For the OCS off the . . .	Apply to . . .
(c) States of California, Oregon, Washington, Hawaii, or U.S. territories in the Pacific Ocean.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010.

§ 280.80 [Amended]

■ 33. In § 280.80(e), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

PART 291—OPEN AND NON-DISCRIMINATORY ACCESS TO OIL AND GAS PIPELINES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT

■ 34. The authority citation for part 291 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

§ 291.1 [Amended]

■ 35. In § 291.1(e), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 291.103 [Amended]

■ 36. In § 291.103 introductory text, remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 291.106 [Amended]

■ 37. In § 291.106(a), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 291.107 [Amended]

■ 38. In § 291.107(a), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

[FR Doc. E9–22027 Filed 9–11–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0684]

Drawbridge Operation Regulation; Three Mile Slough, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the California Route 160 Drawbridge across Three Mile Slough, mile 0.1, near Rio Vista, CA. The deviation is necessary to allow Caltrans to conduct drawbridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position during the maintenance period.

DATES: This deviation is effective from 7 a.m. on September 14, 2009 through 4:30 p.m. on September 14, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0684 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0684 in the ''Keyword'' box and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Caltrans requested a temporary change to the operation of the California Route 160 Drawbridge, mile 0.1, Three Mile Slough, near Rio Vista, CA. The drawbridge navigation span provides a vertical clearance of 12 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal as required by 33 CFR 117.5. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7 a.m. through 4:30 p.m. Monday through Friday, from August 31, 2009 through September 14, 2009, to allow Caltrans to replace the industrial staircase leading to the control house. At all other times during this period, and on September 7, 2009, Labor Day, the drawspan will open on signal as required by 33 CFR 117.5. This temporary deviation has been coordinated with commercial and recreational waterway users. There is no anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In the event of an emergency the drawspan can be opened with 4 hours advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 28, 2009.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. E9–21979 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0815; FRL–8954–7]

Approval and Promulgation of Implementation Plans; New Mexico; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the New Mexico State Implementation Plan (SIP) submitted by the Governor of New Mexico on behalf of the New Mexico Environment Department (NMED) in a letter dated October 7, 2008 (the October 7, 2008 SIP submittal). The October 7, 2008 SIP submittal concerns revisions to New Mexico Administrative Code Title 20, Chapter 2, Part 7 Excess Emissions (20.2.7 NMAC—Excess Emissions) occurring during startup, shutdown, and malfunction related activities. We are approving the October 7, 2008 SIP submittal because the revisions to 20.2.7 NMAC are consistent with the Clean Air Act (the Act). This action is in accordance with section 110 of the Act.

DATES: This direct final rule will be effective November 13, 2009 without

further notice unless EPA receives relevant adverse comments by October 14, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0815, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*.
- Follow the online instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6comment.htm*. Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7242.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2008–0815. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the State Air Agency listed below during official business hours by appointment: NMED, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, NM 87507.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan @epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

Outline

I. Background
A. What action are we taking in this document?
B. What documents did we use in our evaluation of the October 7, 2008 SIP submittal?
C. Why are we approving the October 7, 2008 SIP submittal?
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

A. What action are we taking in this document?

We are approving revisions to 20.2.7 NMAC—Excess Emissions occurring during startup, shutdown, and malfunction related activities as revisions to the New Mexico SIP. We received this submittal with an October 7, 2008 letter from the Governor of New Mexico on behalf of the NMED.

We are approving the repeal of the existing EPA-approved 20.2.7—Excess Emissions, and replacing it with the revised version of 20.2.7 NMAC as contained in the October 7, 2008 SIP submittal. The existing 20.2.7 NMAC—Excess Emissions rule was approved by EPA on September 26, 1997 (62 FR 50518) at 40 CFR 52.1620(c)(66). See Chapter A of our Technical Support Document (TSD) prepared in conjunction with this rulemaking action for more information. The TSD is a part of the docket and available for public review.

The October 7, 2008 submittal also included proposed revisions to NMAC 20.2.70—Operating Permits. We are not taking action on those revisions as part of today's rulemaking action. The revisions to NMAC 20.2.70 are part of the Title V program approval, and will be handled in a separate rulemaking action.

B. What documents did we use in our evaluation of the October 7, 2008 SIP submittal?

The EPA's interpretation of the Act on excess emissions occurring during periods of startup, shutdown, and malfunction is set forth in the following documents: A memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' (1982 Policy); EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation (1983 Policy); EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant

Administrator for Air and Radiation, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (1999 Policy); EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), April 27, 1977 (42 FR 21472); EPA's final rule for Idaho's sulfur dioxide control strategy, November 8, 1977 (42 FR 58171); and the latest clarification of EPA's policy issued on December 5, 2001 (2001 Policy). You can find the 2001 Policy at: *http://www.epa.gov/ttn/oarpg/t1pgm.html* (URL dating July 22, 2008). The EPA's interpretation of the Act related to exclusions from emission limitations for sources in certain startup, shutdown, or malfunction situations was upheld by the United States Court of Appeals for the Sixth Circuit in *Michigan Mfrs. Ass'n* v. *Browner*, 230 F.3d 181 (6th Cir. 2000).

C. Why are we approving the October 7, 2008 SIP submittal?

Under section 110(a) of the Act, EPA views all excess emissions as violations of the applicable emission limitation because excess emissions have the potential to interfere with attainment and maintenance of the National Ambient Air Quality Standards, or with the protection of Prevention of Significant Deterioration increments. However, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions, startups or shutdowns caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. The EPA has provided guidance on two approaches for addressing excess emissions, the use of enforcement discretion and providing an affirmative defense to actions for civil penalties. Neither approach waives liability or reporting requirements for the violation. Excess emissions occurring during periods of startup, shutdown, maintenance, and malfunction must be included in determining compliance with SIP emission limitations. States are not required to provide an affirmative defense approach, but if they choose to do so, EPA will evaluate the State's SIP rules for consistency with our policy and guidance documents listed in section B of this document. Our reasons for approval of the October 7, 2008 SIP submittal are as follows:

The NMED's October 7, 2008 SIP submittal adopts an affirmative defense approach to address excess emissions. This approach is permissible under the 1999 Policy.

The NMED's October 7, 2008 SIP submittal clearly states that operation resulting in an excess emission is a violation of the air quality regulation or permit, and may be subject to potential enforcement action. This statement is consistent with the 1999 Policy.

The NMED's October 7, 2008 SIP submittal adequately sets forth notification and reporting requirements for the owner or operator of a source having an excess emission. We believe that notification and reporting, including implementation of corrective action(s) when needed, of excess emissions will assist with the management of excess emissions and will enhance the New Mexico SIP by reducing the amount or frequency of future potential excess emissions.

The NMED's October 7, 2008 SIP submittal contains criteria to be considered when asserting an affirmative defense for an excess emission during startup or shutdown to claims for a civil penalty (not injunctive relief) that are similar, if not identical, to those in the 1999 Policy. We believe the criteria for asserting an affirmative defense are consistent with our guidance documents and should be approved.

The NMED's October 7, 2008 SIP submittal contains criteria to be considered when asserting affirmative defense for an excess emission during a malfunction to claims for a civil penalty (but not the injunctive relief) that are similar, if not identical, to those in the 1999 Policy. We believe the criteria for asserting an affirmative defense are consistent with our guidance documents and should be approved.

The NMED's October 7, 2008 SIP submittal clearly states that NMED's determinations concerning an owner or operator's assertion of the affirmative defense shall not preclude EPA or citizens' enforcement authority under the Act. This statement is consistent with 42 U.S.C. 7413 and 7604.

Neither section 20.2.7.111 NMAC nor section 20.2.7.112 NMAC of the October 7, 2008 SIP submittal makes an affirmative defense available to an owner or operator of a source having an excess emission due to maintenance related activities. We believe that maintenance activities are predictable events that are subject to planning to minimize releases, unlike malfunctions or upsets, which are sudden, unavoidable or beyond the control of owner or operator. The owner or operator of a source should be able to plan maintenance that might otherwise lead to excess emissions to coincide with maintenance of production equipment or other facility shutdowns. This position is consistent with EPA's interpretation of section 110 of the Act, and with our guidance documents.

The NMED's October 7, 2008 SIP submittal narrowly defines an emergency situation. An owner and operator may assert an affirmative defense for an emergency if certain criteria are met. See 20.2.7.113(B)(1) through (4) NMAC for these criteria. In any enforcement proceeding, the owner or operator seeking to establish the occurrence of an emergency has the burden of proof. In addition, NMED may require additional information reported within the time period specified by the department. See 20.2.7.113(C) and (D) NMAC. We believe this approach is consistent with our guidance documents.

For a section-by-section evaluation of the October 7, 2008 SIP submittal see Chapter B of our TSD. The TSD is a part of the docket and available for public review. For these reasons we are approving 20.2.7 NMAC into New Mexico SIP.

In addition, we are approving the repeal and replacement of the existing EPA-approved 20.2.7 NMAC Excess Emissions rule with the revised 20.2.7 NMAC contained in the October 7, 2008 SIP submittal. The existing EPA-approved 20.2.7 NMAC Excess Emissions rule provided for frequent startup and shutdowns, and exempted certain facilities from notification requirements. See Chapter A of the TSD. The existing EPA-approved 20.2.7 NMAC Excess Emissions rule did not conform with the 1999 Policy. The revised 20.2.7 NMAC contained in the October 7, 2008 SIP submittal conforms with the 1999 Policy, and its approval will enhance the New Mexico SIP. See Chapter B of the TSD.

II. Final Action

Today, we are approving revisions to New Mexico Administrative Code Title 20, Chapter 2, Part 7 Excess Emissions (20.2.7 NMAC—Excess Emissions) occurring during startup, shutdown, and malfunction related activities into New Mexico SIP. We are approving the repeal of the existing 20.2.7 NMAC, and replacing it with the revised 20.2.7 NMAC contained in the October 7, 2008 SIP submittal.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994);
- Does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law; and
- Is not a ''major rule'' as defined by 5 U.S.C. 804(2) under the Congressional Review Act, 5 U.S.C. 801 *et seq.,* added by the Small Business Regulatory Enforcement Fairness Act of 1996. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule.'' Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: August 28, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. The table in § 52.1620(c) entitled ''EPA Approved New Mexico Regulations'' is amended by revising the entry for ''Part 7'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ submittal date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environmental Protection				
Chapter 2—Air Quality				
* * * * * * *				
Part 7	Excess Emissions	7/10/2008	9/14/2009 [Insert *FR* page number where document begins].	
* * * * * * *				

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[FR Doc. E9–21827 Filed 9–11–09; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–IA–2007–0021; 96100–1671–0000–B6]

RIN 1018–AV21

Endangered and Threatened Wildlife and Plants; Listing the Chatham Petrel, Fiji Petrel, and Magenta Petrel as Endangered Throughout Their Ranges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for three petrel species (order Procellariiformes)—Chatham petrel (*Pterodroma axillaris*) previously referred to as (*Pterodroma hypoleuca axillaris*); Fiji petrel (*Pseudobulweria macgillivrayi*) previously referred to as (*Pterodroma macgillivrayi*); and the magenta petrel (*Pterodroma magentae*)—under the Endangered Species Act of 1973, as amended (Act). This rule implements the Federal protections provided by the Act for these three species.

DATES: This rule becomes effective October 14, 2009.

ADDRESSES: Comments and materials we receive, as well as supporting information used in the preparation of this rule, are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 N. Fairfax Drive, Suite 110, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Monica A. Horton, Biologist, Division of Scientific Authority (see **ADDRESSES**); telephone 703–358–1708; facsimile 703–358–2276; e-mail *ScientificAuthority@fws.gov.* If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires us to make a finding (known as a ''90-day finding'') on whether a petition to add a species to, remove a species from, or reclassify a species on the Federal Lists of Endangered and Threatened Wildlife and Plants has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding must be made within 90 days following receipt of the petition and must be published promptly in the **Federal Register.** If we find that the petition has presented substantial information indicating that the requested action may be warranted (a positive finding), section 4(b)(3)(A) of the Act requires us to commence a status review of the species if one has not already been initiated under our internal candidate assessment process. In addition, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months following receipt of the petition (''12-month finding'') on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing. Section 4(b)(3)(C) of the Act requires that a finding of warranted but precluded for petitioned species should be treated as having been resubmitted on the date of the warranted but precluded finding, and is, therefore, subject to a new finding within 1 year and subsequently thereafter until we publish a proposal to list or a finding that the petitioned action is not warranted. The Service publishes an annual notice of resubmitted petition findings (annual notice) for all foreign species for which listings were previously found to be warranted but precluded.

Previous Federal Actions

On November 28, 1980, we received a petition (1980 petition) from Dr. Warren B. King, Chairman of the International Council for Bird Preservation (ICBP), to add 60 foreign bird species to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)), including two species (the Chatham petrel and magenta petrel) that are the subject of this final rule. Two of the foreign species identified in the petition were already listed under the Act; therefore, in response to the 1980 petition, we published a substantial 90-day finding on May 12, 1981 (46 FR 26464), for 58 foreign species and initiated a status review. On January 20, 1984 (49 FR 2485), we published a 12-month finding within an annual review on pending petitions and description of progress on all pending petition findings. In that notice, we found that all 58 foreign bird species from the 1980 petition were warranted but precluded by higher priority listing actions. On May 10, 1985, we published the first annual notice (50 FR 19761) in which we continued to find that listing all 58 foreign bird species from the 1980 petition was warranted but precluded. We published additional annual notices on the 58 species included in the 1980 petition on January 9, 1986 (51 FR 996), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), April 25, 1990 (55 FR 17475), November 21, 1991 (56 FR 58664), and May 21, 2004 (69 FR 29354). These notices indicated that the Chatham petrel and the magenta petrel, along with the remaining species in the 1980 petition, continued to be warranted but precluded.

On May 6, 1991, we received a petition (1991 petition) from ICBP to add an additional 53 species of foreign birds to the List of Endangered and Threatened Wildlife, including the Fiji petrel. In response to the 1991 petition, we published a substantial 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species, and initiated a status review. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act (15 each from the 1980 petition and 1991 petition). In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the Fiji petrel, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1980 and 1991 petitions, including the three species that are the subject of this final rule, as published in our annual notice of review (ANOR) on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), in our April 23, 2007, Annual Notice on Resubmitted Petition Findings for Foreign Species (72 FR 20184), we determined that listing six seabird species of the family Procellariidae, including the three species that are the subject of this final rule, was warranted. In selecting these six species from the list of warranted-but-precluded species, we took into consideration the magnitude and immediacy of the threats to the species, consistent with the Service's listing priority guidelines.

On December 17, 2007 (72 FR 71298), we published in the **Federal Register** a proposal to list the Chatham petrel, Fiji petrel, and the magenta petrel as endangered under the Act, and the Cook's petrel, Galapagos petrel, and the Heinroth's shearwater as threatened under the Act. We implemented the Service's peer review process and opened a 60-day comment period to solicit scientific and commercial