998.
 647—63 FR 53615, October 6, 1998.
 648—63 FR 54970, October 13, 1998.
 649—63 FR 54958, October 13, 1998.
 650—63 FR 54954, October 13, 1998.
 652—63 FR 59244, November 3, 1998.
 657—64 FR 13120, March 17, 1999.
 661—64 FR 28412, May 26, 1999.
 662—64 FR 28403, May 26, 1999.
 663—64 FR 28382, May 26, 1999.
 665—64 FR 46323, September 3, 1999.
 667—64 FR 58530, October 20, 1999.
 668—64 FR 56594, October 20, 1999.
 671—64 FR 63752, November 22, 1999.
 672—64 FR 63203, December 10, 1999.
 673—64 FR 71687, December 22, 1999.
 678—65 FR 3875, January 25, 2000.
 679—65 FR 3890, January 25, 2000.
 681—65 FR 4167, January 26, 2000.
 683—65 FR 5275, February 3, 2000.
 684—65 FR 6338, February 9, 2000.
 685—65 FR 7764, February 16, 2000.
 689—65 FR 14887, March 20, 2000.
 690—65 FR 14908, March 20, 2000.
 691—65 FR 14897, March 20, 2000.
 704—65 FR 82310, October 15, 2000.
 708—65 FR 27598, May 21, 2001.
 711—65 FR 45667, September 23, 2001.
 712—65 FR 51896, October 10, 2001.

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720—67 FR 1868, January 14, 2002.
 721—67 FR 3125, January 23, 2002.
 722—67 FR 6525, February 6, 2002.
 723—67 FR 11443, March 14, 2002.
 727—67 FR 44382, July 2, 2002.
 733—67 FR 68016, November 7, 2002.
 735—68 FR 16986, April 9, 2003.
 739—68 FR 69344, October 15, 2003.
 742—69 FR 16506, April 8, 2004.

EDITORIAL NOTE 1: For FEDERAL REGISTER citations affecting the table in § 17.12(h), see the listing above.

EDITORIAL NOTE 2: For FEDERAL REGISTER citations affecting § 17.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart C—Endangered Wildlife

§ 17.21 Prohibitions.

(a) Except as provided in subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person, subject to the jurisdiction of the United States, to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may,

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limited taking, and an import permit is issued under § 17.22.

(v) Any permanent exports of such specimens meet the requirements of paragraph (g)(4) of this section; and

(vi) Each person claiming the benefit of the exception in paragraph (g)(1) of this section must maintain accurate written records of activities, including births, deaths and transfers of specimens, and make those records accessible to Service agents for inspection at reasonable hours as set forth in §§ 13.46 and 13.47.

(a) *U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle.* Notwithstanding paragraphs (b), (c), (e), and (f) of this section, any person subject to the jurisdiction of the United States may take, export or re-import, deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live wildlife, including embryos and gametes, and sport-hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:

(1) The purpose of such activity is associated with the management or transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;

(2) The specimen was captive-bred, in accordance with § 17.3, within the United States;

(3) All live specimens of that species held by the captive-breeding operation are managed in a manner that prevents hybridization of the species or subspecies.

(4) All live specimens of that species held by the captive-breeding operation are managed in a manner that maintains genetic diversity.

(5) Any export of or foreign commerce in a specimen meets the requirements of paragraph (g)(4) of this section, as well as parts 13, 14, and 23 of this chapter;

(6) Each specimen to be re-imported is uniquely identified by a tattoo or other means that is reported on the

documentation required under paragraph (h)(5) of this section; and

(7) Each person claiming the benefit of the exception of this paragraph (a) must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.

(8) The sport-hunted trophy consists of raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermied head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handcraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53460, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 41 FR 31580, May 31, 1976; 41 FR 54067, Sept. 17, 1976; 58 FR 68525, Dec. 27, 1993; 63 FR 48640, Sept. 11, 1998; 68 FR 2919, Jan. 22, 2003; 68 FR 61136, Oct. 27, 2003; 70 FR 52318, Sept. 2, 2005]

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.) The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is

threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* A person wishing to get a permit for an activity prohibited by § 17.21 submits an application for activities under this paragraph. The Service provides Form 3-200 for the application to which all of the following must be attained:

(i) The common and scientific names of the species sought to be covered by the permit; as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(3) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit;

(4) *Duration of permits.* The duration of permits issued under this paragraph

shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* A person wishing to get a permit for an activity prohibited by § 17.21(c) submits an application for activities under this paragraph. The Service provides Form 3-200 for the application to which all of the following must be attached:

(i) A complete description of the activity sought to be authorized;

(ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(iii) A conservation plan that specifies:

(A) The impact that will likely result from such taking;

(B) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(C) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(D) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan;

(3) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in § 13.21(a) of this subchapter, except for § 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in

effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation 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 conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best sci-

entific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under paragraph (b) of this section may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) 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), if the applicant wishes to engage in any activity prohibited by § 17.21. The applicant must submit an official Service application form (3-280.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of how incidental take of the listed species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline; and

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement other-

wise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(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

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5) (ii) of this section (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal

agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(1) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section, except as provided in this paragraph. 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.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered

in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) 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). When a species covered by a Candidate Conservation Agreement with Assurances is listed as endangered and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as an endangered species. The applicant must submit an official Service application form (3-260.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except

for § 17.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(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

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on

the effective date of a final rule that lists a covered species as endangered.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation Agreement with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation Agreement. These assurances cannot be provided to Federal agencies.

(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) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(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.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;
- (2) Percentage of range adversely affected by the Agreement;
- (3) Percentage of range conserved by the Agreement;
- (4) Ecological significance of that portion of the range affected by the Agreement;
- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and
- (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. 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.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

(a) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the FEDERAL REGISTER, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request shall be made for each permit application. Such a request shall specify the Service's permit application number and state the reasons why that party believes the applicant does not meet the issuance criteria contained in §§13.21 and 17.22 of this subchapter or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and

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that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (c)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (c)(2) of this section, it will include its reasons therefore in such written notice.

[50 FR 39667, Sept. 30, 1985, as amended at 63 FR 6871, Feb. 23, 1998; 63 FR 52635, Oct. 1, 1998; 64 FR 32711, June 17, 1999; 64 FR 52676, Sept. 30, 1999; 65 FR 24092, May 3, 2001; 65 FR 23670, May 25, 2004; 65 FR 72731, Dec. 10, 2004]

§ 17.23 Economic hardship permits.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section in order to prevent undue economic hardship. The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by § 17.21. Each application must be submitted on an official application form (Form 3-200) provided by the Service, and must include, as an attachment, all of the information required in § 17.22 plus the following additional information:

(1) The possible legal, economic or subsistence alternatives to the activity sought to be authorized by the permit;

(2) A full statement, accompanied by copies of all relevant contracts and correspondence, showing the applicant's involvement with the wildlife sought to be covered by the permit (as well as his involvement with similar wildlife), including, where applicable, that portion of applicant's income derived from the taking of such wildlife, or the subsistence use of such wildlife, during the calendar year immediately preceding either the notice in the FEDERAL REGISTER of review of the status of the species or of the proposal to list such wildlife as endangered, whichever is earliest;

(3) Where applicable, proof of a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permit;

(ii) Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier; and

(iii) Will cause monetary loss of a given dollar amount if the permit sought under this section is not granted.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued under any of the three categories of economic hardship, as defined in section 10(b)(2) of the Act. In making his decisions, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(1) Whether the purpose for which the permit is being requested is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(3) The economic, legal, subsistence, or other alternatives or relief available to the applicant;

(4) The amount of evidence that the applicant was in fact party to a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permit; and

(ii) Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier.

(5) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b)(4) of this section would cause if the permit were denied;

(6) Where applicable, the portion of the applicant's income which would be lost if the permit were denied, and the relationship of that portion to the balance of his income.

(7) Where applicable, the nature and extent of subsistence taking generally by the applicant; and

(8) The likelihood that applicant can reasonably carry out his desired activity within one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's office designated in the permit.

(d) Duration of permits issued under this section shall be designated on the face of the permit. No permit issued under this section, however, shall be valid for more than one year from the

date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53480, Nov. 18, 1975, 40 FR 59307, Dec. 16, 1975; 50 FR 39688, Sept. 30, 1985]

Subpart D—Threatened Wildlife

§ 17.31 Prohibitions.

(a) Except as provided in subpart A of this part, or in a permit issued under this subpart, all of the provisions in § 17.21 shall apply to threatened wildlife, except § 17.21(c)(5).

(b) In addition to any other provisions of this part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 8(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

(c) Whenever a special rule in §§ 17.40 to 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions.

[43 FR 18181, Apr. 28, 1978, as amended at 44 FR 31580, May 31, 1979, 70 FR 10563, Mar. 4, 2005]

§ 17.32 Permits—general.

Upon receipt of a complete application the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§ 17.40 to 17.48, of this part provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational

purposes, or incidental taking; or special purposes consistent with the purposes of the Act. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

(a)(1) *Application requirements for permits for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* A person wishing to get a permit for an activity prohibited by § 17.31 submits an application for activities under this paragraph. The Service provides Form 3-200 for the application to which as much of the following information relating to the purpose of the permit must be attached:

(i) The Common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by

the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* (i) A person wishing to get a permit for an activity prohibited by §17.31 submits an application for activities under this paragraph:

(ii) The director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application.

(iii) Each application must be submitted on an official application (Form 3-200) provided by the Service, and must include as an attachment, all of the following information:

(A) A complete description of the activity sought to be authorized;

(B) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(C) A conservation plan that specifies:

(1) The impact that will likely result from such taking;

(2) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(3) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(4) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan.

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in 18.21(b) of this subchapter, except for 18.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided.

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

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(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating

conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation 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 conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 17.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization

and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(3) *Criteria for revocation.* A permit issued under paragraph (b) of this section may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed action is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.31. The applicant must submit an official Service application form (3-200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of how incidental take of the covered species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline;

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service; and

(iv) The Director must publish notice in the FEDERAL REGISTER of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of

the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(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

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999:

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. 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.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) 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). When a species covered by a Candidate Conservation Agreement with Assurances is listed as threatened and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by §17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered

proposed, candidate or other unlisted species is listed as a threatened species. The applicant must submit an official Service application form (3-200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(iv) The Director must publish notice in the FEDERAL REGISTER of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement

will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(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

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on the effective date of a final rule that lists a covered species as threatened.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(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) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(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.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;
- (2) Percentage of range adversely affected by the Agreement;
- (3) Percentage of range conserved by the Agreement;

(4) Ecological significance of that portion of the range affected by the Agreement;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. 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.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with

those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

[60 FR 39689, Sept. 30, 1995, as amended at 63 FR 8871, Feb. 23, 1998; 63 FR 52335, Oct. 1, 1998; 64 FR 32714, June 17, 1999; 64 FR 52676, Sept. 30, 1999; 65 FR 24093, May 3, 2000; 65 FR 29670, May 25, 2000; 65 FR 71731, Dec. 10, 2000]

§ 17.40. Special rules—mammals.

(a) [Reserved]

(b) Grizzly bear (*Ursus arctos*)—(1) *Prohibitions.* The following prohibitions apply to the grizzly bear:

(i) *Taking.* (A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported, within 5 days of occurrence, to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/295-7540 or FTS 776-7540), if occurring in Montana or Wyoming, or to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1490, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/331-6125 or FTS 429-6125), if occurring in Idaho or Washington, and to appropriate State and Indian Reservation Tribal authorities. Grizzly bears or their parts taken in self-defense or in defense of others shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) *Removal of nuisance bears.* A grizzly bear constituting a demonstrable but non immediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(i) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(2) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(3) The taking is reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may take grizzly bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) [Reserved]

(F) *National Parks.* The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

(ii) *Unlawfully taken grizzly bears.* (A) Except as provided in paragraphs (b)(1)(ii)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any unlawful taking of a grizzly bear shall be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(B) Authorized Federal, State, or Tribal employees, when acting in the course of their official duties, may, for scientific or research purposes, possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzly bears.

(iii) *Import or export.* Except as provided in paragraphs (b)(1)(iii)(A) and (B) and (iv) of this section, no person shall import any grizzly bear into the United States.