

■ 2. Revise subpart 51–9.6 to read as follows:

Subpart 51–9.6 Exemptions

§ 51–9.601 Office of Inspector General Exemptions.

(a) Pursuant to section (j) of the Privacy Act of 1974, the Committee has deemed it necessary to adopt the following exemptions to specified provisions of the Privacy Act:

(1) Pursuant to 5 U.S.C. 552a(j)(2), the AbilityOne/OIG–001 Case Management System, System of Records is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3)–(4); (d); (e)(1)–(3); (e)(4)(G)–(I); (e)(5); (e)(8); and (f)–(g) and from 41 CFR 51–9.1, 51–9.2, 51–9.3, 51–9.4, and 51–9.7.

(2) [Reserved]

(b) Pursuant to section (k) of the Privacy Act of 1974, the Committee has deemed it necessary to adopt the following exemptions to specified provisions of the Privacy Act:

(1) Pursuant to 5 U.S.C. 552a(k)(2), AbilityOne/OIG–001 Case Management System, System of Records is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(4)(G)–(I) and (f) and from 41 CFR 51–9.1, 51–9.2, 51–9.3, 51–9.4, and 51–9.7.

(2) [Reserved]

(c) Exemptions from the subsections are justified because application of these provision would present a serious impediment to law enforcement. Access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel, and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly

classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

Michael R. Jurkowski,

Acting Director, Business Operations.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2023–0018; FF09E41000 201 FXES111609C0000]

RIN 1018–BF88

Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise our regulations concerning protections of endangered species and threatened species under the Endangered Species Act (Act). We are proposing to reinstate the general application of the “blanket rule” option for protecting newly listed threatened species pursuant to section 4(d) of the Act, with the continued option to promulgate species-specific rules. We are also proposing to extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to the employees or agents of the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species. We are also proposing minor changes to clarify or correct the existing regulations for endangered and

threatened species; these proposed minor changes would not alter the substance or scope of the regulations. We also request comments on an additional provision under consideration, but not currently proposed, that would extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to employees or agents of the Service, the National Marine Fisheries Service, and State agencies for take associated with conservation-related activities.

DATES: We will accept comments received or postmarked on or before August 21, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–HQ–ES–2023–0018, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2023–0018, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Availability of supporting materials: Supporting materials are available at <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2023–0018.

FOR FURTHER INFORMATION CONTACT: Carey Galst, Branch of Listing and Policy Support, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703/358–1954. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The purposes of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* (the Act)), are to provide a means to conserve the ecosystems upon which listed species depend, develop a program for the conservation of listed species, and achieve the purposes of certain treaties and conventions. Moreover, it is the policy of Congress that the Federal Government will seek to conserve threatened and endangered species and use its authorities to further the purposes of the Act (16 U.S.C. 1531(c)(1)). This proposed rulemaking action pertains primarily to sections 4 and 9 of the Act.

Section 9 of the Act provides a specific list of prohibitions for endangered species but does not provide these same prohibitions to threatened species. Instead, section 4(d) of the Act requires that the Secretary issue regulations necessary and advisable to provide for the conservation of threatened species; these are referred to as “4(d) rules.” Congress delegated the authority to the Secretary to determine what protections would meet this standard for a given species. Early in the administration of the Act, the Service promulgated “blanket rules,” two sets of protective regulations that generally applied to threatened species of wildlife and plants, at 50 CFR 17.31 and 17.71, respectively. These regulations extended the majority of the protections (all of the prohibitions that apply to endangered species under section 9 and additional exceptions to the prohibitions) (*e.g.*, 50 CFR 17.31(a) and 17.71(a) (2018)) to threatened species, unless we issued an alternative rule under section 4(d) of the Act for a particular species (*i.e.*, a species-specific rule). For species with a species-specific rule, that rule contained all of the protective regulations for that species.

On August 27, 2019, we issued a final rule that revised 50 CFR 17.31 and 17.71 (84 FR 44753; hereinafter, “the 2019 4(d) rule”) and ended the blanket rule option for application of section 9 prohibitions to species newly listed as threatened after the effective date of those regulatory revisions (September 26, 2019). The blanket rule protections continued to apply to threatened species that were listed prior to September 26, 2019, without an associated species-specific rule. Under the 2019 4(d) rule, the only way to apply protections to a species newly listed as threatened is for

us to issue a species-specific rule setting out the protective regulations that are appropriate for that species.

On January 20, 2021, the President issued Executive Order 13990 (86 FR 7037, January 25, 2021; hereinafter referred to as “the E.O.”), which required all agencies to review agency actions issued between January 20, 2017, and January 20, 2021, to determine consistency with the purposes articulated in section 1 of the E.O. Pursuant to the direction in the E.O., we reviewed our 2019 4(d) rule to assess whether to keep it in place or to revise any aspects. Our review included evaluating the benefits or drawbacks of the regulations, the necessity of the regulations, their consistency with applicable case law, and other factors. Based on our evaluation, and for reasons discussed in more detail below, we propose to revise our regulations at 50 CFR 17.31 and 17.71 to reinstate the “blanket rules” that apply many of the section 9 protections to newly listed threatened species and update other provisions. This proposed revision would not require any previously finalized species-specific rules issued since September 2019 to be reevaluated on the basis of the final decision. However, under this proposal any wildlife or plant species that the Service listed as threatened prior to September 26, 2019, and protected with the previous “blanket rules,” would have the revised prohibitions and exceptions outlined under 50 CFR 17.31(a) or 17.71(a), respectively, for any future actions after the finalization of this rule. Applying the revised prohibitions and exceptions would make only two changes to the protections for those previously listed threatened species. First, it would add federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species. Second, it would update our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988. These updates would also apply to threatened plants protected under the “blanket rule.” The Secretaries of the Interior and Commerce share responsibilities for implementing most of the provisions of the Act. Generally, marine species and some anadromous (sea-run) species are under the jurisdiction of the Secretary of Commerce, and all other species are under the jurisdiction of the Secretary of the Interior. Authority to administer the Act has been delegated by the Secretary of the Interior to the Director of the U.S. Fish and Wildlife Service (“the Service”) and by the Secretary of

Commerce to the Assistant Administrator for the National Marine Fisheries Service (NMFS). The Service and NMFS (jointly “the Services”) each have separate regulations for implementation of section 4(d) protective regulations for species within their respective jurisdictions. When we amended our section 4(d) regulations in 2019, those amendments affected only species under Service jurisdiction. This proposal, if finalized, would have the same result.

The 2019 4(d) rule, along with other revisions to the Act’s regulations finalized in 2019 (revisions to 50 CFR parts 402 and 424), were subject to litigation in the United States District Court for the Northern District of California. On July 5, 2022, the court issued a decision vacating the 2019 4(d) rule without reaching the merits of the case. On September 21, 2022, the United States Court of Appeals for the Ninth Circuit temporarily stayed the effect of the July 5th decision pending the District Court’s resolution of motions seeking to alter or amend that decision. On October 14, 2022, the Services notified the District Court that we anticipated proceeding with a rulemaking process to revise the 2019 4(d) rule. Subsequently, on November 14 and 16, 2022, the District Court issued orders remanding the 2019 4(d) rule to the Services without vacating it, as the Services had asked the Court to do. Accordingly, the Service has developed this proposal to amend our regulations at 50 CFR part 17.

This proposed rule is one of three proposed rules publishing in today’s **Federal Register** that propose changes to the regulations that implement the Act. Two of these proposed rules are joint between the Services, and this document is specific to the Service.

Proposed Regulatory Revisions

We propose revisions to the regulations in 50 CFR part 17, subparts C, D, F, and G, with minor administrative revisions to subpart A. Our proposal would reinstate the general application of the “blanket rule” option for protecting newly listed threatened species pursuant to section 4(d) of the Act, with the continued option to craft species-specific rules. Reinstating the “blanket rule” option and other proposed regulation revisions would only result in minor changes to protections for currently listed threatened species, whether those species received 4(d) protections from the prior versions of the “blanket rules” or from a species-specific rule. Species that were protected under prior versions of the “blanket rules” or under species-

specific rules that refer to any of the sections we propose revising would receive the updated protections for any actions occurring after finalization of this proposed rule. As stated above, applying the revised prohibitions and exceptions would make only two changes to the protections for those previously listed threatened species. First, it would add federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species. Second, it would update our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988. These updates would also apply to threatened plants protected under a “blanket rule.” Finally, we propose minor changes to clarify, without changing the scope or intent of, the existing regulations at 50 CFR 17.21 and 17.61 for endangered species, as well as technical corrections such as revising the use of the phrase “special rule” to “species-specific rule” in several locations (e.g., 50 CFR 17.8, 17.40).

Reinstatement of Blanket Rules

The primary proposed revisions are to 50 CFR 17.31 and 17.71; the proposed revisions would reinstate the general application of the “blanket rule” options for protecting newly listed threatened wildlife and plant species, respectively, pursuant to section 4(d) of the Act. As mentioned above, the Service had “blanket rules” for wildlife and plants between the 1970s and September 2019, at which time we revised the pertinent regulations to no longer apply to newly listed threatened species. For those species listed prior to September 26, 2019, we also had the option to issue species-specific rules, which we did approximately 25 percent of the time. This proposal would retain the continued option to promulgate species-specific rules. Also as stated above, applying the revised prohibitions and exceptions would make only two changes to the protections for those previously listed threatened species. First, it would add federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species. Second, it would update our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988. These updates would also apply to threatened plants protected under a “blanket rule.” On August 27, 2019, we issued a rule to revise 50 CFR 17.31 and 17.71 such that species listed or reclassified as threatened species after the effective date of those revisions would no longer be afforded protective regulations unless we promulgated a

species-specific rule (84 FR 44753). Between that rule’s effective date in September 2019 and early May 2023, we listed or reclassified 35 threatened species (27 wildlife and 8 plant species) and finalized associated species-specific rules for each of those species. During that time, there were no newly listed threatened species for which time elapsed between listing and putting in place protective regulations because we finalized species-specific rules concurrently with each final classification action. The vast majority of species-specific rules included the prohibitions afforded to endangered species along with commonly provided exceptions to those prohibitions (e.g., exceptions for activities pertaining to defense of life; salvage and recovery actions by employees of the Service, NMFS, and State natural resource agencies; law enforcement possession). All rules for wildlife species also included tailored exceptions to take prohibitions that allow for take (1) with minimal anticipated negative effects to the species or (2) that was unavoidable and associated with activities that would result in overall beneficial effects to the species. Five rules for plant species included similar regulatory language as language included in prior blanket rules. Three other rules for plant species included additional exceptions.

For every newly listed threatened species, we will determine what section 4(d) protections are appropriate. We anticipate that for some species we will determine that a species-specific rule would be appropriate while for other species we will determine that “blanket rule” protections are appropriate. In the latter instances, we conclude for two primary reasons that it would be preferable to apply section 9 prohibitions similar to our longstanding “blanket rules” that were available prior to the 2019 4(d) rule.

The first reason is biological: We want to prevent declines in the species’ status, and section 4(d) provides that the Secretary shall promulgate regulations that are necessary and advisable to provide for the conservation of the species. Although threatened species are not currently in danger of extinction like endangered species, we have determined those species are likely to become in danger of extinction in the foreseeable future and we have an opportunity to try to prevent that from happening. In furtherance of the conservation purposes of the Act identified in section 2(b), Congress put in place the section 9 prohibitions as an immediate way after listing endangered species to help prevent further declines in the species’ status. The plain

language of section 4(d) indicates that the Secretary may by regulation prohibit acts under section 9, and we have concluded that applying those prohibitions in the “blanket rules” upon the listing of threatened species will similarly help prevent further declines of the species and further the conservation purposes of the Act.

The section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to engage in the following actions:

- With respect to endangered wildlife—take such a species within the United States or on the high seas; or possess, sell, deliver, carry, transport, or ship any such species that has been taken illegally;
- With respect to endangered plants—remove and reduce to possession, or maliciously damage or destroy, any such plants from areas under Federal jurisdiction; or remove, cut, dig up, or damage or destroy such plants on any other area in knowing violation of any State law or regulation in the course of violating any State criminal trespass law; or
- With respect to endangered fish or wildlife or plants—import or export any such species; deliver, receive, carry, transport, or ship any such species in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any such species (sections 9(a)(1) and 9(a)(2) of the Act; 50 CFR 17.21 and 17.61).

Another aspect of our biological reason to apply section 9 prohibitions similar to our longstanding “blanket rules” is that, for newly listed species, we often lack a complete understanding of the causes of a species’ decline, and taking a precautionary approach to applying protections would proactively address potentially unknown threats. In addition, the initial listing of a species may bring new attention to the species, and that attention may increase the risk of collection or sale. Therefore, we determined that this approach of applying section 9 prohibitions to threatened species under the “blanket rules” assists our goal of putting in place protections that will both prevent the species from becoming endangered and promote the recovery of species. As we learn more about a given species and the reasons for its decline over time, we have the option to establish or revise species-specific rules accordingly.

The second reason for applying the section 9 prohibitions for endangered species to threatened species under a “blanket rule” is a practical reason. For purposes of implementation and enforcement, it is easier to explain and

comprehend threatened species protections if they are modeled after the section 9 prohibitions—with which agency staff and the public are widely familiar. Therefore, rather than craft similar, but slightly different prohibitions for threatened species, we refer directly to endangered species regulations at 50 CFR 17.21 and 17.61, where appropriate, in our “blanket rules” as well as most species-specific rules.

While we propose to include the statutory section 9 prohibitions for threatened species in the “blanket rules,” we also propose to include certain specific exceptions to those prohibitions. These specific exceptions were available in “blanket rules” prior to the 2019 4(d) rule, and we have no reason not to reinstate them. These include existing exceptions for endangered species (e.g., any person may take endangered wildlife in defense of their own life or the lives of others; Federal and State law enforcement officers may possess, deliver, carry, transport, or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties; certain individuals can take wildlife to aid, salvage, or dispose of threatened species). We also propose to reinstate the exceptions for employees or agents of the Service, NMFS, or a State conservation agency operating a conservation program in accordance with section 6(c) of the Act to take threatened species. We also recognize that we need to maintain our ability to tailor take prohibitions or other protections to what is necessary and advisable for a given species. As stated in our 2019 4(d) rule, we have found significant conservation benefits from developing and implementing species-specific rules, such as (1) facilitating implementation of beneficial conservation actions and (2) reducing or otherwise tailoring permitting requirements for prohibited actions (e.g., take) under circumstances that are considered inconsequential to the conservation of the species, which can also make better use of our limited personnel and fiscal resources and reduce regulatory burden. In some cases, we anticipate that we will continue to propose and finalize species-specific rules. However, in other situations, we may find that the suite of protections and exceptions outlined in this proposed rule for threatened species is appropriate. Given this desire to maintain flexibility to do what is best to conserve threatened species, our current preferred approach is to again make the “blanket rule” option

available to apply to newly listed threatened species unless we develop and publish species-specific rules.

The proposed revisions to 50 CFR 17.31(a) and 17.71(a) in the rule portion of this document include all protections and exceptions for threatened wildlife and plant species and an explanation that these provisions apply unless we develop a species-specific rule for that species. When we find that the suite of protections and exceptions at proposed §§ 17.31(a) or 17.71(a) is appropriate for a given species, we would state so in the preamble of the proposed and final rule listing a species as threatened, and we would not develop any additional regulatory text that would appear as a species-specific rule (e.g., at 50 CFR 17.40 through 17.48). This approach would result in less confusion, less duplication of regulatory text in the Code of Federal Regulations, a lower risk of error in transposing regulatory text, and reduced administrative costs associated with developing and publishing a rule in the **Federal Register** and Code of Federal Regulations.

The statute does not require us to make a finding that our decision to apply, or not to apply, specific section 9 prohibitions to a threatened species is necessary and advisable to provide for the conservation of the species (*In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds*, 515 U.S. 687 (1995)). Nevertheless, to be as transparent as possible, we explain below why applying our regulatory text at proposed §§ 17.31(a) and 17.71(a) is, as a whole, necessary and advisable to provide for the conservation of threatened species unless a species-specific rule is developed (see the section below titled *Necessary and Advisable Determination*). Similarly, in circumstances in which we develop a species-specific rule, we will explain why the species-specific rule, as a whole, satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of that species. Further, when we develop species-specific rules, the explanation must stand on its own based on the information that we have on that particular species and our understanding of its threats; therefore, for newly listed threatened species, we will not compare or contrast the protections at §§ 17.31(a) or 17.71(a) with any of the individual proposed species-specific protective regulations. If this proposal is finalized, the final

regulations will not require the reevaluation of any prior species-specific rules or prior use of §§ 17.31(a) or 17.71(a) for species without species-specific rules. All of the proposed relevant regulatory changes, if finalized, would apply to future actions that may impact threatened species.

Differences With NMFS

In our August 27, 2019, final rule revising the “blanket rules” (84 FR 44753), we explained that going forward we would promulgate species-specific rules for particular species, which is the process NMFS uses. As discussed above, we have reconsidered that approach during our review of our 2019 4(d) rule in accordance with E.O. 13990. We now find our prior approach of having the option of the “blanket rule” is preferable. We recognize that after reinstatement of the general application of the “blanket rule” option with the continued option to craft species-specific rules, our approach to implementing section 4(d) of the Act will again differ from NMFS’ approach. However, many efficiencies can be gained through invoking the “blanket rules” as opposed to promulgating species-specific rules in all instances, and this is particularly important based upon the sheer number of species we have listed as threatened species as compared to NMFS. Given that our agencies applied these different approaches for over 40 years, and we do not have any evidence to suggest there was confusion resulting from this difference, we do not find a risk of increased confusion of reverting to these differing approaches.

In addition, having an approach that differs from NMFS’ approach does not mean that either one is unreasonable. Each agency makes policy choices that best further the purposes of the Act for the species within its jurisdiction. As we have stated before (*i.e.*, 87 FR 43433, July 21, 2022), in some situations it may make sense for the Service and NMFS to apply their own regulations for implementing the Act. We conclude that this is one of those situations.

New Exceptions for Tribes

We propose revisions to 50 CFR 17.31 and 17.71 to extend to federally recognized Tribes the ability currently afforded to the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species. The longstanding policy of the Department of the Interior (DOI) has been to carry out responsibilities under the Act and other statutes in harmony with the Federal trust responsibility to Tribes and to strive to ensure that

Indian Tribes do not bear a disproportionate burden for the conservation of listed species (DOI S.O. 3206 1997). Because of the unique government-to-government relationship between Indian Tribes and the United States, DOI prioritizes effective working relationships and mutual partnerships to promote the conservation of sensitive species (including candidates, species proposed for listing, and listed species) and the health of ecosystems upon which they depend. The proposed changes to the threatened species protective regulations are a recognition that Tribes are governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage and control their natural resources. Further, S.O. 3206 envisioned that, when the Service exercises regulatory authority for threatened species under section 4(d) of the Act, we would strive to avoid or minimize effects on Tribal management or economic development, or the exercise of reserved Indian fishing, hunting, gathering, or other rights, to the maximum extent allowed by law.

In addition to the DOI-specific guidance on coordination with the Tribes, a number of recent memoranda and Executive orders describe the commitment of the U.S. Government to strengthening the relationship between the Federal Government and Tribal Nations and to advance equity for Indigenous people, including Native Americans, Alaska Natives, Native Hawaiians, and Indigenous peoples of the U.S. Territories. These include the Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (86 FR 7491, Jan. 29, 2021); Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009, Jan. 25, 2021); Executive Order 14031: Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders (86 FR 29675, June 3, 2021); and Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making (Nov. 15, 2021). The commitments described in these recent Executive orders and memoranda include ensuring that Federal agencies conduct regular, meaningful, and robust consultation with Tribal officials in the development of Federal research, policies, and decisions, especially decisions that may affect Tribal Nations and the people they represent. Specifically, the November 15, 2021, memorandum on Indigenous knowledge states that Tribes

and Indigenous peoples have unique knowledge and information that should be recognized in the Federal decision-making process. The proposed revisions to the threatened species regulations recognize the merit of allowing any employee or agent of a federally recognized Tribe, who is designated by the Tribe for such purpose, to be able to aid injured or diseased wildlife or plants or dispose of dead individuals without permits. We consider the failure to extend this exception to federally recognized Tribes in the past to be an error of omission rather than commission and that, consistent with various Executive orders, Secretary's orders, and memoranda, we are now proposing to extend this exception to Tribes in recognition of their authority and expertise in managing natural resources on Tribal lands.

Corrections and Clarifications

In addition to the proposed revisions above, we are also proposing revisions in 50 CFR 17.21, 17.31, 17.61, and 17.71. These proposed changes are intended to improve readability, increase consistency among sections, provide alignment with the Act, and correct other inaccuracies.

We propose updating our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988 (16 U.S.C. 1538(a)(2)(B); Act section 9(a)(2)(B), Pub. L. 100–478 (Oct. 7, 1988)). The House Report at the time concluded that the amendments were necessary because, without them, “anyone [could] pick, dig up, cut or destroy an endangered plant with impunity” unless it was committed on an area under Federal jurisdiction and removed from that area (H. Rept. No. 100–467 (Dec. 7, 1987)). To ensure that the regulations conform to the statutory language regarding prohibitions for endangered plants, we are proposing to add a provision that also makes it unlawful to: (a) “maliciously damage or destroy” an endangered plant species on an area under Federal jurisdiction; or (b) “remove, cut, dig up, or damage or destroy” an endangered plant species on any area that is not under Federal jurisdiction in knowing violation of a State law or regulation or in the course of violating a State criminal trespass law.

We also propose language at §§ 17.31(c) and 17.71(c) to make it clear that the provisions that allow the Service to issue permits for certain activities that are otherwise prohibited (§§ 17.32 and 17.72), as well as the provisions that provide exceptions for certain individuals to aid, salvage, or

dispose of threatened species and to take threatened species in the course of carrying out conservation programs for listed species (§§ 17.31(b) and 17.71(b)), always apply to threatened species, unless specifically prohibited in a species-specific rule. We have always intended for these provisions to apply to threatened species as appropriate and did not intend to require every species-specific rule to spell out these provisions. We anticipate these provisions would generally be similar or identical for most species, so applying these provisions unless a species-specific rule provides otherwise would likely avoid substantial duplication.

We also propose modifications to these sections to state clearly that the species-specific rule will include all applicable prohibitions and “any additional” exceptions to highlight that these exceptions always apply unless otherwise specified. We propose similar revisions at § 17.72 to clearly state that the permitting provisions for threatened plant species apply unless expressly prohibited in a species-specific rule. This provision was already clear at § 17.32 for threatened species of wildlife; therefore, this proposed change would align our approach for plants with the provision for wildlife.

We also propose minor edits (*e.g.*, to correct errors in citations and addresses) in 50 CFR 17.21, 17.31, 17.61, and 17.71. For example, we propose to update prohibitions and exceptions regarding take of federally listed migratory birds to align the 50 CFR part 17 regulations with changes previously made at 50 CFR part 21. We also propose edits to clarify that take of a threatened species is excepted for the Service and NMFS independent of the section 6 provision. To provide greater clarity and specificity, we also propose replacing the phrase “special rule” with “species-specific rule” in several locations in 50 CFR part 17.

Necessary and Advisable Determination

Section 4(d) provides two separate authorities. First, the Secretary “shall” issue whatever regulations they deem necessary and advisable for the conservation of any threatened species. Second, the Secretary “may” choose to prohibit for a threatened species any of the activities that section 9 prohibits for endangered species.

The first sentence has two components: a requirement (to issue regulations for threatened species, if there are any that meet the standard) and a standard (that the regulations be necessary and advisable to provide for the conservation of the species). Thus, we must determine what regulations, if

any, are necessary and advisable to provide for the conservation of the species, and if so, promulgate them. We interpret the statutory language (“necessary and advisable to provide for the conservation of the species”) to focus the standard for 4(d) rules on providing for the conservation of the species. Therefore, within that context we have interpreted the “necessary and advisable” language to establish a single standard, and we do not attempt to evaluate or make independent findings as to whether a 4(d) rule is separately “necessary” and “advisable.” This interpretation was upheld by the court in *In re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 234 (D.D.C. 2011) (referring to “Congress’s broad delegation of authority to the Secretary to determine what measures are necessary and advisable to provide for the conservation of threatened species”). If this proposal is finalized, for threatened species that use the blanket rules found at 50 CFR 17.31(a) and 17.71(a), we will not make necessary and advisable determinations for the use of those blanket rules in future proposed or final listing rules. Rather, we explain here why use of the blanket rules is necessary and advisable to provide for the conservation of threatened species unless we have issued a species-specific rule for a given species (for species-specific rules, we will continue to include the rationale for why as a whole it is necessary and advisable to provide for the conservation of the species that is the subject of the rule, as has been our past practice).

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act provides a specific list of prohibitions for endangered species under section 9, but the Act does not provide these same prohibitions to threatened species. Therefore, when we conduct a rulemaking action to list a species as threatened, we recognize that the species is likely within the foreseeable future to become at risk of extinction, and we will either promulgate a species-specific rule to establish regulations to provide for the conservation of the species or the species will be afforded protections under the “blanket rules” at §§ 17.31(a) or 17.71(a), as was the case for species listed prior to September 26, 2019.

The second source of authority in section 4(d) states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or 9(a)(2), in the case of plants. The use of the word “may,” along with the absence of any specific standards, in the second sentence grants us particularly broad discretion to put in place for threatened species any of the prohibitions that section 9 contains for endangered wildlife and plants. These prohibitions make it illegal for any person subject to the jurisdiction of the United States to engage in the following actions:

- With respect to endangered wildlife—take such a species within the United States or on the high seas; or possess, sell, deliver, carry, transport, or ship any such species that has been taken illegally;
- With respect to endangered plants—remove and reduce to possession, or maliciously damage or destroy, any such plants from areas under Federal jurisdiction; or remove, cut, dig up, or damage or destroy such plants on any other area in knowing violation of any State law or regulation in the course of violating any State criminal trespass law; or
- With respect to endangered fish or wildlife or plants—import or export any such species; deliver, receive, carry, transport, or ship any such species in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any such species (sections 9(a)(1) and 9(a)(2) of the Act; 50 CFR 17.21 and 17.61).

The statute does not require us to make a finding that our decision to apply, or not to apply, specific section 9 prohibitions to a threatened species is necessary and advisable to provide for the conservation of the species. However, we think it is most transparent if in this proposed rule we describe our rationale for why the regulatory texts that we are proposing at §§ 17.31(a) and 17.71(a) (“blanket rules”) are, as a whole, necessary and advisable to provide for the conservation of threatened species.

For all the reasons we described in this and the previous sections above, we propose to find, even though we are not required to do so, that the blanket rules are necessary and advisable to apply to a threatened species unless we issue a species-specific rule for that species. Section 4(d) of the Act indicates that the Secretary may by regulation prohibit acts under section 9, and we have concluded that applying those prohibitions immediately upon the

listing of threatened species in many circumstances will similarly help prevent further declines of the species and further the conservation purposes of the Act. In addition, we often lack a complete understanding of the cause of a species’ decline, and affording a threatened species protections that are similar to the protections for an endangered species follows basic conservation principles to attempt to prevent further declines of the species. We have also found that it is easier to explain and comprehend most species’ protective regulations for purposes of implementation and enforcement if they are modeled after the section 9 prohibitions—with which agency staff and the public are widely familiar. Providing all of the common exceptions to threatened species afforded protections under a “blanket rule” also helps to conserve the species by incentivizing conservation through reducing unneeded permitting (e.g., to allow take associated with aiding injured wildlife).

Implementation

Pursuant to section 10(j) of the Act, members of experimental populations are generally treated as threatened species; and pursuant to 50 CFR 17.81, experimental populations are designated through population-specific regulations found in §§ 17.84 through 17.86. Under our existing practice, each population-specific regulation contains all of the applicable prohibitions, along with any exceptions to prohibitions, for that experimental population. All of the relevant changes associated with this proposed rulemaking would similarly change existing species-specific rules for experimental populations that include references to 50 CFR 17.21, 17.31, 17.61, or 17.71.

Additional Exception Under Consideration

In addition to the proposed regulatory revisions described above, we are also considering including an additional provision in §§ 17.31(b) and 17.71(b) that would extend exceptions to the prohibitions to certain individuals from federally recognized Tribes for take associated with conservation-related activities. These exceptions to prohibitions for threatened species are already afforded to employees or agents of the Service, NMFS, States, and other agencies. Adding this exception to the general prohibitions for threatened species may be appropriate and would better align with our longstanding policy because it would demonstrate DOI and Service recognition of federally recognized Tribes as discussed above

(see the section above titled *New Exceptions for Tribes*). This potential change would recognize the management efforts and expertise, including Indigenous Knowledge, that federally recognized Tribes bring to conservation of threatened species.

Therefore, we are soliciting comments on the following additional text that we are considering for inclusion in § 17.31(b): “Notwithstanding § 17.21(c)(1) and unless otherwise specified, any employee or agent of the Service or NMFS, of a federally recognized Tribe’s natural resource agency undertaking conservation activities in accordance with an approved cooperative agreement with the Service that covers that threatened species of wildlife, or of a State conservation agency that is operating a conservation program pursuant to the terms of an approved cooperative agreement with the Service that covers the threatened species of wildlife in accordance with section 6(c) of the Act, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take those species.”

We are also soliciting comments on the following additional text that we are considering for inclusion in § 17.71(b): “Notwithstanding § 17.61(c)(1) and unless otherwise specified, any employee or agent of the Service, of a federally recognized Tribe’s natural resource agency undertaking conservation activities in accordance with an approved cooperative agreement with the Service that covers the threatened species of plant, or of a State conservation agency that is operating a conservation program pursuant to the terms of an approved cooperative agreement that covers the threatened species of plant with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those species.”

These potential regulatory changes would allow Tribes to conduct conservation-related activities without a permit under the Act but would not remove any requirements for Tribes to receive any other applicable authorizations from the appropriate Federal land manager (e.g., U.S. Forest Service special-use permits) or permits from a State natural resource agency for situations in which the activity occurs outside of lands owned and managed by the Tribe. In addition, if we finalize regulations with the exceptions set forth above, nothing would require Tribes to

change their past practices for compliance with the Act.

We request information and comments from Tribes and other members of the public on the following issues:

- The current regulatory burden to federally recognized Tribes to apply for and receive permits for conservation actions for threatened species and the extent to which extending this exception to federally recognized Tribes would alleviate that burden.
- Whether federally recognized Tribes would view this type of exception as helpful or desirable.
- Whether the inclusion of this exception in “blanket rules” is consistent with the conservation purposes of the Act.
- Whether we should require cooperative agreements with federally recognized Tribes to provide the exception for conservation-related activities and how we should determine the scope of such exceptions.
- Whether the phrase “employee or agent” of a Tribe’s “natural resource agency” is the best way to describe the organizational or functional role of individuals who would be designated by a federally recognized Tribe for conservation purposes.
- Whether this change that we are considering would have a significant effect on the human environment.

Based upon the comments we receive, we may finalize the language exactly as written above, we may finalize a revised version of the language under consideration, or we may decide not to finalize this provision.

Public Comments

We are seeking comments from all interested parties on the specific revisions we are proposing or considering, including on whether reinstating the “blanket rules” as a whole with the additional exception we are considering for federally recognized Tribes, is necessary and advisable to provide for the conservation of threatened species, as well as on any of our analyses or preliminary conclusions in the Required Determinations section of this document. We will consider all relevant information prior to issuing a final rule. Depending on the comments received, we may change the proposed regulations based upon those comments.

You may submit your comments concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Comments sent by any other method, to any other address or individual, may not be considered. Comments must be

submitted to <https://www.regulations.gov> before 11:59 p.m. (eastern time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive by, or mailed comments that are not postmarked by, the date specified in **DATES**.

Comments and materials we receive will be posted and available for public inspection on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is significant.

Executive Order 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, including with the requirement of retrospective analysis of existing rules, designed “to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

We are proposing revisions to portions of the implementing regulations at 50 CFR part 17. The preamble to this proposed rule details how the regulatory changes we are

proposing will improve the implementation of the Act.

The proposed revisions to 50 CFR 17.31 and 17.71 reinstate the general application of the “blanket rule” option for protecting newly listed threatened wildlife and plant species, respectively, pursuant to section 4(d) of the Act. The proposal retains the continued option to promulgate species-specific rules.

When we removed the “blanket rule” options in 2019, we compiled certain historical data regarding the numbers of threatened wildlife and plant species that the Service listed and the number of species-specific rules that we had adopted each year between 1997 and 2018 (the analysis timeframe) in an effort to describe for OMB and the public the potential effects of those regulations (on <https://www.regulations.gov>, see Supporting Document No. FWS-HQ-ES-2018-0007-69539 of Docket No. FWS-HQ-ES-2018-0007).

If we reinstate the “blanket rules,” we anticipate that in some cases we will continue to propose and finalize species-specific rules that are designed to meet the specific conservation needs of species. However, in other situations, we may find that the standard suite of protections and exceptions for threatened species in the blanket rule is appropriate. Because the blanket rule option had been available for over 40 years prior to the 2019 4(d) rule, we do not anticipate any material effects to the process or outcomes as a result of this proposed change. However, because protections and exceptions for threatened species are so highly fact-specific, it is not possible to specify future benefits or costs stemming from the proposed revisions. The updates we are proposing to the endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988 (16 U.S.C. 1538(a)(2)(B); Act section 9(a)(2)(B), Public Law 100-478 (Oct. 7, 1988)) and other minor edits, also referred to as technical corrections (e.g., in 50 CFR 17.8, 17.21, 17.31, 17.61, and 17.71) will improve readability, increase consistency among sections, provide alignment with the Act, and correct other inaccuracies and will not materially change the protections provided to threatened or endangered species or their effects on any potentially regulated entities.

We are also proposing revisions to 50 CFR 17.31 and 17.71 to extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to the Service and other Federal and State agencies to aid,

salvage, or dispose of threatened species. These proposed revisions would reduce the regulatory burden or potential legal risks on Tribes associated with conducting these activities. There may also be cost savings for the Service for reduced permit application processing. We cannot specify the extent to which there may be reduced costs to Tribes associated with permit applications or risk of law enforcement action, as we cannot predict which species may be listed as threatened species, and of those species, which may occur in areas in which federally recognized Tribes may conduct these actions.

The proposed revisions would further the effectiveness of the Service’s program to carry out the statutory mandates for conserving threatened species. There are no identifiable quantifiable effects from the proposed rule. There may be reduced administrative costs for federally recognized Tribes or the Service associated with a potential reduction in permitting. We do not anticipate any material effects such that the rule would have an annual effect that would reach or exceed \$200 million or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or that person’s designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic impact on a substantial number of small entities.

The following discussion explains our rationale.

This rulemaking proposes to revise the Service’s regulations protecting endangered and threatened species under the Act. The changes in this proposed rule are instructive regulations and do not directly affect small entities.

Since the only potential entities directly affected by this proposed regulation change are not small entities, including any small businesses, small organizations, or small governments, we certify that, if adopted as proposed, this rule would not have a significant economic effect on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*): (a) On the basis of information contained in the Regulatory Flexibility Act section above, this proposed rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this proposed rule would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or Tribal governments or the private sector of \$100 million or greater in any year; that is, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or Tribal governments.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This proposed rule would not directly affect private property, nor would it cause a physical or regulatory taking. It would not result in a physical taking because it would not effectively compel a property owner to suffer a physical invasion of property. Further, the proposed rule would not result in a regulatory taking because it would not deny all economically beneficial or productive use of the land or aquatic resources and it would substantially advance a legitimate government interest (conservation and recovery of

endangered species and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with E.O. 13132, we have considered whether this proposed rule would have significant federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to the Service's protective regulations for endangered and threatened species promulgated under the Act and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988. This proposed rule would revise the Service's regulations for protecting species pursuant to the Act.

Government-to-Government Relationship With Tribes

In accordance with E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior's manual at 512 DM 2, we are considering possible effects of this proposed rule on federally recognized Indian Tribes. The Service has reached a preliminary conclusion that the changes to these implementing regulations do not directly affect specific species or Tribal lands. This proposed rule would revise regulations for protecting endangered and threatened species pursuant to the Act. The only provision in these proposed regulations that could appear to have an effect on Tribes is the exception to aid, salvage, or dispose of threatened species. However, the inclusion of this exception does not require any Tribe to do anything or change their management practices. Further, we are not changing the relationship between the Service and Tribes. The proposed provision simply provides a new mechanism for compliance with the Act. These proposed regulations would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

We are considering the possible effects of this proposed rule on federally recognized Indian Tribes. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. See Secretaries' Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997).

Paperwork Reduction Act

This proposed rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (45 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with permitting and reporting requirements and assigned OMB Control Number 1018-0094 (expires 01/31/2024). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are analyzing this proposed rule in accordance with the criteria of the NEPA (42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10-46.450), and the Department of the Interior Manual (516 DM 8). We invite the public to comment on the extent to which this proposed rule may have a significant impact on the human environment or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment that would require further analysis under NEPA. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Endangered Species Act

In developing this proposed rule, the Service is acting in our unique statutory role as administrator of the Act and is engaged in a legal exercise of interpreting the standards of the Act. The Service's promulgation of interpretive rules that govern our implementation of the Act is not an action that is in itself subject to the Act's provisions, including section 7(a)(2). The Service has a historical practice of issuing our general implementing regulations under the Act without undertaking section 7 consultation. Given the plain language,

structure, and purposes of the Act, we find that Congress never intended to place a consultation obligation on the Service's promulgation of implementing regulations under the Act. In contrast to actions in which we have acted principally as an "action agency" in implementing the Act to propose or take a specific action (*e.g.*, issuance of section 10 permits and actions under statutory authorities other than the Act), here, the Service is carrying out an action that is at the very core of our unique statutory role as administrator—promulgating general implementing regulations interpreting the terms and standards of the statute.

As stated above, some of the proposed regulatory changes would result in minor changes to protections for currently listed threatened species that were protected under prior versions of the "blanket rules" or under a species-specific rule. To the extent that section 7 may apply to any of these proposed changes, we will undertake any section 7 analysis as appropriate before finalizing these changes.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. The proposed revised regulations are not expected to affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you believe are unclearly written, identify any sections or sentences that you believe are too long, and identify the sections

where you believe lists or tables would be useful.

Authority

We issue this rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

Subpart A—Introduction and General Provisions

■ 2. Amend § 17.8 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 17.8 Import exemption for threatened, CITES Appendix-II wildlife.

(a) Except as provided in a species-specific rule in §§ 17.40 through 17.48 or in paragraph (b) of this section, all provisions of §§ 17.31 and 17.32 apply to any specimen of a threatened species of wildlife that is listed in Appendix II of the Convention.

(b) Except as provided in a species-specific rule in §§ 17.40 through 17.48, any live or dead specimen of a fish and wildlife species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided all of the following conditions are met:

* * * * *

Subpart C—Endangered Wildlife

■ 3. Amend § 17.21 by revising paragraphs (c) and (d) to read as follows:

§ 17.21 Prohibitions.

* * * * *

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

territorial sea of another country, under international law.

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

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured, or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen that may be useful for scientific study; or

(iv) Remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed in an appropriate area.

(4) Any taking under paragraphs (c)(2) and (3) of this section must be reported in writing to the Office of Law Enforcement via contact methods listed at www.fws.gov, within 5 calendar days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by their agency for such purposes may, when acting in the course of their official duties take those endangered species that are covered by an approved cooperative agreement for conservation programs in accordance with the cooperative agreement, provided that such taking is not reasonably anticipated to result in:

(i) The death or permanent disabling of the specimen;

(ii) The removal of the specimen from the State where the taking occurred;

(iii) The introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or

(iv) The holding of the specimen in captivity for a period of more than 45 consecutive days.

(6) Notwithstanding paragraph (c)(1) of this section, any person acting under a valid migratory bird rehabilitation

permit issued pursuant to § 21.76 of this subchapter may take endangered migratory birds without an endangered species permit if such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee is adhering to the conditions of the migratory bird rehabilitation permit.

(7) Notwithstanding paragraph (c)(1) of this section and consistent with § 21.76(a) of this subchapter:

(i) Any person who finds a sick, injured, or orphaned endangered migratory bird may, without a permit, take and possess the bird in order to immediately transport it to a permitted rehabilitator; and

(ii) Persons exempt from the permit requirements of § 21.12(b)(2) and (c) of this subchapter may take sick and injured endangered migratory birds without an endangered species permit in performing the activities authorized under § 21.12(b)(2) and (c) of this subchapter.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife that was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane, an endangered species, in Texas and gives it to a second person, who puts it in a closed van and drives 30 miles to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three people have violated the law: the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport, or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(3) Notwithstanding paragraph (d)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.76 of this subchapter may possess and transport endangered migratory birds without an endangered species permit when such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee is adhering to the conditions of those permits.

(4) Notwithstanding paragraph (d)(1) of this section, and consistent with § 21.76(a) of this subchapter, persons

exempt from the permit requirements of § 21.12(b)(2) and (c) of this subchapter may possess and transport sick and injured endangered migratory bird species without an endangered species permit in performing the activities authorized under § 21.12(b)(2) and (c) of this subchapter.

* * * * *

Subpart D—Threatened Wildlife

■ 4. Revise § 17.31 to read as follows:

§ 17.31 Prohibitions.

(a) Except as provided in §§ 17.4 through 17.8, or in a permit issued pursuant to § 17.32, the provisions of paragraph (b) of this section and all of the provisions of § 17.21 (for endangered species of wildlife) except § 17.21(c)(3) and (5) apply to threatened species of wildlife, unless the Secretary has promulgated species-specific provisions (see paragraph (c) of this section).

(b)(1) Notwithstanding § 17.21(c)(1), and unless otherwise specified, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, a State conservation agency, or a federally recognized Tribe, who is designated by their agency or Tribe for such purposes, may, when acting in the course of their official duties, take threatened wildlife without a permit if such action is necessary to:

- (i) Aid a sick, injured or orphaned specimen; or
- (ii) Dispose of a dead specimen; or
- (iii) Salvage a dead specimen that may be useful for scientific study; or
- (iv) Remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in an appropriate area.

(2) Any taking under paragraph (b)(1) of this section must be reported in writing to the Office of Law Enforcement, via contact methods listed at www.fws.gov, within 5 calendar days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

(3) Notwithstanding § 17.21(c)(1), and unless otherwise specified, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of an approved cooperative agreement with the Service

that covers the threatened species of wildlife in accordance with section 6(c) of the Act, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take those species.

(c) For threatened species of wildlife that have a species-specific rule in §§ 17.40 through 17.48, the provisions of paragraph (b) of this section and § 17.32 apply unless otherwise specified, and the species-specific rule will contain all of the prohibitions and any additional exceptions that apply to that species.

■ 5. Amend § 17.32 by revising the undesignated introductory text to read as follows:

§ 17.32 Permits—general.

Upon receipt of a complete application, the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. The permit shall be governed by the provisions of this section unless a species-specific rule applicable to the wildlife and set forth in §§ 17.40 through 17.48 of this part provides otherwise. A permit issued under this section must be for one of the following purposes: scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

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■ 6. Amend § 17.40 by revising the section heading to read as follows:

§ 17.40 Species-specific rules—mammals.

■ 7. Amend § 17.41 by revising the section heading to read as follows:

§ 17.41 Species-specific rules—birds.

■ 8. Amend § 17.42 by revising the section heading to read as follows:

§ 17.42 Species-specific rules—reptiles.

■ 9. Amend § 17.43 by revising the section heading to read as follows:

§ 17.43 Species-specific rules—amphibians.

■ 10. Amend § 17.44 by revising the section heading to read as follows:

§ 17.44 Species-specific rules—fishes.

■ 11. Amend § 17.45 by revising the section heading to read as follows:

§ 17.45 Species-specific rules—snails and clams.

■ 12. Amend § 17.46 by revising the section heading to read as follows:

§ 17.46 Species-specific rules—crustaceans.

■ 13. Amend § 17.47 by revising the section heading to read as follows:

§ 17.47 Species-specific rules—insects.

§ 17.48 [Removed and Reserved]

■ 14. Remove and reserve § 17.48.

Subpart F—Endangered Plants

■ 15. Amend § 17.61 by revising paragraphs (a), (b), and (c) to read as follows:

§ 17.61 Prohibitions.

(a) *General prohibitions.* Except as provided in a permit issued pursuant to § 17.62 or § 17.63, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (b) through (e) of this section in regard to any endangered plant.

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

(c) *Remove and reduce to possession.* (1) It is unlawful to remove and reduce to possession any endangered plant from an area under Federal jurisdiction; maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

(2) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by their agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession endangered plants from areas under Federal jurisdiction without a permit if such action is necessary to:

- (i) Care for a damaged or diseased specimen;
- (ii) Dispose of a dead specimen; or
- (iii) Salvage a dead specimen that may be useful for scientific study.

(3) Any removal and reduction to possession pursuant to paragraph (c)(2) of this section must be reported in writing to the Office of Law Enforcement, via contact methods listed at www.fws.gov within 5 calendar days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

(4) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by their agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those endangered plants that are covered by an approved cooperative agreement for conservation programs in accordance with the cooperative agreement, provided that such removal is not reasonably anticipated to result in:

(i) The death or permanent damage of the specimens;

(ii) The removal of the specimen from the State where the removal occurred; or

(iii) The introduction of the specimen so removed, or of any propagules derived from such a specimen, into an area beyond the historical range of the species.

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Subpart G—Threatened Plants

■ 16. Revise § 17.71 to read as follows:

§ 17.71 Prohibitions.

(a) Except as provided in a permit issued pursuant to § 17.72, the provisions of paragraph (b) of this section and all of the provisions of § 17.61, except § 17.61(c)(2) through (4), apply to threatened species of plants, unless the Secretary has promulgated species-specific provisions (see paragraph (c) of this section), with the following exception: Seeds of cultivated specimens of species treated as threatened are exempt from all the provisions of § 17.61, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container during the course of any activity otherwise subject to the regulations in this subpart.

(b)(1) Notwithstanding § 17.61(c)(1) and unless otherwise specified, any employee or agent of the Service, any other Federal land management agency, federally recognized Tribe, or a State conservation agency, who is designated by their agency or Tribe for such purposes, may, when acting in the course of official duties, remove and reduce to possession threatened plants from areas under Federal jurisdiction without a permit if such action is necessary to:

(i) Care for a damaged or diseased specimen;

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen that may be useful for scientific study.

(2) Any removal and reduction to possession pursuant to paragraph (b)(1) of this section must be reported in writing to the Office of Law Enforcement, via contact methods listed at www.fws.gov, within 5 calendar days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

(3) Notwithstanding § 17.61(c)(1) and unless otherwise specified, any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of an approved cooperative agreement with the Service that covers the threatened species of plants in accordance with section 6(c) of the Act, who is designated by their agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those species.

(c) For threatened species of plants that have a species-specific rule in §§ 17.73 through 17.78, the provisions of paragraph (b) of this section and § 17.72 apply unless otherwise specified, and the species-specific rule will contain all the prohibitions and any additional exceptions that apply to that species.

■ 17. Amend § 17.72 by revising the undesignated introductory paragraph to read as follows:

§ 17.72 Permits—general.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened plants. The permit shall be governed by the provisions of this section unless a species-specific rule applicable to the plant and set forth in §§ 17.73 through 17.78 of this part provides otherwise. A permit issued under this section must be for one of the following: scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act. Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specified period of time.

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■ 18. Amend § 17.73 by revising the section heading to read as follows:

§ 17.73 Species-specific rules—flowering plants.

■ 19. Amend § 17.74 by revising the section heading to read as follows:

§ 17.74 Species-specific rules—conifers and cycads.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. FWS–HQ–ES–2021–0104; FXES114090FEDR–234–FF09E300000; Docket No. NMFS–230607–0143]

RIN 1018–BF96; 0648–BK48

Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: We, FWS and NMFS (collectively referred to as the “Services” or “we”), propose to amend portions of our regulations that implement section 7 of the Endangered Species Act of 1973, as amended. The Services are proposing these changes to further clarify and improve the interagency consultation processes, while continuing to provide for the conservation of listed species.

DATES: We will accept comments from all interested parties until August 21, 2023. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. eastern time on that date.

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–HQ–ES–2021–0104, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment.”