

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the Public Works Department, City of Stillwater, 723 South Lewis Street, Stillwater, Oklahoma.
Send comments to The Honorable Terry Miller, Mayor, City of Stillwater, City Hall, P.O. Box 1449, Stillwater, Oklahoma 74076.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95-21922 Filed 9-1-95; 8:45 am]

BILLING CODE 6718-03-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 40 and 154

[CGD 82-058]

Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking was initiated to amend the Coast Guard's regulations concerning safety standards for self-propelled vessels carrying bulk liquefied gases. The proposed rules would have aligned the regulations with the amendments to the International Maritime Organization (IMO) Code on which the regulations were based. At this time, the Coast Guard wishes to focus its available resources on actions of higher priority. Therefore, the Coast Guard is terminating further rulemaking under docket number 82-058.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Felleisen, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-1217.

SUPPLEMENTARY INFORMATION: On June 6, 1994, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (59 FR 29259). The Coast Guard received one letter commenting on the NPRM. No public hearing was requested, and none was held.

After a comprehensive review of its active regulatory program, the Coast Guard has determined that this rulemaking is of relatively low priority at this time. International rules for gas carriers are sufficient, and no new gas carrier building in this country is anticipated in the near future. The Coast Guard wishes to focus its available resources on actions of the highest priority and has determined that the

best course of action is to terminate further rulemaking under docket number 82-058. In keeping with the President's direction to Federal agencies to review their regulations, the Coast Guard will reexamine this issue at some point in the future to determine if further rulemaking is necessary. Based on these considerations, the Coast Guard is terminating further rulemaking under docket number 82-058.

Dated: August 18, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95-21962 Filed 9-1-95; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13 and 17

RIN 1018-AC57

Fish and Wildlife Service, General Provisions and General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Fish and Wildlife Service (Service) general permit procedures providing uniform rules, conditions, and procedures relating to the application, issuance, denial, suspension, revocation, and general administration of the Service permit program. This revision of the Service's general permit procedures is intended to more clearly explain the procedures for permit application and the criteria used by the Service in making issuance determinations. This revision provides regulations that establish qualitative eligibility factors and provides standards for the fair disqualification of inappropriate applicants. This revision also effects the Service criteria for suspension and revocation of permits and the procedures for appealing the denial, suspension, or revocation of permits. The processing fee rate for a permit application is also amended to

provide for increased rates to recover a larger percentage of the costs of processing the permits and to provide for fee exemptions for several permit categories.

The Service is also revising its regulations prescribing its general procedures and its regulations implementing the Endangered Species Act of 1973 in order to revise certain Service addresses provided therein.

DATES: Comments must be submitted on November 6, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203-3247. Comments and materials may be hand-delivered to the Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240, Telephone Number (703) 358-1949 or Maggie Tieger, Chief, Branch of Permits, Office of the Management Authority, Telephone Number (703) 358-2104.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has oversight responsibilities under Federal wildlife conservation statutory and regulatory authorities to provide uniform rules, conditions, and procedures for the application, issuance, denial, suspension, revocation, and general administration of the Service wildlife permit program. The Service in accordance with this responsibility is proposing the following changes to the general permit procedures of Part 13. Section 13.1, a general introductory section to the regulations of Part 13, describes in initial terms the requirements for making a permit application. This section has been revised, for it has been the source of some confusion to applicants, to explain when the Service will accept a single permit application to satisfy the separate permit requirements of

activities requiring more than one permit.

Several administrative changes have been made to § 13.3, entitled "scope of regulations." This section outlines the general scope of Part 13 and provides an explanation of the term "permit" for regulatory purposes. This section has been revised to more clearly state the scope of its requirements. Specifically, the titles of several parts of the Code of Federal Regulations (CFR) in Title 50, that are referenced within this section, have been brought up to date. In addition the explanation provided for the term "permit" has been restated. The term "permit," as the term is applied in Part 13, will not refer to "a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies." This change in § 13.3 was needed to correctly reference within this section the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The requirements of CITES are applicable, in this particular instance, because CITES requirements necessitate that all permits issued pursuant to Part 23 will automatically become void upon the expiration of their stated duration.

The permit application procedures of Part 13 are found in §§ 13.11. Several changes have been made in these application procedures. The last sentence of the introductory paragraph of this section, which states that "applicants do not have to submit a separate application for each permit unless otherwise required by this Subchapter," has been deleted, for it is redundant and has caused unnecessary confusion among applicants. The Service's provisions for the acceptance of a single permit application for multiple-permitted activities is now to be addressed within the revised § 13.1.

In § 13.11(b) the Service provides forwarding instructions for permit applications. The instructions in § 13.11(b)(2) and § 13.11(b)(3) are being revised, and a new forwarding instruction in § 13.11(b)(4) is added for endangered and threatened species incidental take permits and native endangered and threatened species take and interstate commerce permits. This change is being made in order to update the mailing addresses for permit applications. An equivalent change has been made to § 17.22(a)(1), § 17.22(b)(1), § 17.32(a)(1), § 17.32(b)(1), and § 17.72(a)(1) that sets forth the specific submission requirements for endangered and threatened species permits.

The time notice requirements for making an application are set forth in § 13.11(c). This section advises applicants of the time necessary for the processing of a permit. This section is being revised to advise applicants that the time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects and may require more than 90 calendar days. Permit applicants are also now informed that the time required for the processing of their permits may be increased by the procedural requirements of the National Environmental Policy Act (NEPA).

In implementing its responsibilities under the Endangered Species Act (ESA), CITES, Marine Mammal Protection Act (MMPA), Lacey Act, and Wild Bird Conservation Act (WBCA), the Service charges a user fee for the processing of permits and certificates. These permits and certificates authorize the holders to engage in certain wildlife-related activities, such as the import or export of fish, wildlife, or plants whose trade is regulated by treaty or by other laws of the United States. The general statutory authority to charge fees for permits and certificates is found in 31 U.S.C. 483(a), that provides that any Federal agency may charge fees for services including permits and certificates to make these services "self-sustaining to the full extent possible." The authority to charge fees is also found under wildlife laws. Specifically, the ESA 16 U.S.C. § 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the government connected with permits or certificates authorized by the Act including processing applications and reasonable inspection * * *." The MMPA, 16 U.S.C. § 1374(g), also provides that the "Secretary shall establish, and charge a reasonable fee for permits" issued pursuant to the Act.

The current schedule of fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). In accordance with fee policies in effect at the time of the publication of the notice, the total cost of processing each application was not expected to be fully borne by the applicant. The Service, therefore, set what was believed to be a reasonable fee for most permit applications to help defray processing costs.

A recent internal analysis of user fees revealed a need to increase import/export license and permit fees. This determination is supported by the fact that the Service has not increased fees since 1982 despite a 48.2 percent increase in the cost of living between

August 1982 to August 1993, according to the index published by the Bureau of Labor Statistics. In Fiscal Year 1992 the cost to the Service for issuing 3,066 permits in the Office of Management Authority was approximately \$1 million, excluding the costs associated with ESA Section 7 consultations, NEPA compliance activities, or regional review of permit applications. Revenues generated in user fees for the same year amounted to approximately \$61,000, or 6 percent of expenditures.

The Service is therefore proposing to implement a new fee schedule, given the shortfall between program costs and fee collection and the fact that there has been no increase in fees for over 12 years. The Service proposes to increase the standard permit processing fee as set forth in a new table to be designated at § 13.11(d)(4)(i) from the \$25 per application level to \$50 per application. The Service also proposes to itemize nonstandard fees in a redesignated and revised table at § 13.11(d)(4)(ii) as follows: To increase the marine mammal permit fee to \$250 for public display and scientific research permits; to increase the marine mammal registered tanner/agent permit fee to \$75; to increase the ESA captive-bred wildlife registration fees to \$175 for a 3-year period for new requests, and to \$75 for a 3-year period for ESA captive-bred wildlife registration renewal and pheasant registrations; to increase the ESA import, take, and interstate commerce permit fee to \$175; to increase the ESA export and foreign commerce permit fee to \$100; to increase the CITES import permit fee to \$150; to increase the CITES trophy import permit fee to \$50; to increase CITES reissuance, pre-Convention certificate, captive-bred certificate, certificate for artificially propagated plants, and certificate of origin fees to \$75; to increase the permit fee for CITES pet export/re-export to \$35; to increase CITES export permit fee to \$125; to increase the CITES Appendix II export permit fee for native American furbearers and alligators (excluding live) to \$75; to increase CITES Appendix II and III re-export certificate fees to \$125; to revise the import/export license fee from its current level to \$55; to increase the injurious wildlife permit fee to \$75; to increase the WBCA personal pets (import) permit fee to \$50; to increase the WBCA permit fee to \$150 for scientific research, zoological breeding or display, and cooperative breeding; to set the fee for approval of cooperative breeding programs to \$200; to set the fee for approval of Foreign breeding facilities to \$250/species; to waive the

Migratory Bird Treaty Act (MBTA), bird-banding/marketing permit fee; to waive the MBTA special purpose-rehabilitation/educational permit fee; to set the fee for MBTA special purpose-depredation permits for private citizens (non-commercial) at \$25; to waive the permit fee for bald and golden eagles; and to waive the permit fee for bald and golden eagle, Indian religious or ceremonial use. The ceremonial use. The Service is providing for these several permit fee exemptions or reductions in order to facilitate activities either regarded as beneficial to wildlife resources or to facilitate the exercise of religious freedom.

The difference in the rates in the above user fees reflects the level of complexity that the Service encounters in processing the various types of permits, based on the estimated costs to the Federal Government of providing these special services. The proposed fees are to be established at 30 percent of the calculated actual processing cost of each permit type. Fees for marine mammal permits, for example, are set at the rate of \$250 since they are the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission as well as publication of notices in the **Federal Register**. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix I permit and are significantly more complex to process than a pet permit application. These proposed fee increases are intended to proportionately reflect a percentage of the level of Service personnel resources and working hours required to process them rather than the entire actual cost for processing.

The Service's proposed new fee schedule is intended to recover a greater portion of the direct and indirect costs to the Federal Government of providing special services than is currently being recovered. The proposed fee schedule will also serve to more fully implement the Federal user fee policy that calls for cost recovery where special services provided by the Service impart a special benefit to an identifiable recipient.

In § 13.11(d)(3) the Service provides for a waiver of permit fees for certain governmental entities. This section provides that a fee will not be charged to any Federal, State, or local government agency, nor to any individual or institution under contract to such agency for the proposed activity. Fees have traditionally been waived or

reduced for public institutions provided that proof of their status as a "public institution" accompanied the permit application. The Service is now proposing to limit the fee waiver provided for public institutions to only qualifying Federal and State governmental agencies and to individuals or institutions under contract to such agencies. The Service finds it necessary to limit this exemption at this time in order to more equitably recover a fair share of permit costs within a substantial sector of the Service's processing workload. The Service believes this change is reasonable since the affected institutions receive significant benefits from Service permits beyond those that accrue to the general public or to Federal or State governments.

Several other changes are made in the existing table of nonstandard fees in § 13.11(d)(4). These changes are intended to correct administrative errors in reference and to update this table in accordance with the previously proposed changes to the Service's import/export license fee rates (59 FR 47212). In addition, changes are also made in the table to indicate the exemption to the standard fee requirement to be provided for migratory bird special purpose rehabilitation and educational permits authorized under § 21.27; for American Indian religious or ceremonial use permits authorized under Part 21 and § 22.22; and for special purpose depredation permits for private individual non-commercial purposes that are authorized under § 21.27.

The Service's requirements for abandoned or incomplete applications are stated in § 13.11(e). This section has been revised to notify applicants that the Service may return substantially incomplete or improperly executed applications, and to further instruct applicants of the importance of providing complete and accurate information.

Applications for permits are required under § 13.12 to contain certain general information. Several changes are being made to the requirements of this section. Section 13.12(a)(4) is being revised to include the word "export." This change is intended to inform applicants of the required documentation necessary for the exportation of wildlife. In addition to the general information requirements required on permit applications, certain additional applicant information is also required on permit applications in accordance with § 13.12(b). These additional requirements may be found by making reference to the specific type

of permit within the table provided in § 13.12(b). Within this section several obsolete or redundant references to discontinued wildlife permit types are being deleted, and missing references to permit types are being added. These changes include: the deletion of the heading "Marking of package or container;" the deletion of references under the heading "Marking of package or container" that were made to "Symbol marking" permits; a correction in the position of a reference to the "Import/export license" from its present position under the heading "Marking of package or container" to its proper position under "Importation at Nondesignated Ports;" the addition of the heading "Wild Bird Conservation Act Permits" with a listing of the four types of available permits; the deletion of a reference made under the heading "Threatened wildlife and plant permits" that was made to "American alligator-buyer or tanner" permits; the addition of a reference under the heading "Marine mammal permits" of "Registered agent or tanner;" and the deletion of a reference under the heading "Migratory bird permits" that was made to "Special aviculturist" permits.

The terms and conditions under that the Service issues or refuses to issue a permit are indicated in § 13.21. This section is being updated to correct obsolete references to the "Bureau" and by inserting the abbreviated name the "Service," to refer to the Fish and Wildlife Service.

Several additional changes are being made to the text of § 13.21. One important change is the addition of certain "factors," to a new section to be designated § 13.21(a)(2), that will be considered by the Service when making a determination whether an individual applicant and/or permittee has failed to exercise responsibility. Such evaluations are to include consideration of one or more of the following factors: the competence, ability, skill, knowledge, training, and experience of the applicant and the suitability of facilities; whether there have been prior wildlife violations; whether there has been a failure to qualify or to fulfill any criteria or condition in law or regulation applicable to the permit; and whether there have been prior violations involving misrepresentation of material facts, falsified documents, false labeling or invoicing, failure to present documents or wildlife for examination or inspection, or other circumstances involving concealing, evading or circumventing detection of wildlife violations.

In certain instances a permit will not be issued, despite the proper execution of a wildlife permit application. This may arise when an applicant has failed to meet the applicable issuance conditions stipulated in § 13.21(b). Specifically, the issuance requirements stipulated in § 13.21(b)(3) are being revised to properly distinguish two distinct prerequisite conditions as independent and separate operative requirements. These stipulated requirements, as they presently read, are that the applicant has demonstrated a valid justification for a permit and that the applicant has made a showing of responsibility. A change is being made to separate these two requirements by amending § 13.21(b)(3) to allow non-issuance of a permit for failure to demonstrate a valid justification for a permit and by creating a new § 13.21(b)(8) to allow non-issuance of a permit for failing to demonstrate a showing of responsibility. The Service notes in making this change that there should be no automatic linkage: Where the satisfaction of one requirement or element could be interpreted to automatically meet the requirements of the second element; or between an applicant's showing of responsibility and the separate and logically independent requirement of an applicant being able to demonstrate a justification for a permit.

In addition to the above-mentioned changes, three new "issuance criteria" requirements have been added at § 13.21(b)(6), § 13.21(b)(7), and § 13.21(b)(9) respectively, to require the applicant to fulfill all applicable requirements necessary for the filing of a complete application prior to the Director's or Regional Director's issuance of the appropriate permit, to require the applicant to have complied with the conditions of previously held permits, and to provide for non-issuance where the applicant has conducted the activity prior to the issuance of the permit required by Subchapter B. This correction was considered necessary in order to further explain the criteria that the Director or Regional Director must consider before reviewing and issuing a permit.

The requirements of § 13.21(b) list certain factors that will disqualify a person from obtaining a permit. A disqualification, under this section, is to be instituted when an applicant has been determined, under certain specified criteria, to have been in violation of certain listed wildlife laws.

A change to the scope of the factors is being made in § 13.21(c) by the inclusion of additional "disqualifying factors." This section has been

reorganized as follows. First, the existing disqualification factor in § 13.21(c)(1) for 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 that disqualifies a person from receiving or exercising the privileges of a permit is being amended to encompass all criminal violations of these Acts, to establish a 5-year duration of disqualification, and to include within this regulation equivalent violations of the ESA, CITES, Airborne Hunting Act, the MMPA, the WBCA, and the African Elephant Conservation Act. This disqualification factor is being redesignated to appear as § 13.21(c)(1)(i). Second, an additional factor is being added at a newly designated § 13.21(c)(1)(ii) to include as a basis for disqualification an assessment of one or more civil penalties for a violation(s) of the Lacey Act, the Eagle Act, the ESA, CITES, Airborne Hunting Act, MMPA, the WBCA, or the African Elephant Conservation Act, where such assessment(s) evidence a lack of responsibility in accordance with § 13.21(a)(2). Third, changes are being made within § 13.21(c)(2) to disqualify an applicant from receiving or exercising the privilege of a permit for a period of 5 years where an individual has had a similar permit previously revoked for reasons found in §§ 13.28(a)(1), (a)(2), or (a)(3). The effect of this change is to include as a basis for a permit disqualification any prior revocation received pursuant to these three sections. These changes are intended to include as a basis for disqualification other kinds of wildlife violation(s) and to fairly equate comparable levels of violation(s) to allow disqualification in certain instances where violation(s) clearly evidence a lack of responsibility. Changes to the scope of revocation actions encompassed under these three sections will be covered later in the preamble discussion of changes to permit revocations in § 13.28.

The conditions of issuance and acceptance of a permit are set forth in § 13.21(e). The provisions of § 13.21(e)(2) are intended to inform applicants of their responsibilities as holders of Fish and Wildlife Service permits, and that by accepting or holding a permit the applicant acknowledges the necessity for close regulation and monitoring of the activity permitted. It is further explained within this provision that by the act of acceptance of a permit the permittee

consents to and will allow the entry by agents or employees of the Service, or other authorized State Government official upon the premises where the permitted activity is conducted at any "reasonable hour". This paragraph is being revised by the addition of the words "as established or evidenced by actual operation or by the normal hours of operation for similar types of business, trade or operations." This change is made to clearly delineate what is meant by the use of the operative term "reasonable hour". In addition, this section is also being revised to allow Service agents or employees or other authorized State governmental officials to audit or copy any books, records, or permits required to be kept in accordance with Subchapter B.

The requirements for a denial of a permit application are set out in § 13.21(g). Under the terms of § 13.21(g), "Denial", an issuing/reviewing office may deny a permit to any applicant who fails to meet the applicable Service issuance criteria. This section is being revised to provide that the issuing/reviewing office will provide the applicant with a written explanation stating the basis for a permit denial. Although the Service has generally provided such explanations as a matter of policy in the past, this change is being made to require such notification by regulation.

Section 13.21(g) is also amended by the inclusion of the requirement that, "except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process." This change is intended to establish a fair and effective duration for a Service permit denial and to place the burden upon the previously denied applicant to correct conditions prior to any resubmission of their application.

The Service's requirements for renewal of permits are established in § 13.22. Section 13.22 sets forth in detail the procedure to be used by applicants for the renewal of existing permits. Changes made within this section include the addition of a new introductory text to the section stating that "generally a permit issued under this Subchapter B may be renewed, provided the activity authorized thereunder has not been completed." This change is being made to explain to applicants the permits are issued for a particular or discrete permitted activity or act and that such permits will only be renewed when the particular permitted individual activity or act has not been completed. This section was intended to enable the permittee to fully

complete a single permitted activity and was never intended to authorize an additional or successive activity or act of the same kind.

Other changes made in this section were made to remind the applicant of the basic requirement that all applications must be completely filled out prior to the initiation of processing of a renewal. An additional change made in this section was the inclusion of a provision to read "Any renewal application information remaining unchanged for a period of more than 4 years may be regarded as outdated, and the applicant required to provide new and complete application information upon request." This change was necessary to ensure that all information contained within permit application files is current and updated on a regular basis.

Section 13.22 has also caused some confusion among applicants concerning the special requirements of CITES. Section 13.22(c) is being amended to clarify the provision allowing continuation of a permitted activity while a permit renewal is pending. As currently written, the permit must be valid and renewable to continue the activity; as proposed, the permit also must not have been suspended or revoked. In addition, the proposal reflects that continuation does not apply to permits issued under CITES, as CITES permits are void upon expiration. Another change made was in § 13.22(d) to require a written explanation for any denial of a permit renewal. The Service has routinely provided such explanations and is amending the regulations to provide such notice by regulation.

The Service's provisions for the amendment of permits are established in § 13.23. This section sets forth the procedures to be used by applicants in modifying the conditions of a permit. This section is being revised to replace the word "his" with the words "his/her" in § 13.23(a) to make this reference gender neutral.

The procedures for the change of name or address of a permittee are set forth in § 13.23(c). Under the requirements of this section, a permittee is required to notify the issuing office within 10 calendar days of a change of name or address. This section is being revised by the addition of a provision informing the permittee that a failure to notify the office that issued the permit of a change of address may result in the cancellation of a permit. This situation arises in cases where reasonable efforts to contact the permittee by certified or registered mail have failed. A canceled permit may be reinstated if the

permittee subsequently contacts the issuing office within 90 calendar days of the date of cancellation.

A new section has been established at § 13.23(d) to explain that the issuing/reviewing office may deny amendments of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21, or in the sections specifically governing the activities for that the amendment has been requested.

The Service's criteria and procedures for suspension, revocation, and review are established in § 13.27, § 13.28, and § 13.29, respectively. Sections § 13.27 and § 13.28 are being corrected to conform with the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). In accordance with the requirements of the APA these sections will not be prefaced by a sentence stating "the following criteria will apply, except: pursuant to a court order; or in cases of willfulness; or in cases in which the public health, interest, or safety requires otherwise" This change is intended to inform applicants that permits issued by the Service may be immediately suspended or revoked pursuant to: a sentence or order of a court; or in cases where the permittee has intended by act or omission to willfully, intentionally, knowingly, or voluntarily violate applicable law; or where the public health, interest, or safety requires.

The Service's criteria and procedures for permit suspension are stated in § 13.27. These procedures are applicable when the Service has determined it necessary and proper to take the appropriate action of suspending a permit. The procedural steps within the Service's administrative remedies, in cases of permit suspension, have been amended to conform with those now made available in cases of permit revocations pursuant to § 13.28(b). This change is intended to equate the administrative remedies available in cases of permit suspensions with those of permit revocations and to eliminate repetitive procedures.

In addition to these changes, the last sentence of § 13.27(a) is being deleted for it has resulted in a permit suspension remaining in effect for an indefinite period of time or in the existing language of the regulation "until the permittee had corrected deficiencies." This change was necessary because the terms of this provision are not in agreement with the provisions of § 13.28(a)(2), that allow a permittee 60 days to correct any deficiencies that resulted in a suspension or face possible revocation of the permit.

Several small changes are being made in the procedures for suspension in § 13.27(b). Pursuant to § 13.27(b)(2) a permittee, upon receipt of a notice of proposed suspension, may file a written objection to the proposed suspension action. The procedural specifications for this objection have been amended. This change is accomplished by the insertion of the word "postmarked" to replace the deleted word "filed." A provision regarding the requirements for making a written objection is also added to read as follows: "Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reason why the permittee objects to the proposed suspension, and may include supporting documentation and any new information."

An additional change to the permit suspension procedures was made in § 13.27(b)(3) to read: "A decision on the suspension will be made within 45 calendar days after the receipt of the objection, or the end of the objection period if the permittee does not respond within the objection period, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons thereof. The issuing/reviewing office will also provide the applicant with information concerning the right to appeal and the procedures thereof. The Service is making this change to standardize available administrative remedies within Part 13 in an effort to minimize the delays caused by overly repetitious procedures.

Changes have been made to the procedures for permit revocation in § 13.28. The Service's procedures for revocation will not be divided, according to applicability, into two procedurally distinct and independent categories of revocation action. These actions can be categorized as: first, revocation procedures that will apply in ordinary or usual "revocation" actions; and second, special revocation procedures that will apply only to revocation of a suspended permit when the permittee fails to correct deficiencies that were the cause of the permit suspension within the required period of time.

The first type of revocation action is established in the present § 13.28(b). This section has been otherwise revised with changes being made to several procedural steps and by the substitution of the word "appeal" for the word "reconsideration." This change will replace the redundant step of having a

permittee make a request for reconsideration upon receiving notice of a Service decision on the revocation. A step that in sequence followed the permittees prior right to make a written objection upon receipt of a notice of proposed revocation. This change is intended to eliminate the overly repetitious re-review of the permit revocation by the initial revoking office. The regulations will now replace this administrative step with the more consequential administrative step of providing the permittee with the right of immediately appealing an adverse decision to the appropriate Director or Regional Director in accordance with § 13.29(e). These changes were also necessary to provide comparable procedural uniformity between the permit revocation procedures of this section and the procedures to be established for suspension as stated in § 13.27.

In the newly proposed second type of revocation action, the Service will seek revocation in instances where there are valid grounds for revocation of a suspended permit for failure to correct deficiencies in accordance with § 13.28(a)(3). The procedures for this type of revocation action are to be set forth in § 13.28(c). These new procedures are intended to provide finality or closure to the availability of administrative procedures in instances where a suspended permittee has failed within the required period of time to correct deficiencies that resulted in the suspension of their permit. In such cases the suspended permittee who is effectively in violation of their suspension for failing to act in good faith, will be barred from availing themselves of further Service procedures and will therefore, be compelled to seek any redress through non-administrative means. This change is intended to demonstrate the importance of full compliance with all suspension orders and the necessary consequences for failing to exercise good faith. The Service believes that this change is necessary, fair, and equitable in light of the seriousness of a failure to abide by the terms of a suspension order.

The Service is also amending and reorganizing § 13.28(a), which provides the applicable criteria for permit revocations. The existing criteria in § 13.28(a)(1) provides that a permit may be revoked when "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, that involves a violation of the conditions of the permit or of the laws or regulations

governing the permitted activity." The Service is amending the scope of § 13.28(a)(1) to provide for revocation for violation of any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country that involves a violation of the conditions of the permit or the laws or regulations governing the permitted activity and which results in a felony conviction, or entry of a plea of guilty or nolo contendere.

In order to present all applicable revocation criteria in logical sequence the Service proposes to redesignate the existing §§ 13.28 (a)(2), (a)(3), (a)(4), and (a)(5) to become §§ 13.28 (a)(3), (a)(4), (a)(5), and (a)(6) respectively, and to insert additional criteria for permit revocation in new § 13.28(a)(2) and § 13.28(a)(7). The new permit revocation criteria at § 13.28(a)(2) will provide that a permit may be revoked when "the permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment(s) or conviction(s) evidences a lack of responsibility."

In Sections 13.28 (a)(7), (a)(8), (a)(9), and (a)(10) the Service would add four additional criteria for permit revocation. The new criteria at § 13.28(a)(7) would read as follows: "It is determined that the permittee failed to disclose material information required or made false statements as to any material fact in connection with his application or the conduct of activities under his or her permit." This change is intended to inform the applicant of the necessity of making a full and accurate permit application and the consequences of their failing to do so. The new criteria at § 13.28(a)(8) would read as follows: "Evidence showing failure to exercise responsibility in accordance with § 13.21(a)(2)." This change is intended to provide for revocations in situations where the permittee has clearly evidenced a failure to exercise responsibility. The new criteria to be set forth at § 13.28(a)(9) would read as follows: "The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified." This change will allow the Service to revoke permits when conditions, that would have disqualified the permittee at the time of

application, are discovered after a permit has been issued. The new criteria to be set forth at § 13.28(a)(10) would read as follows: "the applicant has failed to fulfill the applicable requirements of Subchapter B." This change would allow the Service to revoke permits upon a finding that the permittee is not in compliance with the required conditions for holding a permit.

An additional change to the permit revocation procedures in § 13.28(b)(3) would read: "A decision on the suspension will be made within 45 calendar days after the receipt of the objection or the end of the objection period, whichever is applicable, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection, revoking the permit, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures for appeal." The Service proposes this change to standardize available administrative remedies within Part 13 in an effort to minimize the delays caused by overly repetitious procedures.

An important change proposed to § 13.28(d) is the addition of a special reference table to be entitled "Time allocated for administrative procedures." The Service is proposing this section to assist permittees in complying with the time restrictions provided for the availability of suspension, revocation and other review procedures.

In revising the review procedures in section 13.29, the Service has attempted to eliminate certain redundancy with the suspension, revocation, and the procedures for the appeal of a permit denial. To accomplish this change, the Service is proposing to make two procedural changes: first, to provide the permittee whose permit has been revoked or suspended with the immediate right to directly appeal to the Director or Regional Director in lieu of a repetitious request for reconsideration before the same issuing/reviewing office who initiated the revocation or suspension action; and second, to allow the Service to proceed in an orderly fashion from permit suspension to permit revocation in situations where a permittee has failed within the required period of time to remedy the deficiencies that caused the suspension. These changes are necessary because the procedures as currently written are overly repetitious and delaying to

permittees seeking redress. The review procedures as written have also inappropriately allowed applicants falling under § 13.29(a) (1), (2), and (3) to request a reconsideration of proposed suspension or revocation actions, even when there was no lawful authority to issue a permit. The Service believes that a request for reconsideration of suspensions or revocations is unnecessarily repetitive in such instances, especially in light of the applicant's existing available procedural remedies of objecting to any suspension or revocation action in accordance with § 13.27(b)(2) and § 13.28(b)(2), respectively, and challenging any adverse answer to such action with a timely appeal.

Other changes have been proposed in the text of § 13.29. These include: the clarification of the requirements for the submission of certification in § 13.29(b)(4); administrative changes in § 13.29(d); and the inclusion of certain exceptions to this section in § 13.29(a) and § 13.29(e). Several additional changes are being made to the provisions of § 13.29(f), which would be re-numbered and administratively revised. Section 13.29(f)(1) would be amended to read "the Director or the Regional Director may designate any staff member(s) to assist in analyzing the issues and may include the recommendations of the issuing/reviewing office." This change is intended to clarify the respective role of the issuing/reviewing office in providing assistance and recommendations to the Director or Regional Director considering an appeal.

The Service, in an effort to simplify its regulations, is adding a reference section in a new section to be designated § 13.30. The intent of this section is to provide the user with a reference to clearly illustrate: the exercise of responsibility determinations; the effects of disqualification; procedures for denial; the procedures for permit amendment(s) initiated by the Service; the procedures for suspension of a permit; the general procedures for revocation of a permit; the special procedures for revocation of a suspended permit, where the applicant has failed to correct deficiencies that were the cause of a suspension; and the effects of a prior revocation on subsequent permits.

Section 13.41 sets forth the requirement that wildlife possessed in accordance with permit conditions must be maintained under humane and healthful conditions. This section would be revised to read "any live wildlife or plants possessed, held, transported, and/or imported under a

permit must be maintained under humane and healthful conditions." This change is intended to insure that all wildlife and plants under a Service permit are adequately maintained under applicable regulations.

The Service requirements regarding the maintenance of records is stated in § 13.46. This section would be revised to require that such records now include information on the specifics of any death or escape of permitted wildlife. In addition such records will now be required "to include names and addresses of persons by or with whom any plant (to include seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred . . ." This change is intended to include the seeds of plants that are regulated by permit with applicable record keeping requirements.

In § 13.47 the Service sets out the inspection requirements applicable to any person holding a permit pursuant to Part 13. This section would be revised by the addition of the words "as established or evidenced by actual operation, or normal or expected hours of operation for the type of similar type of business, trade, operation or activity." This change is made in order to more clearly delineate what is meant by the use of the operative term "reasonable hour." The equivalent provision in Section § 13.21(e)(2) would also be similarly revised.

In addition to the changes being made in Part 13, the Service would revise Part 10 to add a necessary reference to the appropriate Regional Office addresses and to also update the existing list of Division of Law Enforcement, Regional Office addresses provided in § 10.22. The Service would also update the mailing address in § 17.22, 17.32, 17.62, and 17.72 as noted earlier, for the submission of applications for permits for Native Endangered and Threatened Species Take, Interstate Commerce, and Incidental Taking permits. Finally, the Service is considering additional regulatory provisions for the identification of trade secrets or confidential business information (CBI) contained in permit applications. The Service invites additional comments on how it may consider the views of applicants as to the protection and identification of such information, when requested under the Freedom of Information Act.

Background

On Thursday, November 14, 1991, the Service published in the **Federal Register** (56 FR 57873) a Notice of Intent to Review 50 CFR Part 13. The Service, in this notice, requested that all

interested parties submit written comments. In response to this request, the Service received comments from a total of 66 individuals and organizations.

Specifically, written comments were received from 36 individuals, 11 government agencies, 8 sportsman associations, 1 American Indian tribe, 3 scientific associations, and 7 wildlife management and conservation associations. Only 10 of the comments received pertained to Part 13. The Service has carefully considered all comments received in response to the Notice in proposing these changes to Part 10, 13, and 14.

Summary of Comments and Information Received

Comments Pertaining to 50 CFR Section 13.3

Scope of Regulations

Several commenters noted that the term "permit" should also include foreign documents such as export permits, commodity clearances, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits, and certificates of origin. One commenter noted that currently the Service has no real regulations that pertain to the specific requirements of foreign permits. The Service finds considerable merit in these comments and is proposing to amend this section accordingly to encompass such permits.

Comments Pertaining to 50 CFR Section 13.11 and 13.12

Application Procedures, General Information Requirements on Permits

A few comments were received on 50 CFR § 13.11. One commenter representing a scientific association suggested, in regards to § 13.11(a), that a letter describing a researcher's activities be allowed instead of the present requirement of filling out a Service permit application form. In issuing/reviewing permits and applications, the Service needs to quickly ascertain a permittee's or applicant's status or eligibility. To best accomplish this task, a uniform permit application has been routinely used. The Service believes that a continuation of the use of this standard form is the best and most efficacious method of processing applications and ensuring all required information has been provided.

Several comments from scientific and wildlife associations requested a review of 50 CFR § 13.11(b)(2). This section references the designated port of entry requirement of Part 14. One commenter

suggested that the Service's regulations should include an exception to designated port of entry requirements for scientific specimens and raptors used in the practice of falconry. The Service finds insufficient merit in the suggested exemptions for scientific specimens and of falconry birds from the designated port requirements. The Service has strived in its administration of permits under Part 13 to treat all permit applicants fairly and uniformly without regard to the status of the permittee. Procedurally, the requirements of § 13.11(b)(2) are intended to identify the appropriate issuing/reviewing office for a permit. This section was not intended as a list of exceptions to other regulations.

One commenter noted that delays in the issuance of permits caused by the time notice requirements in 50 CFR § 13.11(c) has imposed a hardship upon permit applicants. Other commenters also expressed similar concerns about perceived delays in the permit review process. The Service is concerned about any delays encountered in its permit programs. The permit process, however, is a deliberative process and therefore, requires careful, individual analysis and review by the Service. Importers of scientific specimens, captive-bred raptors, and wildlife importers in general should take this consideration into account and plan ahead for their importation and or exportation needs.

One comment on § 13.12, the general information requirements of permit applications, requested that a timely notification be given to all applicants with incomplete permit applications. The commenter further noted that such notice would serve to prevent the penalization of the applicant for relatively inconsequential or unintended omissions. It is the considered opinion of the Service that such additional "formal" procedures are not warranted at this time. The Service is not convinced that such additional procedures would result in any consequential saving in time. The Service, however, will continue to notify the applicant informally in all such cases.

Comments Pertaining to 50 CFR Section 13.21

Issuance of Permits, Denials

One commenter suggested that under certain limited circumstances, verbal authorization to undertake a permitted scientific project should be allowed. The commenter further qualified this suggestion, however, by noting that applicants should not have to bear legal liability when misleading oral

representations are given within such verbal authorizations. The Service believes that such verbal authorizations would be ill advised for the same vagueness and accountability problems noted by the commenter.

One commenter questioned the qualifications of persons making a determination as to the relative validity of a permit justification under § 13.21(b)(3). This section generally conditions the issuance of a permit by the Director or Regional Director to the applicant's demonstration of a valid justification for a permit and an independent showing of responsibility. Service permit applications are reviewed in an ordered and sequential process whereby permits are examined by qualified Service staff working under direct guidance and supervision of Service managers. Permit issuance decisions are reviewed for consistency with established permit policy. Applicants who are dissatisfied with the justifications given for any Service permit decision may readily seek recourse and remedy through available Service administrative procedures.

One commenter suggested deleting the first sentence of § 13.21(e)(2) for, as the commenter stated, "the first sentence implies a mistrust * * * of the permittee." In response to this comment, the Service can only state that no such implication of mistrust is intended. The intent of this requirement is to clearly set forth the responsibility of the permittee to allow for compliance inspections of permitted activities by the Service. Such inspection requirements are essential for the exercise of due diligence in the preservation of fish and wildlife resources.

One commenter noted that the officer should be required to provide applicants with a written indication of the reasons for any denial of a permit or the non-renewal of a permit under §§ 13.21(g) and 13.22(d) respectively. The Service appreciates the concerns of the commenter and is proposing to change the regulations to include a provision in § 13.21(g) and § 13.22(d), to be similar to those provided in § 13.27(b)(3) and § 13.28(b)(3), to read as follows: "the issuing/reviewing office will notify the permittee in writing of the Service's decision for denial or non-renewal of the permit." Generally, the Service has provided the basis of its decisions to applicants in the past as a matter of policy. This notice would now be required by regulation.

Comments pertaining to 50 CFR Section 13.28

Permit Revocation

One commenter noted that the criteria for permit revocation should also include the complete civil and criminal prior violation history of the permittee. The commenter further noted that whether a felony violation is willful, as stated in § 13.28(a)(1), should not be the only consideration in permit revocations. The commenter noted that many repeat offenders assert their violations are a result of ignorance of the regulations although, as the commenter elaborated, these are the same regulations to which the violators have affirmed knowledge when they sign their permit application. The Service finds considerable merit in the commenter's suggestion. The Service in its revocation procedures has attempted to strike a balance in favor of fairness. The revocation of an individual's permit is a punitive measure of final resort that rightfully demands that the Service provide sufficient justification for its permit revocation determinations and provides the applicant with a fair process. The present criterion in § 13.28(a)(1) require the proof of the causal element of "willfulness" in the commission of certain listed felonies. This element has presented the Service with an extremely difficult legal burden of proof in permit revocation actions. This burden of proof has tended to limit the effectiveness of revocation as a deterrent. The Service, in an effort to construct a greater deterrent, is proposing to amend the regulations to allow for additional criteria for permit revocation. These additional criteria would be set forth in a new § 13.28(a)(2) that would provide that a permit may be revoked when "the permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, or entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment or conviction evidences a lack of responsibility."

Comments pertaining to 50 CFR Section 13.29

Review Procedures

One commenter recommended the amendment of 50 CFR § 13.29(f) by the addition of the following suggested

language "The applicant will be provided in writing all presentations, whether oral or written, made by the issuing/reviewing office, or other Service divisions or employees, to higher authority regarding the merits of the appeal, which presentations shall be included in the appeal record. The deciding officer will state in the decision the date and contents of any discretionary policy adopted by the Service and applied in that matter, and state the facts justifying why that policy applies and should be adopted or applied in that appeal." The Service finds this proposal to be impractical and undesirable. The term "discretionary policy" is ambiguous and an inaccurate representation. Where an appeal is successful, the applicant will receive their permit and the record will substantiate why the issuing/reviewing office's decision has been reversed. Where an appeal is rejected, the applicant will receive notice providing the basis for that determination.

Comments pertaining to 50 CFR § 13.42

Permits are Specific

One commenter noted that scientific collecting permits should be written in such a way as to allow for scientific opportunism. The rationale for this suggestion, as noted by the commenter, is that scientists cannot always predict the particular species they will find or what species they will find useful for research purposes. The commenter further noted that this problem is of special concern when invertebrate and plant species are involved. The Service is sympathetic to the concerns expressed herein and otherwise by the scientific community. The Service continues to recognize the essential need to facilitate the study of science. The Service, however, must carefully weigh these concerns pursuant to its mandate to carefully monitor the collection of scientific wildlife specimens. The Service is hesitant to issue scientific collecting permits without sufficient species specificity. Therefore, the Service does not anticipate making any changes in the regulations pertaining to scientific collecting permits at the present time. The applicant should always have an idea of what their intended target species will be. Where the collection of additional species is anticipated, the applicant is simply required to add them to the list of those species in the application justification.

One representative of an association of scientists suggested several changes to the regulation involving special permit provisions for scientists. One

request was for the Service to provide for "temporary verbal authorization" to be given while a research application is being processed. Another commenter suggested that permit application information be only required for what was termed "a randomly sampled subset of applicants, with clearly defined research objectives." The commenter also suggested that application fees should be waived for scientific or educational institutions and, that under certain limited circumstances, verbal permit authorization to undertake a permitted scientific project or the modification thereof be provided. The Service is cognizant of the special requirements of scientist and researchers; however, the Service is hesitant at this time to provide for such special permit procedures in the absence of adequate safeguards. In regard to the issue of fees, the cost incurred by the Service in processing permits is substantial and should not be dependent upon the status, purpose, or funding source of the recipient.

Other comments to Part 13 included the recommendation that there be greater national uniformity in the Service's interpretation and enforcement of regulations. Specific recommendations addressed: the need for uniformity in the issuance of permits; the need to establish uniform renewal, non-renewal, and revocation criteria; and the recommendation that the permit process be simplified, expedited, and administered through a centralized permit process rather than the current regional system.

In this review of Part 13, the Service is attempting to update the regulatory provisions that provide uniform procedures applicable to the permit process. The Service in its general permit procedures has attempted to achieve a desirable level of specificity in its regulations and uniformity in the issuance of permits throughout the seven Regional Offices. There is, however, a limit to the degree of specificity and centralization that can be achieved by the Service without making the regulations and the permit issuance process more complex and extensive than necessary. The Service has made an effort in the past to decentralize the permit process to make it more responsive to users and efficient in operation. The process was once centralized in the Washington office of the Division of Law Enforcement. This was found to be unsatisfactory as the Service was unable to make accurate judgments about applications that were specific to diverse regional conditions. In addition the Service's ability to take an adverse action when necessary was

also limited, depending on the type of permit involved, by its ability to ascertain the specific facts and circumstances involved in each case. The variables relating to the issuance of the permit are often unique to the locale and situation. The Service's responsibilities for the permit process require its careful evaluation of all the facts, circumstances and local conditions related to a permit's issuance. In order for the Service to be fair to everyone, it can only provide the basic procedural guidelines for taking those adverse actions. It is not in the best interest of the permittees or the Service to impose the unique variables of one situation to every case.

Several additional comments were received on Part 13; these include a recommendation that changes be made to permit procedures that affect museum and scientific specimens. One commenter suggested that permit requirements are too complicated, especially in such instances where scientific specimens or materials on loan to parties outside the United States are returned. The Service is concerned about any delays encountered by applicants and permittees in its permit functions. The Service, however, must process the requests of all members of the public fairly and equitably without regard to their individual status on a first in, first out basis.

One commenter noted that the Service should determine whether the provisions of § 13.41 regarding the humane conditions for wildlife possessed under a permit are adequate to cover conditions of falconry birds. This, in the commenter's opinion, would be particularly true in the event the facilities standards of § 21.21 are removed or changed. The Service in § 21.29 and § 21.30 has established standard criteria for falconers and raptor propagators. These include the requirements for falconry facilities. Any requirements beyond these are imposed by the respective individual states.

Another commenter suggested that the Service's requirements for alteration of a permit in § 13.43 should allow the "reasonable" copying of permits for use as records and for other limited purposes. The Service, in reply to the above comment, is justifiably concerned about the integrity of its permit system. Any proliferation of copies would tend to undermine the system and lead to increased doubt as to the authenticity of permits. Therefore, to continue to safeguard the permit system the ban on the copying of permits, except where specifically permitted on the face of the permit, will remain in effect.

One commenter noted that the requirements for the maintenance of records in § 13.46 were too burdensome on permittees. The Service fully realizes that there is some burden imposed upon the permittee by the requirement of § 13.46 to maintain records. The Service, however, believes that this burden is at a minimum level and reasonably necessary for the maintenance of a sound permit program and to preserve wildlife resources. Finally, a few commenters requested the Service define the terms "reasonable hour" and "sale." The term, "reasonable hour" as it is used in § 13.47 invokes a reasonable standard of interpretation and is given its common meaning in light of the facts and circumstances of each case. The Service has carefully considered the suggestion to provide greater clarification to this term and proposes making changes in the language of this and the equivalent section in § 13.21(e)(2) accordingly. The term "sale" includes offers, or possess for sale, barter, exchange, or trade. The Service invites further comment on the merits of the addition of such a definition.

Need for Proposed Rulemaking

The Fish and Wildlife Service (Service) is updating the general permit procedures. In addition the Service is correcting errors in the amended uniform rules and procedures for the application, issuance, denial, suspension, revocation, and general administration of permits issued pursuant to 50 CFR Part 13. Definitions have been added and several errors and missing references have been corrected. Changes were necessary in several sections for the purposes of eliminating ambiguities and to more clearly articulate procedural requirements, to circumscribe applicable exceptions to requirements, and to provide for greater clarity.

Changes in the Service permit user fee policies and rates were made in order to more fully recover the cost of maintaining the permit system. The Service is revising its overall user fee policies and rates and is attempting in general to recover a fair or more reasonable proportion of the cost of special services provided to individuals and businesses. The demands of providing such special services have

required a proportionately greater allocation of Service resources than the services provided to the public at large. Federal guidelines indicate that the entire cost of providing such special services should be realized by the recipient, the Service at this time is simply attempting to recover a larger portion of permit issuance costs through more realistic user fees.

The Service is also amending 50 CFR Part 10 and 50 CFR Part 17. The Service is making limited changes to these parts to correct addresses provided therein.

Required Determinations

This rule was not subject to review by the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Small entities are presently required to comply with the current regulations. This revision will have a beneficial effect upon small entities by simplifying general permit procedures. This action is not expected to have significant "taking" implications, as per Executive Order 12630. This proposed rule does not contain any additional information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Department has certified to OMB that these proposed regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778. This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Parts 10, 13, and 17 are regulatory and enforcement actions that are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Department Manual and an Environmental Action Memorandum is on file at the Service's office in Arlington, Virginia. A determination has been made pursuant to Section 7 of the Endangered Species Act that the revision of Part 14 will not affect federally listed species.

Author

The originator of this proposed rule is Law Enforcement Specialist Paul McGowan working in cooperation with the staff of the Division of Law Enforcement and the Office of Management Authority, Fish and Wildlife Service, Washington, D.C.

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations, is proposed to be amended as set forth below:

1. The authority citation for Part 10 is revised to read as follows:

Authority: 16 U.S.C. 668a-d, 703-712, 742a-742j-1, 1361-1384, 1401-1407, 1531-1543, 3371-3378; 18 U.S.C. 42; 19 U.S.C. 1202.

Subpart C—Addresses [Amended]

2. Section 10.22 is revised to read as follows:

§ 10.22 Regional and law enforcement offices.

Service Regional and Law Enforcement offices and their areas of responsibility follow:

(a) Mail forwarded for the attention of the Regional Director for the U.S. Fish and Wildlife Service should be addressed: Regional Director, Attention: Endangered/Threatened Species Permits (see appropriate address in the table in paragraph (b) of this section);

(b) Mail forwarded for the attention of the Division of Law Enforcement should be addressed: Assistant Regional Director, Division of Law Enforcement, (see appropriate address in the following table):

TABLE—AREAS OF RESPONSIBILITY AND OFFICE ADDRESSES

Jurisdiction	Regional directors	Assistant regional directors for law enforcement
Region 1: California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, the Marshall Islands, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.	U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232-4181, Telephone: (503) 231-6241.	U.S. Fish and Wildlife Service, Law Enforcement, 911 N.E. 11th Avenue, Portland, OR 97232-4181, Telephone: (503) 231-6125.
Region 2: Arizona, New Mexico, Oklahoma, and Texas.	U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103, Telephone: (505) 766-3972.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 329, Albuquerque, NM 87102, Telephone: (505) 766-2091.
Region 3: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111-4056, Telephone: (612) 725-3583.	U.S. Fish and Wildlife Service, Law Enforcement, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111-4056, Telephone: (612) 725-3530.
Region 4: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.	U.S. Fish and Wildlife Service, 1875 Century Center Blvd., Suite 200, Atlanta, GA 30345, Telephone: (404) 679-7088.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 49226, Atlanta, GA 30303, Telephone: (404) 331-5872.
Region 5: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035, Telephone: (413) 253-8627.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 779, Hadley, MA 01035-0779, Telephone: (413) 253-8274.
Region 6: Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	U.S. Fish and Wildlife Service, P.O. Box 25486-DFC, Suite 550, Denver, CO 80225, Telephone: (303) 236-7920.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 25486-DFC, Denver, CO 80225, Telephone: (303) 236-5270.
Region 7: Alaska	U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, Telephone: (907) 786-3542.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 92597, Anchorage, AK 99509-2597, Telephone: (907) 786-3311.
Region 9: Any foreign country (Washington Office).	U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, VA 22203, Telephone: (703) 358-2104 or 1-(800) 358-2104.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 3247, Arlington, VA 22203-3247, Telephone: (703) 358-1949.

50 CFR Part 13 [Amended].

3. The authority citation for Part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a; 704, 712; 742j-1; 1374(g); 1382; 1538(d); 1539, 1540(f); 3374; 4901-1916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 483(a), 9701; E.O. 11911, 41 FR 15683.

4. Section 13.1 is revised to read as follows:

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this subchapter B will, 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 that set forth the additional requirements for the specific permits desired. If the activity for which a permit is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. A single permit authorizing an activity under several parts of this subchapter B may be issued. A single application for such a permit will be accepted if it

includes all of the information required to justify each specific permitted activity to be authorized.

5. Section 13.3 is revised to read as follows:

§ 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 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)—except as provided in § 13.22(c). As used in this part 13 the term "permit" will refer to a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies.

6. Section 13.11 is amended by revising the introductory text to the section, by revising paragraphs (b)(2)

and (b)(3), by adding paragraph (b)(4), by revising paragraphs (c), (d)(2), (d)(3), (d)(4) and (e) to read as follows:

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless the applicant has filed an application in accordance with the following procedures:

* * * * *

(b) * * *

(2) Exception to designated port (50 CFR part 14), import/export license (50 CFR 14.93), migratory bird permit other than banding (50 CFR part 21), and bald or golden eagle permits (50 CFR part 22) may be obtained by writing to the Assistant Regional Director for Law Enforcement of the Region in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Regions).

(3) Wild Bird Conservation Act (50 CFR part 15); injurious wildlife (50 CFR part 16); endangered and threatened species, except incidental take, and native species take and interstate commerce (50 CFR part 17); marine mammals (50 CFR part 18); and permits and certificates for the Convention on International Trade in Endangered Species of Wild Fauna and Flora

(CITES), (50 CFR part 23) may be obtained by writing to: Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, Virginia 22203.

(4) Endangered and threatened species incidental take permits (50 CFR 17.22(b)), and native endangered and threatened species take and interstate commerce permits may be obtained by writing to: Regional Director (Attention: *Endangered/Threatened Species Permits*) of the Region where the activity is to take place (see 50 CFR 10.22 for addresses and boundaries of the Regions).

(c) *Time notice.* The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the applicant requests. Applications for permits for marine mammals and/or endangered and threatened species should be postmarked at least 90 calendar days prior to the requested effective date. Time required for the processing of endangered and

threatened species incidental take permits will vary according to the project scope and significance of effects. Applications for all other permits should be submitted to the issuing/reviewing office and be postmarked at least 60 calendar days prior to the requested effective date. The processing time of permits may be increased by the procedural requirements of the National Environmental Policy Act (NEPA). When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with the procedural requirements of NEPA.

(d) * * *

(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 pursuant to § 13.1. The issuing office in such

instance may charge only the highest single fee for the activity permitted.

(3) A fee will not be charged to any Federal or State government agency nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of status as a Federal or State government agency must accompany the application. Except as otherwise authorized or waived, the failure to submit evidence of such status with the application will require the submission of all processing fees prior to the acceptance of the application for processing.

(4) *User fees.*

(i) Standard user fee.

Type of permit	Fee
Except as provided in paragraph (d)(4)(ii) of this section, the standard fee for processing any application	\$50

(ii) Nonstandard user fees.

Marine Mammals	
Public Display and Scientific Research (18.31)	\$250
Registered Tanners/Agents (18.23(d))	75
Endangered Species Act (ESA)	
Captive-bred Wildlife:	
New Requests	175/3 years
Renewals and Pheasants	75/3 years
ESA Import, Take, and Interstate Commerce	175
ESA Export and Foreign Commerce	100
CITES Import	150
CITES Trophy Import	50
CITES Reissuance, Pre-Convention, Captive-bred, Artificially Propagated Plants, and Certificate of Origin	75
CITES Pet Export/Re-Export	35
CITES Export	125
CITES Appendix II Export of native furbearers and alligators (excluding live)	75
CITES Appendix II, III Re-Export	125
Import/Export License (14.93)	55
Injurious Wildlife (Part 16)	75
Wild Bird Conservation Act (Part 15)	
Personal Pet Import (15.25)	50
Scientific Research, Zoological Breeding or Display, and Cooperative Breeding (15.22, 15.23, 15.24)	150
Approval of Cooperative Breeding Programs	200
Approval of Foreign Breeding Facilities	250/species
Migratory Bird (Part 21)	
Bird-Banding/Marking (21.22)	None
Special Purpose—Rehabilitation/Educational (21.27)	None
Special Purpose—Depredation, Private Individuals (Non-Commercial) (21.27)	25
Bald and Golden Eagles (Part 22)	None
Indian Religious or Ceremonial Use (Part 21, 22.22)	None

(e) *Abandoned or incomplete applications.* Substantially incomplete or improperly executed applications may be returned to the applicant. If the application is only lacking minor information or the proper fees, the issuing/reviewing office will accept the application for processing and notify the

applicant of the deficiency. If the applicant fails to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund fees for an abandoned application.

7. Section 13.12 is amended by revising paragraphs (a)(4) and (b) to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(4) If the requested permit activity involves the import, export, 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 wildlife or plants, documentation as

indicated in § 14.52(c) of this subchapter B;

* * * * *

(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 at Nondesignated Ports:	
Scientific	14.31
Deterioration Prevention	14.32
Economic Hardship	14.33
Import/Export License	14.93
Wild Bird Conservation Act Permits:	
Scientific Research	15.22
Zoological Breeding or Display	15.23
Cooperative Breeding	15.24
Personal Pets	15.25
Injurious Wildlife: Importation or Shipment	16.22
Endangered Wildlife and Plant Permits:	
Similarity of Appearance	17.52
Scientific, Enhancement of Propagation or Survival, Incidental Taking of Wildlife	17.22
Scientific, Enhancement of Propagation or Survival for Plants	17.62
Economic Hardship for Wildlife	17.23
Economic Hardship for Plants	17.63
Threatened Wildlife and Plant Permits:	
Similarity of Appearance	17.52
General for Wildlife	17.32
General for Plants	17.72
Marine Mammals Permits:	
Scientific Research	18.31
Public Display	18.31
Registered Agent or Tanner	18.23(d)
Migratory Bird Permits:	
Banding or Marking	21.22
Scientific Collecting	21.23
Taxidermist	21.24
Waterfowl Sale and Disposal	21.25
Special Purpose	21.27
Falconry	21.28
Raptor Propagation Permit	21.30
Depredation Control	21.41
Eagle Permits:	
Scientific or Exhibition	22.21
Indian Religious Use	22.22
Depredation Control	22.23
Falconry Purposes	22.24
Take of Golden Eagle Nests	22.25
Endangered Species Convention Permits (CITES)	23.15

8. Section 13.21 is amended by revising paragraphs (a), (b), (c)(1), (c)(2), (e)(2), and (g) as follows:

§ 13.21 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Service. An oral or written representation of an employee or agent of the United States Government or an action of such employee or agent will not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(2) For the purpose of this part, a determination as to an applicant's

exercise of responsibility is to include consideration of such factors as:

- (i) Level of competence, ability, skill, knowledge, training, and/or the suitability of facilities, particularly for live animals and plants;
- (ii) Prior wildlife or plant violations;
- (iii) Failure to qualify or fulfill any criteria or conditions applicable to the permit; or
- (iv) Prior violations involving misrepresentation of material facts; falsified documents; false labeling or invoicing; failure to present documents, wildlife, or plants for examination or inspection; or other circumstances involving concealing, evading, or circumventing detection of wildlife or plant violations.

(b) *Issuance criteria.* Upon receipt of a properly executed application for a permit, the Director or Regional Director will 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 in accordance with paragraph (a)(2) of this section.
- (2) The applicant has failed to disclose material information required or has made false statements as to any material fact in connection with his/her application.
- (3) The applicant has failed to demonstrate a valid justification for the permit;

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

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

(6) The applicant has failed to fulfill the applicable requirements of this subchapter B;

(7) The applicant has failed to comply with the conditions of previously held permits;

(8) The applicant has failed to exercise responsibility in accordance with § 13.21(a)(2); or

(9) The applicant has conducted the activity prior to the issuance of the permit required by subchapter B.

(c) * * *

(1)(i) A conviction or entry of a plea of guilty or nolo contendere for a criminal violation of the Lacey Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, Endangered Species Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Airborne Hunting Act, Marine Mammal Protection Act, Wild Bird Conservation Act, or African Elephant Conservation Act will disqualify such person from receiving or exercising the privileges of a permit for a period of 5 years from the date of most recent conviction or entry of judgment, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

(ii) The assessment of one or more civil penalties for violation(s) of the Lacey Act, Bald and Golden Eagle Protection Act, Endangered Species Act, CITES, Airborne Hunting Act, Marine Mammal Protection Act, Wild Bird Conservation Act, or African Elephant Conservation Act will disqualify such person from receiving or exercising the privileges of a permit for a period of 5 years, from the date of most recent assessment, where such assessment(s) evidences a lack of responsibility in accordance with paragraph (a)(2) of this section, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1), (a)(2), or (a)(3) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of 5 years from the date of the final agency decision on such revocation, unless such disqualification has been expressly waived by the Director or Regional

Director in response to a written petition.

* * * * *

(e) * * *

(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 will allow entry by agents or employees of the Service, or authorized State official upon premises where the permitted activity is conducted at any reasonable hour, as established or evidenced by actual operation, or normal or expected hours of operation for the type or similar type of business, trade, operation, or activity. Service agents or employees may enter such premises to inspect the location; and inspect, audit or copy any books, records, or permits required to be kept by this subchapter B; and inspect any wildlife or plants kept under authority of the permit.

(f) * * *

(g) *Denial.* The issuing/reviewing office 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. The applicant will be provided with a written explanation stating the basis for the denial and of the right to request reconsideration. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

9. Section 13.22 is amended by adding introductory text to the section and by revising paragraphs (a), (c), and (d) to read as follows:

§ 13.22 Renewal of permits.

Generally, a permit under this subchapter B may be renewed provided the specified permit activity authorized thereunder has not been completed.

(a) *Application for renewal.*

Applicants to renewal of a permit must submit a written application, complete in all regards, at least 30 calendar days prior to the expiration date of the current permit. Applicants for renewal 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. Except where otherwise provided by written authorization, any renewal of application information remaining

unchanged for a period of more than 4 years may be regarded as outdated, and the applicant required to provide a new and complete application information upon request.

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid and renewable permit, currently in force and not suspended or revoked, 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. The terms of this provision do not apply to permits or certificates issued under CITES in accordance with part 23, which are void upon expiration.

(d) *Denial.* The issuing/reviewing office 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. The applicant will be provided a written explanation of the basis for the denial and of the right to request reconsideration. Upon receipt of a denial the applicant will be required to cease all activities authorized by the permit. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

10. Section 13.23 is amended by revising paragraph (a), by revising paragraph (c), and by adding paragraph (d) to read as follows:

§ 13.23 Amendment of permits.

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

* * * * *

(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 any such change. Where the issuing office is not so notified and reasonable efforts to contact the permittee by certified and/or registered mail have failed, the permit will be canceled. The canceled permit may be reinstated if the permittee subsequently contacts the issuing office within 90 calendar days. This provision does not authorize any

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

(d) *Denial.* The issuing/reviewing office may deny amendments 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 amendment is requested. The applicant will be provided a written explanation of the basis for the denial and of the right to request reconsideration. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

11. Section 13.27 is amended by revising paragraph (a), by revising paragraph (b)(2), and by revising paragraph (b)(3) and by adding paragraph (b)(4) to read as follows:

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The following criteria will apply except: pursuant to a court order; in cases of willfulness; or in cases where the public health, interest, or safety requires otherwise. In general 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/reviewing office 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.

(b) * * *

(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 postmarked within 45 calendar 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 and any new information.

(3) A decision on the proposed suspension will be made within 45 calendar days after receipt of the objection, or the end of the objection period if the permittee does not respond within the objection period, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection, the issuing/reviewing office will notify the permittee in writing of the Service's

decision and the reasons thereof together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures thereof.

(4) A permit suspended under paragraph (b)(3) of this section will be subject to revocation in accordance with § 13.28(c) when the permittee fails to correct the deficiencies that were the cause of the permit suspension within 45 calendar days of the following: (i)(A) Receipt of the suspension action under paragraph (b) of this section; or (B) the date of adverse decision under the appeal process set forth in § 13.29(e). (ii) Where the permittee has provided written notification to clearly show the deficiencies that were the cause of permit suspension have been corrected within the 45 days of this subparagraph, a decision on the revocation will be made within 45 calendar days after receipt of the notice of correction.

12. Section 13.28 is amended by revising paragraph (a) and the heading of paragraph (b); adding paragraph (b) introductory text revising paragraphs (b)(2), (b)(3), and (b)(4); by adding paragraphs (c) and (d) to read as follows:

§ 13.28 Permit revocation.

(a) *Criteria for revocation.* The following criteria will apply, except: pursuant to a court order; or in cases of willfulness; or in cases where the public health, interest, or safety require otherwise. A permit may be revoked for any of the following reasons:

(1) The permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the law(s) or regulation(s) governing the permitted activity, that results in a felony conviction, or entry of a plea of guilty or nolo contendere. The revocation will disqualify any such person in accordance with § 13.21(c)(2) from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(2) The permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, or entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment or conviction evidences a lack of responsibility. The revocation will disqualify any such person in

accordance with § 13.21(c)(2) from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(3) The permittee fails to correct deficiencies that were the cause of a permit suspension, within 45 calendar days of receipt of the suspension action in accordance with § 13.27(b) or, if appealed, within 45 calendar days of the date of an adverse decision under the appeal process set forth in § 13.29(e). The revocation will disqualify any such person, in accordance with § 13.21(c)(2), from receiving or exercising the privileges of a similar permit for a period of 5 years; or

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

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

(6) 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;

(7) The permittee failed to disclose material information required or made false statements as to any material fact in connection with his or her permit application or as to the conduct of activities under his or her permit;

(8) The permittee has failed to exercise responsibility in accordance with § 13.21(a)(2);

(9) The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified; or

(10) The permittee has failed to fulfill the applicable requirements of this subchapter B.

(b) *General procedures for revocation.* Except as provided in paragraph (c) of this section, the following procedures will apply.

* * * * *

(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 postmarked 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 and any new information.

(3) A decision on the proposed revocation will be made within 45 calendar days after receipt of the objection or the end of the objection period if the permittee does not respond within the objection period, unless

extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons therefor, together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures for appeal.

(4) Unless a permittee files a timely appeal as set forth in § 13.29(e), any wildlife or plants held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing/reviewing office. If a permittee files a timely appeal of a permit revocation, such permittee may retain possession of any wildlife or plants held under authority of the permit until final disposition of the appeal process.

(c) *Special procedures for revocation.* A suspension permit will be subject to revocation when a permittee fails to correct deficiencies that were the cause of the permit suspension, in accordance with § 13.28(a)(3) and the procedures of this section:

(1) When the issuing/reviewing office believes there are valid grounds for the revocation of a permit suspended under the criteria of § 13.27(a) for reasons found in § 13.28(a)(3), the permittee will be notified in writing of the revocation by certified or registered mail. This notice will identify: the permit that has been revoked; the reason(s) for such revocation; the effective date of revocation; the proposed disposition of the wildlife or plants, if any; and inform the permittee that such revocation is without recourse to further administrative procedures and of the permittee disqualification for 5 years in accordance with § 13.21(c)(2). The issuing/reviewing office may amend any notice of revocation at any time.

(2) Any wildlife or plants held under authority of a permit that has been subjected to permit suspension in accordance with § 13.27, where the permittee has failed to correct deficiencies that were the cause of the permit suspension in accordance with § 13.28(a)(3) must be disposed of in accordance with instructions of the issuing/reviewing office.

(d) *Time allocated for administrative procedures.*

(1) *Suspension (§ 13.27(b)).*

(i) Written objection postmarked within 45 calendar days of the date of proposed suspension (§ 13.27(b)(2)).

(ii) Service decision within 45 calendar days after receipt of the objection or end of the objection period (§ 13.27(b)(3)).

(iii) Correct deficiencies within 45 calendar days of the date of the suspension (§ 13.27(b)(4)).

(iv) Appeal of adverse decision postmarked within 45 calendar days of the date of the notification (§ 13.27(b)(3)).

(v) Correct deficiencies within 45 calendar days of the date of the denial of the appeal (§ 13.27(b)(4)).

(2) *Revocation (§ 13.28(b)).*

(i) Written objection postmarked within 45 calendar days of the date of proposed revocation (§ 13.28(b)(2)).

(ii) Service decision within 45 calendar days after receipt of the objection or end of the objection period (§ 13.28(b)(3)).

(iii) Appeal of adverse decision postmarked within 45 calendar days of the date of the notification (§ 13.28(b)(3)).

(iv) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior (§ 13.29(f)(e)).

(3) *Revocation of suspended permit (§ 13.28(c)).*

(i) Occurs if permittee has failed to correct deficiencies that resulted in suspension under § 13.27(b)(3) within 45 calendar days of either: the receipt of the suspension action in accordance with § 13.28(a)(3) or, if the suspension is appealed, the date of a final adverse decision under the appeal process set forth in § 13.29(e).

(ii) The permittee will be notified in writing of the permit revocation by certified or registered mail. Revocation under 13.28(c) is without recourse to further administrative procedures (§ 13.28(c)(1)).

(4) *Other review procedures.* Denial under § 13.29(a)(1), or denial of renewal § 13.29(a)(2), amendment § 13.29(c) or required amendment § 13.29(a)(3), and partial denial of permit issued, renewed, or amended § 13.29(a)(4).

(i) Written reconsideration (include certification) postmarked within 45 calendar days of notification of the decision (§ 13.29(b)(2), § 13.29(b)(4)).

(ii) Service decision within 45 calendar days after receipt of the request for reconsideration (§ 13.29(d)).

(iii) Appeal of an adverse decision postmarked within 45 calendar days of the date of notification (§ 13.29(e)).

(iv) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior (§ 13.29(f)(e)).

13. Section 13.29 is amended by revising (a) introductory text, (a)(3), (a)(4), (b)(2), (b)(4), (d) and (e), by redesignating the existing paragraphs (f) (1), (2) and (3) as (f) (2), (3), and (4), by adding a new paragraph (f)(1) and by

revising newly designated paragraphs (f) (2), (3) and (4) to read as follows:

§ 13.29 Review procedures.

(a) *Request for reconsideration.*

Except when the activity requested is one for which there is no lawful authority to issue a permit and in actions revoking a suspended permit in accordance with § 13.28(a)(3) for failure to correct the deficiencies that were the cause of permit suspension, any person may request reconsideration of an action under this part if that person is one of the following:

* * * * *

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

(4) A permittee who has a permit issued, renewed, or amended, but has not been granted authority by the permit to perform all activities requested in the application.

(b) * * *

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

* * * * *

(4) The request for reconsideration will 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 will be held, and the person submitting the request will be given written notice of the need to submit the certification within 15 calendar days of the date of the notice. Failure to submit certification will result in the request being rejected as insufficient in form and content.

* * * * *

(d) *Determination of grant or denial of a request for reconsideration.* The issuing/reviewing office will notify the applicant or permittee of the Service's decision within 45 calendar days of the receipt of the request for reconsideration or the certification, if submitted separately, unless extended for good cause and the applicant or permittee is notified of the extension. This notification will be in writing, will state the reasons for the decision, and will contain a description of the evidence that was relied upon by the issuing/reviewing office. If the decision is adverse, the notification will also provide information concerning the right to appeal, the official to whom an

appeal may be addressed, and the procedures for making an appeal.

(e) *Appeal.* Except for actions revoking a suspended permit in accordance with § 13.27(a), § 13.28(a)(3), and § 13.28(c), a person who has received an adverse decision following submission of either a written objection to a suspension or revocation or a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing/reviewing office is located or to the Director, for offices that report directly to the Director. An appeal when submitted must be postmarked within 45 calendar days of the date of the

notification of the decision on the objection to a suspension or revocation, or the request for reconsideration. The appeal will 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) * * * (1) The Director or the Regional Director may designate any staff member(s) to assist in analyzing the issues and may include the recommendations of the issuing/reviewing office.

(2) Before a decision is made concerning the appeal, the appellant may present oral arguments before the

Director or the Regional Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(3) The Service will 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 is notified of the extension.

(4) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior.

14. Section 13.30 is added to subpart C to read as follows:

§ 13.30 Table of references.

(a) Exercise of Responsibility Determinations: A determination as to whether an applicant or permittee has exercised responsibility under the considerations of § 13.21(a)(2).	Will be made for the reasons specified in § 13.21(b)(1), § 13.21(b)(3), § 13.21(b)(8), § 13.21(c)(1)(ii), or § 13.28(a)(2).1
(b) The Effects of Disqualification: A disqualification for reasons specified in § 13.21(c).	Will result in denial of a new permit [§ 13.21(g)], renewal of a permit [§ 13.22(b)], and amendment of a permit [§ 13.23(c)], or revocation of any existing permit [§ 13.28(a)(4)].
(c) Procedures for Denial: Permit under § 13.21(g), Renewal under § 13.22(d), Amendment under § 13.23(c), or Partial Denial under § 13.29(a)(4). An applicant for a permit who has received a written notice of denial.	May file a request for reconsideration under the procedures specified in § 13.29(b) and may then file a timely appeal when appropriate under § 13.29(e).
(d) Procedures for Permit Amendment(s) Initiated by the Service: A permittee [see § 13.29(a)(3)] who has a permit amended under § 13.23(b).	May file a request for reconsideration under the procedures specified in § 13.29(b) and may then file a timely appeal when appropriate under § 13.29(e).
(e) Procedures for Suspension of a Permit: A permittee who has a permit suspended in accordance with § 13.27.	May file a written objection as specified in § 13.27(b)(2) and may then file a timely appeal in accordance with § 13.27(b)(3) when appropriate under § 13.29(e).
(f) General Procedures for Revocation of a Permit: A permittee who has received a proposed revocation for reasons specified in § 13.28(a)(1), § 13.28(a)(2), § 13.28(a)(4), § 13.28(a)(5), § 13.28(a)(6), § 13.28(a)(7), § 13.28(a)(8), § 13.28(a)(9), or § 13.28(a)(10).	May file a written objection as specified in § 13.28(b)(2) and may then file a timely appeal in accordance with § 13.28(b)(3) when appropriate under § 13.29(e).
(g) Special Procedures for Revocation of a Suspended Permit, Where Applicant Has Failed to Correct Deficiencies That Were the Cause of a Suspension: A suspended permit revoked for reasons specified in § 13.28(a)(3).	Will follow the revocation procedures specified in § 13.28(c).
(h) The Effects of a Prior Revocation on Subsequent Permits: A prior revocation for reason specified in § 13.28(a)(1), § 13.28(a)(2), or § 13.28(a)(3).	Will result in disqualification for a permit under § 13.21(c)(2).

15. Section 13.41 is revised to read as follows:

§ 13.41 Humane conditions.

Any live wildlife or plants possessed, held, transported and/or imported under a permit must be maintained under humane and healthful conditions to include 9 CFR subchapter A, 50 CFR

part 14, subpart J, and other conditions of a permit that may apply.

16. Section 13.46 is revised to read as follows:

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee will maintain complete and accurate records of any taking, possession, transportation, sale,

purchase, barter, exportation, or importation of plants or wildlife pursuant to such permit. Such records will be kept current and will include names and addresses of persons from or with whom any plant or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction; date of death or escape; and such other information as

may be required or appropriate. Such records will be legibly written or reproducible in English and will be maintained for 5 years from the date of expiration of the permit.

17. Section 13.47 is revised to read as follows:

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B will allow the Director's or Regional Director's agent to enter his premises at any reasonable hour, as established or evidenced by actual operation, or normal or expected hours of operation for the type or similar type of business, trade, operation, or activity, 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.

18. The authority citation for Part 17 is revised to read as follows:

Authority: 16 U.S.C. 1361-1407, 1531-1544, 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

Subpart C—Endangered Wildlife [Amended]

19. Section 17.22 is amended by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

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

* * * * *

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph for native endangered species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.21 (c) and (e). Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native endangered species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the activity prohibited by § 17.21. 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:

* * * * *

(b)(1) *Application requirements for permits for incidental taking.*

Applications for permits under this paragraph must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the activity is to take place (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.21(c). 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:

* * * * *

Subpart D—Threatened Wildlife [Amended]

20. Section 17.32 is amended by revising paragraphs (a)(1) introductory text and (b)(1)(i) to read as follows:

§ 17.32 Permits—general.

* * * * *

(a)(1) *Application requirements 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.* Applications for permits under this paragraph for native threatened species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native threatened species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management and Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3-200) provided by the Service and must include as an attachment, as much of the following information that relates to the purpose for which the applicant is requesting a permit:

* * * * *

(b)(1) *Application requirements for permits for incidental taking.* (i) Applications for permits under this paragraph must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the activity is to take place (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.31.

* * * * *

Subpart F—Endangered Plants [Amended]

21. Section 17.62 is amended by revising paragraph (a) introductory text to read as follows:

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

* * * * *

(a) *Application requirements.* An application for a permit under this section for native endangered species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native endangered species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the following required information and any other information that is requested by the Director or Regional Director.

* * * * *

Subpart G—Threatened Plants [Amended]

22. Section 17.72 is amended by revising paragraph (a) introductory text to read as follows:

§ 17.72 Permits—general.

* * * * *

(a) *Application requirements.* An application for a permit under this section for native threatened species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native threatened species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3-200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the following required information and any other information that is requested by the Director or Regional Director.

* * * * *

Date: November 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Editorial Note: This document was received at the Office of the Federal Register on August 29, 1995.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950822210-5210-01; I.D. 081195A]

RIN 0648-AH94

Summer Flounder Fishery; Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures proposed in Amendment 7 to the Summer Flounder Fishery Management Plan (FMP). This amendment would revise the fishing mortality rate reduction schedule for summer flounder, with the intended effect of still rebuilding summer flounder stock abundance, while reducing short-term economic losses for participants in the fishery.

DATES: Comments on the proposed rule must be received on or before October 16, 1995.

ADDRESSES: Comments on the proposed rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan."

Copies of Amendment 7, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed amendment was published in the **Federal Register** on August 17, 1995 (60 FR 42830). Copies of the amendment are

available from the Council upon request (see ADDRESSES). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from North Carolina northward. The objectives of the FMP are unchanged by this amendment: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality of immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

The regulations implementing the FMP, and its amendments, enact a broad spectrum of measures to stop overfishing and allow the stock to rebuild. These measures include a fishing mortality rate (F) reduction schedule. The reduction schedule was set at F of 0.53 for 1993-95, and F_{max} (0.23) in 1996 and thereafter. F_{max} is the biological reference point that corresponds to the level of fishing mortality that produces the maximum yield per recruit. The schedule was developed and adopted by the Council and ASMFC after lengthy deliberations. It was deemed an appropriate balance between effective reduction in fishing mortality and short-term economic burdens placed on participants in the fishery.

The Council and ASMFC conducted analyses of the fishing mortality rate reduction schedules during the development of Amendment 2. This reduction in fishing mortality was to be accomplished through a combination of minimum mesh size and minimum fish size restrictions and a coastwide annual quota divided between the recreational and commercial fisheries. Based on these analyses, the Council believed that by the fourth year of the rebuilding schedule (1996), the level of rebuilding in the stock would offset any significant reductions in quota. That is, it was assumed that the stock growth from years 1 to 3 would be large enough, so that by 1996 the quota would not be significantly different from the 1995 level.

However, although the stock has rebuilt from its 1989 low level, it has not recovered to the extent projected. Lower than expected recruitment levels