



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

WESTERN RIVERSIDE COUNTY MSHCP PERMITTEES
(SEE ATTACHMENT A)

2. AUTHORITY-STATUTES
16 USC 1539(a)
16 USC 1533(d)
16 USC 703-712
16 USC 668-668(d)
REGULATIONS (Attached)
50 CFR 17.22
50 CFR 17.32
50 CFR 21.23 & 21.27
50 CFR 13

3. NUMBER
TE088609-0

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE
6/22/2004

7. EXPIRES
6/22/2079

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

9. TYPE OF PERMIT
THREATENED AND ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
Western Riverside County, California: within the MSHCP Plan Area as depicted on maps and described in the MSHCP.

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

- | | | | | |
|------|----|-----------------------|----|--|
| C.1. | a. | Riverside County | p. | CALTRANS |
| | b. | City of Banning | q. | California State Parks |
| | c. | City of Beaumont | r. | Riverside County Flood Control and Water Conservation District |
| | d. | City of Calimesa | s. | Riverside County Regional Park and Open-Space District |
| | e. | City of Canyon Lake | t. | Riverside County Transportation Commission |
| | f. | City of Corona | u. | Riverside County Waste Resources Management District |
| | g. | City of Hemet | v. | Regional Conservation Authority |
| | h. | City of Lake Elsinore | | |
| | i. | City of Moreno Valley | | |
| | j. | City of Murrieta | | |
| | k. | City of Norco | | |
| | l. | City of Perris | | |
| | m. | City of Riverside | | |
| | n. | City of San Jacinto | | |
| | o. | City of Temecula | | |

D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY
Michelle B. Fri

TITLE *Acting*
DEPUTY MANAGER, CALIFORNIA/NEVADA OPERATIONS OFFICE

DATE
6/22/2004

- a. Roy Wilson, Chairman
Board of Supervisors
Riverside County
4080 Lemon Street, 5th Floor
Riverside, California 92501
- b. Arthur L. Welch, Mayor
City of Banning
99 E. Ramsey Street
Banning, California 92220
- c. Larry Dressel, Mayor
City of Beaumont
Civic and Community Center
550 East 6th Street
Beaumont, California 92223
- d. Shenna Moqheet, Mayor
City of Calimesa
908 Park Avenue
Calimesa, California 92320
- e. John Zaitz, Mayor
City of Canyon Lake
31516 Railroad Canyon Road
Canyon Lake, California 92587
- f. Jeff Miller, Mayor
City of Corona
815 West Sixth Street
Corona, California 92882-3238
- g. Lyle Alberg, Mayor
City of Hemet
445 E. Florida Avenue
Hamet, California 92543
- h. Thomas Buckley, Mayor
City of Lake Elsinore
130 S. Main Street
Lake Elsinore, California 92530
- i. Frank West, Mayor
City of Moreno Valley
14177 Frederick Street
Moreno Valley, California 92552
- j. Jack van Haaster, Mayor
City of Murrieta
26442 Beckman Court
Murrieta, California 92562
- k. Frank Hall, Mayor
City of Norco
2870 Clark Avenue
Corona, California 92860
- l. Daryl Busch, Mayor
City of Perris
101 North D. Street
Perris, California 92570
- m. Ronald Loveridge, Mayor
City of Riverside
3900 Main Street
Riverside, California 92522
- n. Jim Ayres, Mayor
City of San Jacinto
201 East Mail Street
San Jacinto, California 92583
- o. Michael S. Nagger, Mayor
City of Temecula
43200 Business Park Drive
Temecula, California 92590
- p. Anne Mayer, District Director
CALTRANS
District 8, MS1201
464 W. Fourth Street, 6th Floor
San Bernardino, California 92401-1400

- q. Ruth Colman, Director
California State Parks
1416 9th Street, Room 1405
Sacramento, California 95814
- r. Warren D. Williams, General Manager
Riverside County Flood Control and Water
Conservation District
1995 Market Street
Riverside, California 92501
- s. Paul Frandsen, General Manager
Riverside County Regional Park and
Open-Space District
4600 Crestmore Road
Riverside, California 92509-6858
- t. Eric Haley, Executive Director
Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, California 92502
- u. Hans KenKamp, General Manager
Riverside County Waste Resources
Management District
14310 Frederick Street
Moreno Valley, California 92553
- v. Carolyn Syms-Luna, General Manager
Western Riverside County Regional
Conservation Authority
4080 Lemon Street, 12th Floor
Riverside, California 95201

Special Terms and Conditions for Permit TE-088609-0
U.S. Fish and Wildlife Service, Carlsbad, California

1. All sections of Title 50 *Code of Federal Regulations*, parts 13, 17.22, and 17.32 are conditions of this Permit. The current version of these regulations is provided in Attachment 1.
2. The authorization granted by this Permit is subject to compliance with, and implementation of the Final Western Riverside County Multiple Species Habitat Conservation Plan/ Natural Community Conservation Plan (MSHCP), dated June 17, 2003, errata letter to MSHCP from the County of Riverside dated May 21, 2004, and executed Implementing Agreement all of which are hereby incorporated into this Permit. In the event of a discrepancy, the special terms and conditions of this permit included herein, the IA, and MSHCP, including its associated volumes (exclusive of the IA) and the errata letter to MSHCP from the County of Riverside dated May 21, 2004, are the controlling documents in the above order regarding the conditions and authorizations of this permit.
3. The Permittees, Agricultural Operations and Participating Special Entities that have obtained a certificate of inclusion, and Third Parties Granted Take Authorization under the direct control of the Permittees, are authorized to take the animal species identified in Attachment 2 to this Permit as "Covered Species Adequately Conserved," to the extent that take of these species would otherwise be prohibited under section 9 of the Endangered Species Act of 1973, as amended (ESA), and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the ESA. To become a Covered Species Adequately Conserved, 12 species require that a Memorandum of Understanding be entered into with the U.S. Forest Service, consistent with Section 18.0 of the IA, that addresses management of Forest Service lands within the MSHCP Conservation Area. In order for the remaining 17 species to become Covered Species Adequately Conserved, achievement of species-specific conservation objectives, as identified in Table 9-3 of the MSHCP, must be demonstrated to the satisfaction of the Service.

Take authorization is effective at Permit issuance for those animal species listed as adequately conserved in Attachment 2 that are currently listed under the ESA. For each of the remaining animal species listed as adequately conserved in this attachment that are not listed as threatened or endangered under the Act, this section 10(a)(1)(B) Permit will become effective with respect to such species concurrent with the listing of the species as threatened or endangered under the Act, to the extent that their take is prohibited by the ESA. Take must be incidental to otherwise lawful Covered Activities within the Plan Area as described and defined

in the MSHCP and IA, and as further conditioned herein. The amount and nature of the take is described in the Attachment 3 for each species.

4. Because take of plants is not prohibited under the ESA, incidental take cannot be authorized under this Permit. Plant species included on the Permit in special terms and conditions and in Attachment 2 are named in recognition of the conservation benefits provided for such plants in the MSHCP, IA, and other documents identified in condition 2, and receive those assurances identified in the IA.
5. The following conditions apply to birds:
 - a. Bald eagle and golden eagle - No lethal take is authorized. Take or disturbance of active nests is not authorized. The Service will not refer the incidental take of any bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712) (MBTA), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the terms and conditions specified herein.
 - b. For birds other than the bald eagle and golden eagle, this section 10(a)(1)(B) permit under the ESA also constitutes a Special Purpose Permit under 50 CFR 21.27 for the take, as defined by 50 CFR 10.12, of those Covered Species Adequately Conserved that are listed as threatened or endangered under the Endangered Species Act of 1973, as amended, and protected by the MBTA, except for both eagles. Such Special Purpose Permit shall be valid for a period of 3 years from the effective date, provided the section 10(a)(1)(B) permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that the Permittees continues to fulfill their obligations under this agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 CFR 21.27 or its successor at the time of renewal.

Take, as defined by 50 CFR 10.12, associated with habitat loss for bird species on the list of Covered Species Adequately Conserved (Attachment 2) is avoided or minimized by the restrictions provided in Sections 5.2.1, 7.5.3, and 6.1.2, and Table 9-2 of the MSHCP. In addition, these restrictions shall include the following restrictions and prohibitions for birds included as Covered Species Adequately Conserved (Attachment 2) that are subject to incidental take as defined by 50 CFR 17.3:

- Coastal California gnatcatcher - Clearing of occupied habitat within PQP lands and the Criteria

Area between March 1 and August 15 is prohibited.

- Least Bell's vireo and southwestern willow flycatcher - Avoid occupied habitat pursuant to the species objectives.

Other birds protected by the MBTA and not listed under the ESA - No take is authorized under the MBTA (including the killing and wounding of any such birds, or take of eggs and active nests).

6. Unless take is authorized by the California Department of Fish and Game's Take Authorization for the MSHCP, Fully Protected Species under California Fish and Game Code may not be taken or possessed at any time and no provision of any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected species. The following species are Fully Protected species: bald eagle, golden eagle, peregrine falcon, and white-tailed kite.
7. Where Covered Activities result in the incidental take of Covered Species Adequately Conserved within U.S. Army Corps of Engineers' jurisdictional wetlands or other waters of the United States, or where Covered Activities are federally funded or require a Federal permit or authorization, such incidental take is authorized by this Permit provided that appropriate authorization is first secured from the Corps or any other applicable Federal agency with jurisdiction. Where Covered Activities require formal section 7 consultation under the ESA, exemption for any associated incidental take by the applicable Federal agency(ies) shall be provided through future formal consultation, while authorization for any associated incidental take by the Permittee(s), Third Parties Granted Take Authorization, and Participating Special shall be provided through this Permit. This permit term and condition does not alter the provisions of Section 14.9 of the IA.
8. Because the Management and Monitoring activities are anticipated to extend beyond the term of the 75-year Permit and pursuant to Section 8.8 of the MSHCP, the Permittees have permanent responsibility for managing the conservation lands in perpetuity. At the end of the 75-year Permit term, the endowment for Adaptive Management shall be maintained in a non-wasting account.
9. The Orange County-Riverside County Corridor, like the Cajalco Road Improvements, State Route 79 Improvements, and San Jacinto River Project, may be a Covered Activity subject to the identified process in the MSHCP for each project and the Minor Amendment Procedure described in Section 20.4.2 of the IA.

10. The intermediate mariposa lily shall be considered a "Species Adequately Conserved" only after the species-specific conservation objectives are achieved.
11. The Permittees shall implement species Objective 1B for the Delhi sands flower-loving fly in accordance with Table 9-2 of the MSHCP. To clarify a potential result of a "meet and confer" with the applicable Local Permittee(s) and Service regarding an occupied project site described in Objective 1B of Table 9-2 of the MSHCP, the language "the Service concurs that such conservation would not contribute to the long-term conservation of the species" is interpreted to mean "the Service determines that the proposed, 75 percent conservation on site would not contribute to the long-term conservation of the species."
12. Consistent with the biological issue and consideration identified in the REMAP Area Plan (Section 3.3.12 of the MSHCP) to conserve undeveloped uplands including agricultural land, annual grassland, and coastal sage scrub that support or provide potential Habitat for Quino checkerspot butterfly, the Regional Conservation Authority (RCA) shall work to conserve the Quino checkerspot butterfly within the Tule Creek/Anza Valley Subunit of the REMAP Area Plan and, if necessary, use the Criteria Refinement Process to achieve this conservation.
13. Reserve Managers, in coordination with the RCA and Reserve Management Oversight Committee (RMOC), shall prepare Reserve Management Plans for each management unit that contains significant Additional Reserve Lands under Local Permittee control. Such plans shall be submitted to the RMOC within 5 years of significant acquisition of Additional Reserve Lands in a management unit.
14. Notwithstanding the authorized incidental take associated with Reserve Management, Monitoring and Scientific Research Activities (section 7.4.1 of the MSHCP), this Permit does not alter any permitting requirements authorized under section 10(a)(1)(A) of the ESA for biologists conducting surveys provided for in the Plan nor does this Permit alter any of the survey protocols associated with such permits.
15. Where management activities associated with vernal pools call for salvage, creation, restoration, or enhancement pursuant to the species-specific management objectives in Table 5-2 of the MSHCP, such efforts involving vernal pool species shall employ the following procedure or an alternative procedure mutually agreed upon with the Service:
 - a. Fairy shrimp pond soil (inoculum) will be collected when it is dry to avoid damaging or destroying fairy shrimp cysts, which are fragile when wet. A hand trowel or similar instrument will be used

to collect the soil. Whenever possible, soil will be collected in chunks. The trowel will be used to pry up intact chunks of soil, rather than loosening the soil by raking and shoveling, which can damage cysts. Soil will not be collected from any ponds until approved by the Service.

- b. The soil from each pond will be stored individually in labeled bags or boxes that are adequately ventilated and kept out of direct sunlight to prevent the occurrence of fungus or excessively heating the soil.
 - c. Inoculum will not be introduced into the created ponds until after the created ponds have been demonstrated to retain water for a minimum 60 days and will be placed in a manner that preserves, to the maximum extent possible, the orientation of the fairy shrimp cysts within the surface layer of soil (*e.g.*, collected inoculum will be shallowly distributed within the pond so that cysts have the potential to be brought into solution upon inundation).
16. This Permit does not authorize the intentional pursuit or killing of animals associated with hunting.
17. The following procedure and analysis shall apply if a Permittee elects to use Public/Quasi-Public Lands within the MSHCP Conservation Area in a way that alters the land use such that it would not contribute to Reserve Assembly:

The Permittee shall make findings that the replacement acreage is biologically equivalent or superior to the existing property. The biological equivalency or superior analysis shall address the effects on habitats, Covered Species, core areas (as identified on the MSHCP Core and Linkage Map), linkages and constrained linkages (as identified on the MSHCP Core and Linkage Map), MSHCP Conservation Area configuration and management (such as increases or decreases in edge), and ecotones (defined as the areas of adjoining Vegetation Communities, generally characterized by greater biological diversity) and other conditions affecting species diversity (such as invasion by exotic species). The Permittees shall submit the equivalency analysis in narrative and graphic form comparing the effects/benefits of the proposed project to the Wildlife Agencies (Service and California Department of Fish and Game) for review and concurrence. Impacts to Habitats within existing Public/Quasi-Public Lands shall be compensated by purchase and dedication into the MSHCP Conservation Area of land of no less than a ratio of 1:1 that is in addition to the Additional Reserve Lands.

18. Pursuant to the policy on Riparian/Riverine Areas and Vernal Pools:
 - a. Where the avoidance alternative is selected, the other appropriate mechanisms incorporated into the project design to ensure the long-term Conservation of unsurveyed avoided areas shall include appropriate management.
 - b. Where the avoidance alternative is not selected and focused surveys confirm occupancy by Covered Species identified in Section 6.1.2 of the MSHCP and pursuant to the species objectives, 90 percent (to 100 percent for the southwestern willow flycatcher and western yellow-billed cuckoo) of the occupied portions of the property that provide for the long-term Conservation value for the species (including the watershed of individual vernal pools occupied by fairy shrimp species) shall be conserved unless a Determination of Biologically Equivalent or Superior Preservation concludes that a proposed alternative will provide equal or better conservation.
19. Permittees shall incorporate the appropriate guidelines (MSHCP Section 7.5) and specific design features (MSHCP Table 7-4) into individual planned roadway projects within the Criteria Area and Public/Quasi-Public Lands.
20. The Monitoring Program Administrator shall consult with the Service on the development and implementation of the long-term monitoring plan.
21. Prior to each Status Meeting with the Wildlife Agencies pursuant to Section 6.6.2.F.2 of the MSHCP, the RCA shall provide to the Wildlife Agencies a copy of the Permittee's final decision document for each development application in the Criteria Area submitted for the joint project/application review process that have been received since the last Status Meeting or Permit issuance, whichever is later. In addition, the RCA shall provide to the Wildlife Agencies a copy of the final decision documents that have been received since the last Status Meeting or Permit issuance, whichever is later, confirming that individual planned roadway projects within the Criteria Area, which are described in Section 7.3.5 of the Plan and depicted in Figure 7-1 of the Plan, are consistent with the Criteria, appropriate guidelines (MSHCP Section 7.5), and specific design features (MSHCP Table 7-4).
22. The first annual report is due to the Wildlife Agencies 15 months from the date of Permit issuance. Subsequently, annual reports shall be submitted to the Wildlife Agencies every 12 months for the life of the Permit. A copy of the annual report shall be submitted to the Field Supervisor of the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad,

California 92008, and one copy shall be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232. Aside from the information requirements set forth in Section 10.1 of the IA, the annual report shall address for that year:

- a. Permit implementation of Covered Activities within the Criteria Area, including the Criteria Refinement Process; and implementation of policies on Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, Protection of Narrow Endemic Plant Species, and Additional Survey Needs and Procedures.
- b. Biologically Equivalent or Superior Preservation determinations.

23. In addition to the reporting requirements identified in Section 10.0 of the IA and the MSHCP, the following monitoring and/or reporting conditions shall apply:

- a. Within 6 months of execution of the IA, the Cities and County (Local Permittees) shall transmit to the Wildlife Agencies and RCA relevant documents showing adoption and/or execution of each Local Permittee's MSHCP implementation mechanism. Any subsequent amendments to the implementation mechanism throughout the life of the Permit shall be transmitted to the Service.
- b. Copies of maps of existing disturbed use areas at County Waste facilities shall be provided to the Service.
- c. Copies of the initial baseline assessment of Additional Reserve Lands pursuant to Section 5.2.1 of the MSHCP shall be provided to the Service.
- d. Among the other items described in Section 5.3.7 of the MSHCP, the Monitoring Program Administrator shall monitor and include in the Biological Monitoring Report an analysis of the effectiveness of wildlife movement features for target species where such features are incorporated into the design of roadway projects within the MSHCP Conservation Area. The Wildlife Agencies, in consultation with the Monitoring Program Administrator and RCA, shall jointly agree on how, where, and when the effectiveness monitoring will be done and how the data will be analyzed to inform the Permittees regarding design and siting of future wildlife movement features.

- c. Permittees shall require biologists send copies of all habitat assessments and focused survey reports for all Covered Species to the Monitoring Program Administrator.
 - f. Within 30 days of completion of an emergency repair pursuant to Section 7.4.1 of the MSHCP, the RCA shall provide a copy of their administrative record documentation regarding any such repair, including any revegetation plans determined to be warranted and the associated revegetation implementation.
24. The Permittees shall contact that the Service's Carlsbad Fish and Wildlife Office (6010 Hidden Valley Road, Carlsbad, California 92008, telephone 760-431-9440) immediately regarding any violations or potential violations of the Federal Endangered Species Act or Migratory Bird Treaty Act.
25. Within 1 working day of finding dead, injured, or sick endangered or threatened wildlife species, the Permittees or its designated agents must orally notify the Service's Carlsbad Fish and Wildlife Office. Written notification to the Carlsbad Fish and Wildlife Office and the Division of Law Enforcement (185 W. "F" Street, Suite 440, San Diego, California 92101) must be made within 5 calendar days and must include the date, time, and location of the specimen and any other pertinent information.
26. A copy of this Permit must be in on file in the possession of the Permittees, and Third Parties under their direct control, while conducting taking activities. Please refer to the Permit number in all correspondence and reports concerning Permit activities. Any questions you may have about this Permit should be directed to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92008, telephone 760-431-9440.
27. On June 10, 2004, the Court in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.) ordered that, until the Service completes a rulemaking on permit revocation standards for incidental take permits, the Service may not approve new incidental take permits or related documents containing "No Surprises" assurances. The order does not prevent the Service from issuing incidental take permits that do not contain "No Surprises" assurances. Therefore, the "No Surprises" assurances contained in Sections 3.81, 3.109, 4.3(C), 14.10, 14.22, and 17.6 of the IA, and Sections 1.2.4 and 6.8 of the MSHCP are currently unenforceable and are ineffective with respect to this Permit. The remainder of the Permit, the IA, and the MSHCP shall remain in full force and effect to the maximum extent permitted by law. In addition, in the event that any future judicial decision or determination from the District Court for the District of Columbia in *Spirit of the Sage Council v. Norton*, Civil Action

No. 98-1873 (D.D.C.) holds that the "No Surprises" assurances rule (or similar successive rule) is vacated, unenforceable, or enjoined for any reason or to any extent, the "No Surprises" assurances contained in Sections 3.81, 3.109, 4.3(C), 14.10, 14.12, and 17.6 of the IA, and Sections 1.2.4 and 6.8 of the MSHCP shall be enforceable only to the degree allowed by any such decision or determination; provided that the remainder of the Permit, the IA, and the MSHCP shall remain in full force and effect to the maximum extent permitted by law. In the event that the "No Surprises" assurances rule is vacated, held unenforceable, or enjoined by a judicial decision or determination, including without limitation the June 10, 2004, order described above, but is later reinstated or otherwise authorized, the "No Surprises" assurances contained in Sections 3.81, 3.109, 4.3(C), 14.10, 14.12, and 17.6 of the IA, and Sections 1.2.4 and 6.8 of the MSHCP shall likewise be automatically reinstated and apply to the entire term of the MSHCP to the maximum extent permitted by law.

If, in response to any judicial decision or determination, the "No Surprises" assurances rule is revised, the "No Surprises" assurances contained in Sections 3.81, 3.109, 4.3(C), 14.10, 14.12, and 17.6 of the IA, and Sections 1.2.4 and 6.8 of the MSHCP shall be automatically amended in a manner consistent with the revised rule so as to afford the maximum protection to the Permittees consistent with the revised rule. Pursuant to the June 10, 2004, order in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.), and while said order is in effect, until the Service adopts new revocation rules specifically applicable to incidental take permits, all incidental take permits issued by the Service shall be subject to the general revocation standard in 50 C.F.R. § 13.28(a)(5). Additionally, notwithstanding anything to the contrary in the IA (particularly Section 23.5) and the MSHCP, the Service retains statutory authority, under both sections 7 and 10 of the ESA, to revoke incidental take permits that are found likely to jeopardize the continued existence of a Covered Species. The Service recognizes that the Permittees retain the right under and pursuant to Section 22.0 of the IA to terminate their participation in the MSHCP in accordance with the requirements of Section 22.0 of the IA should the "No Surprises" assurances rule not be reinstated or be reinstated or otherwise authorized and/or amended in a manner not satisfactory to the Permittees.

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

[45 FR 17884, Mar. 19, 1980, as amended at 47 FR 56861, Dec. 21, 1982]

\$12.42 Recovery of certain storage costs.

Any wildlife, plant, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 et seq., any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling, or storage of such property. If any fish, wildlife or plant is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371, et seq., any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Service shall send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill shall contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment. Payment shall be made in accordance with the bill. The recipient of any assessment of costs under this section who has an objection to the reasonableness of the costs described in the bill may, within 30 days of the date on which he received the bill, file written objections with the Regional Director of the Fish and Wildlife Service for the Region in which the seizure occurred. Upon receipt of the written objections, the appropriate Regional Director will promptly review them and within 30 days mail his final decision to the party who filed objections. In all cases, the Regional Director's decision

shall constitute final administrative action on the matter.

[47 FR 56861, Dec. 21, 1982]

Subpart F—Return of Property

\$12.51 Return procedure.

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

PART 13—GENERAL PERMIT PROCEDURES

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- 13.3 Scope of regulations.
- 13.4 Emergency variation from requirements.
- 13.5 Information collection requirements.

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- 13.12 General information requirements on applications for permits.

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- 13.21 Issuance of permits.
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Subpart D—Conditions

- 13.41 Humane conditions.

U.S. Fish and Wildlife Serv., Interior

- 13.42 Permits are specific.
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AUTHORITY: 16 U.S.C. 668a, 704, 712, 742f-1, 1382, 1539(d), 1539, 1540(G), 3374, 4901-4916, 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

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

Subpart A—Introduction

\$13.1 General.

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

\$13.2 Purpose of regulations.

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

[54 FR 36147, Sept. 14, 1989]

\$13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Import and Marketing" (part 14), "Feather Imports" (part

- 15), "Injurious Wildlife" (part 16), "Endangered Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Birds" (part 21), "Eagles" (part 22) and "Endangered Species Convention" (part 23). As used in this part 13, the term "permit" shall refer to either a license, permit, or certificate as the context may require.

[42 FR 10465, Feb. 22, 1977, as amended at 42 FR 32377, June 24, 1977; 45 FR 56673, Aug. 25, 1980]

\$13.4 Emergency variation from requirements.

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

\$13.5 Information collection requirements.

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

(b) We estimate the public reporting burden for these reporting requirements to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLISQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of

Subpart B—Application for Permits

§13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless the applicant has filed an application in accordance with the following procedures. Applicants do not have to submit a separate application for each permit unless otherwise required by this subchapter.

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

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

(1) Migratory bird banding permits (50 CFR 21.22)—Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708. (Special application forms must be used for bird banding permits. They may be obtained by writing to the Bird Banding Laboratory).

(2) Exception to designated port (50 CFR part 14), import/export license (50 CFR 14.93), migratory bird permit, other than banding (50 CFR part 21), bald or Golden eagle permits (50 CFR part 22)—Assistant Regional Director for Law Enforcement of District in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Law Enforcement Districts).

(3) Feather quota (50 CFR part 15), injurious wildlife (50 CFR part 16), endangered and threatened species (50 CFR part 17), marine mammal (50 CFR part 18) and permits and certificates for the Convention on International Trade in Endangered Species (CITES) (50 CFR part 23)—U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203.

(c) Time notice. The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the

applicant requests. Applicants for endangered species and marine mammal permits should submit applications to the Office of Management Authority which are postmarked at least 90 calendar days prior to the requested effective date. Applicants for all other permits should submit applications to the issuing office which are postmarked at least 60 days prior to the requested effective date.

(d) Fees. (1) Unless otherwise exempted by this paragraph, applicants for issuance or renewal of permits must pay the required permit processing fee at the time of application. Applicants should pay fees by check or money order made payable to "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if the Service has processed the application. However, the Service may return the application fee if the applicant withdraws the application before the Service has significantly processed it.

(2) Except as provided in paragraph (d)(4) of this section the fee for processing any application is \$25.00. If regulations in this subchapter require more than one type of permit for an activity, and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity. The issuing office may charge only the highest single fee for the activity permitted.

(3) A fee shall not be charged to any Federal, State or local government agency, nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of such status must accompany the application.

(4) Nonstandard fees.

Table with 2 columns: Type of permit, Fee. Rows include Import/Export License, Marine Mammal, Migratory Bird Banding, Bald or Golden Eagles.

(e) Abandoned or incomplete applications. Upon receipt of an incomplete or improperly executed application, or if the applicant does not submit the proper fees, the issuing office will notify the applicant of the deficiency. If the

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

[47 FR 30755, July 15, 1982, as amended at 50 FR 52889, Dec. 26, 1985; 54 FR 4031, Jan. 27, 1989; 54 FR 38147, Sept. 14, 1989; 61 FR 31868, June 21, 1996]

§13.12 General information requirements on applications for permits.

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

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

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

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

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

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

(4) If the requested permitted activity involves the import or re-export of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in §14.52(c) of this subchapter B;

(5) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in sub-

chapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

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

(7) Date;

(8) Signature of the applicant; and

(9) Such other information as the Director determines relevant to the processing of the application.

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

Table with 2 columns: Type of permit, Section. Rows include Importation at nondesignated ports, Scientific, Denotation prevention, Economic hardship, Marking of package or container, Symbol marking, Import/export license, Feather import quota, Injurious wildlife, Endangered wildlife and plant permits, Similarity of appearance, Scientific, enhancement or propagation or survival, medicinal taking for wildlife, Scientific, propagation, or survival for plants, Economic hardship for plants, Threatened wildlife and plant permits, Similarity of appearance, General for wildlife, American alligator-buyer or larver, General for plants, Marine mammals permits, Scientific research, Public display, Migratory bird permits, Banding or marking, Scientific collecting, Taxidermy, Waterfowl sale and disposal, Special aviculturist, Factory, Raptor propagation permit, Depredation control, Eagle permits, Scientific or exhibition, Indian religious use, Depredation control, Factory purposes.

| Type of permit | Section |
|---|---------|
| Take of golden eagle nests | 22.25 |
| Endangered Species Convention permits | 23.15 |

139 FR 1161, Jan. 4, 1974, as amended at 42 FR 10465, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54046, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56973, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 46 FR 42880, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57300, Dec. 29, 1983; 50 FR 39687, Sept. 30, 1985; 50 FR 45408, Oct. 31, 1985; 54 FR 38147, Sept. 14, 1989]

Subpart C—Permit Administration

§ 13.21 Issuance of permits.

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Use of supplemental information.* The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea of guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(e) *Conditions of issuance and acceptance.* (1) Any permit automatically incorporates within its terms the conditions and requirements of subpart D of

this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued.

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

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

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

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 38148, Sept. 14, 1989]

§ 13.22 Renewal of permits.

(a) *Application for renewal.* Applicants for renewal of a permit must submit a written application at least 30 days prior to the expiration date of the permit. Applicants must certify in the form required by § 13.13(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.

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

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until

the Service has acted on such person's application for renewal.

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

[54 FR 38148, Sept. 14, 1989]

§ 13.23 Amendment of permits.

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

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

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

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

§ 13.24 Right of succession by certain persons.

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

(1) The surviving spouse, child, executor, administrator, or other legal

representative of a deceased permittee; or

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

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

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

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

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

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

[64 FR 32711, June 17, 1999]

§ 13.25 Transfer of permits and scope of permit authorization.

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

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

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

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms

and conditions of the permit, including any outstanding minimization and mitigation requirements; and

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

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

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

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

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

[64 FR 32711, June 17, 1999, as amended at 64 FR 52676, Sept. 30, 1999]

§ 13.26 Discontinuance of permit activity.

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

[64 FR 38149, Sept. 14, 1999]

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The privileges of exercising some or all of the permit authority may be suspended at

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

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

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

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

[64 FR 38149, Sept. 14, 1999]

§ 13.28 Permit revocation.

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

(1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any

foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or

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

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

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

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

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

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

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

(4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the

issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

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

§ 13.29 Review procedures.

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

- (1) An applicant for a permit who has received written notice of denial;
- (2) An applicant for renewal who has received written notice that a renewal is denied;
- (3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or
- (4) A permittee who has a permit issued or renewed but has not been granted authority by the permit to perform all activities requested in the application, except when the activity requested is one for which there is no lawful authority to issue a permit.

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

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

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

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

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

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

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

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

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

(2) The Service shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal.

unless extended for good cause and the appellant notified of the extension.

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

[54 FR 38149, Sept. 14, 1989]

Subpart D—Conditions

§ 13.41 Humane conditions.

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

[54 FR 38150, Sept. 14, 1989]

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

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

§ 13.43 Alteration of permits.

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

§ 13.44 Display of permit.

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

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31

for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

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

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

§ 13.47 Inspection requirement.

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

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

§ 13.48 Compliance with conditions of permit.

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

[54 FR 38150, Sept. 14, 1989]

§ 13.49 Surrender of permit.

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

[54 FR 38150, Sept. 14, 1989]

§ 13.50 Acceptance of liability.

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

[64 FR 32711, June 17, 1999]

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

Subpart A—Introduction

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Subpart B—Importation and Exportation of Designated Ports

- 14.11 General restrictions.
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- 14.14 In-transit shipments.
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- 14.20 Exceptions by permit.
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Subpart C—Designated Port Exception Permits

- 14.31 Permits to import or export wildlife at nondesignated port for scientific purposes.
- 14.32 Permits to import or export wildlife at nondesignated port to minimize deterioration or loss.

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Subpart D [Reserved]

Subpart E—Inspection and Clearance of Wildlife

- 14.51 Inspection of wildlife.
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Subpart F—Wildlife Declarations

- 14.61 Import declaration requirements.
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Subpart H—Marking of Containers or Packages

- 14.81 Marking requirement.
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- 14.141 Consignment to carrier.
- 14.142 Primary enclosures.

SPECIFICATIONS FOR SLOTHS, BATS, AND FLYING LEMURS (CYNOCEPHALIDAE)

- 14.151 Primary enclosures.

SPECIFICATIONS FOR OTHER TERRESTRIAL MAMMALS

- 14.161 Primary enclosures.

SPECIFICATIONS FOR BIRDS

- 14.171 Consignment to carrier.
- 14.172 Primary enclosures.

AUTHORITY: 16 U.S.C. 668, 704, 712, 1382, 1386(d)-(f), 1540(f), 3371-3378, 4223-4234, and 4901-4916; 18 U.S.C. 42; 31 U.S.C. 9701.

SOURCE: 45 FR 56673, Aug. 25, 1980, unless otherwise noted.

Subpart A—Introduction

§ 14.1 Purpose of regulations.

The regulations contained in this part provide uniform rules and procedures for the importation, exportation, and transportation of wildlife.

§ 14.2 Scope of regulations.

The provisions in this part are in addition to, and do not supersede other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and transportation of wildlife.

§ 14.3 Information collection requirements.

The Office of Management and Budget approved the information collection requirements contained in this part 14 under 44 U.S.C. 3507 and assigned OMB Control Number 1018-0092. The Service may not conduct or sponsor, and you are not required to respond, to a collection of information unless it displays a currently valid OMB control number. We are collecting this information to provide information about wildlife imports or exports, including enforcement of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*) and to carry out the provisions of the conven-

tion on International Trade in Endangered Species of Wild Fauna and Flora. We estimate the public reporting burden for these reporting requirements to vary from 10 to 15 minutes per response. Direct comments regarding the burden estimate or any other aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018-0092), Washington, DC 20603.

[63 FR 52634, Oct. 1, 1998]

§ 14.4 What terms do I have to understand?

In addition to definitions contained in part 10 of this subchapter, in this part:

Accompanying personal baggage means all hand-carried items and all checked baggage of a person entering into or departing from the United States.

Accredited scientist means any individual associated with, employed by, or under contract to and accredited by an accredited scientific institution for the purpose of conducting biological or medical research, and whose research activities are approved and sponsored by the scientific institution granting accreditation.

Accredited scientific institutions means any public museum, public zoological park, accredited institution of higher education, accredited member of the American Zoo and Aquarium Association, accredited member of the American Association of Systematic Collections, or any State or Federal government agency that conducts biological or medical research.

Commercial means related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to quantity or weight. There is a presumption that eight or more similar unused items are for commercial use. The Service or the importer/exporter/owner may rebut this presumption based upon the particular facts and circumstances of each case.

- 560—59 FR 59177: November 26, 1994.
- 564—59 FR 60568: November 25, 1994.
- 565—59 FR 62382: December 05, 1994.
- 567—59 FR 64623: December 15, 1994.
- 570—60 FR 61: January 3, 1995.
- 572—60 FR 3562: January 18, 1995.
- 575—60 FR 6694: February 3, 1995.
- 578—60 FR 12486: March 7, 1995.
- 581—61 FR 10697: March 15, 1996.
- 584—61 FR 31058: June 19, 1996.
- 586—61 FR 41023: August 7, 1996.
- 587—61 FR 43184: August 21, 1996.
- 589—61 FR 52384: October 7, 1996.
- 590—61 FR 53068: October 10, 1996.
- 591—61 FR 53107: October 10, 1996.
- 592—61 FR 53123: October 10, 1996.
- 593—61 FR 53130: October 10, 1996.
- 594—61 FR 53137: October 10, 1996.
- 595—61 FR 53182: October 10, 1996.
- 596—61 FR 54358: October 18, 1996.
- 599—61 FR 67497: December 23, 1996.
- 600—62 FR 689: January 6, 1997.
- 601—62 FR 1647: January 10, 1997.
- 603—62 FR 1694: January 13, 1997.
- 606—62 FR 4182: January 29, 1997.
- 609—62 FR 5551: February 6, 1997.
- 611—62 FR 14351: March 26, 1997.
- 613—62 FR 27978: May 22, 1997.
- 615—62 FR 31748: June 11, 1997.
- 619—62 FR 33037: June 18, 1997.
- 620—62 FR 33873: June 19, 1997.
- 623—62 FR 40973: July 31, 1997.
- 624—62 FR 42702: August 8, 1997.
- 625—62 FR 54807: October 22, 1997.
- 627—62 FR 61925: November 20, 1997.
- 635—63 FR 19849: April 22, 1998.
- 640—63 FR 43115: August 12, 1998.
- 641—63 FR 44984: August 20, 1998.
- 643—63 FR 49034: September 14, 1998.
- 644—63 FR 49021: September 14, 1998.
- 647—63 FR 53615: October 6, 1998.
- 648—63 FR 54970: October 13, 1998.
- 649—63 FR 54956: October 13, 1998.
- 650—63 FR 54994: October 13, 1998.
- 651—63 FR 59244: November 3, 1998.
- 657—64 FR 13120: March 17, 1999.
- 661—64 FR 28412: May 26, 1999.
- 662—64 FR 28403: May 26, 1999.
- 663—64 FR 28392: May 26, 1999.
- 666—64 FR 48323: September 3, 1999.
- 667—64 FR 56590: October 20, 1999.
- 668—64 FR 56596: October 20, 1999.
- 671—64 FR 63752: November 22, 1999.
- 672—64 FR 69203: December 10, 1999.
- 673—64 FR 71687: December 22, 1999.
- 678—65 FR 3875: January 25, 2000.
- 679—65 FR 3880: January 25, 2000.
- 681—65 FR 4152: January 26, 2000.
- 683—65 FR 5275: February 3, 2000.
- 684—65 FR 6338: February 9, 2000.
- 685—65 FR 7764: February 16, 2000.
- 689—65 FR 14887: March 20, 2000.
- 690—65 FR 14909: March 20, 2000.
- 691—65 FR 14997: March 20, 2000.

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

EDITORIAL NOTE 2: For FEDERAL REGISTER citations affecting §17.12, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C—Endangered Wildlife

§ 17.21 Prohibitions.

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

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

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

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

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his 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 which may be useful for scientific study; or
- (iv) Remove specimens which 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 a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, DC 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take those endangered species which 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.

(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 which was taken in violation of paragraph (c) of this section.

Example A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty 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 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.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this section.

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided either that the wildlife is of a taxon listed in paragraph (g)(6) of this section, or that the following conditions are met:

(i) The wildlife is of a species having a natural geographic distribution not including any part of the United States, or the wildlife is of a species that the Director has determined to be eligible in accordance with paragraph (g)(5) of this section;

(ii) The purpose of such activity is to enhance the propagation or survival of the affected species;

(iii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iv) Each specimen of wildlife to be re-imported is uniquely identified by a band, tattoo or other means that was

reported in writing to an official of the Service at a port of export prior to export from the United States; and

(v) Any person subject to the jurisdiction of the United States who engages in any of the activities authorized by this paragraph does so in accordance with paragraphs (g) (2), (3) and (4) of this section, and with all other applicable regulations in this Subchapter B.

(2) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by this paragraph must first register with the Service (Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia 22203). Requests for registration must be submitted on an official application form (Form 3-200-41) provided by the Service, and must include the following information:

(i) The types of wildlife sought to be covered by the registration, identified by common and scientific name to the taxonomic level of family, genus or species;

(ii) A description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, and when appropriate, in conducting research directly related to maintaining and propagating such wildlife;

(iii) Photograph(s) or other evidence clearly depicting the facilities where such wildlife will be maintained; and

(iv) a copy of the applicant's license of registration, if any, under the animal welfare regulations of the U.S. Department of Agriculture (9 CFR part 2).

(3) Upon receiving a complete application, the Director will decide whether or not the registration will be approved. In making this decision, the Director will consider, in addition to the general criteria in §13.21(b) of this subchapter, whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section. Each person so registered must maintain accurate written

records of activities conducted under the registration, and allow reasonable access to Service agents for inspection purposes as set forth in §13.46 and 13.47. Each person registered must submit to the Director an individual written annual report of activities, including all births, deaths and transfers of any type.

(4) Any person subject to the jurisdiction of the United States seeking to export or conduct foreign commerce in captive-bred endangered wildlife that will not remain under the care of that person must first obtain approval by providing written evidence to satisfy the Director that the proposed facilities or other resources adequate to enhance the propagation or survival of such wildlife and that the proposed recipient will use such wildlife for purposes of enhancing the propagation or survival of the affected species.

(5)(i) The Director will use the following criteria to determine if wildlife of any species having a natural geographic distribution that includes any part of the United States is eligible for the provisions of this paragraph:

(A) Whether there is a low demand for taking of the species from wild populations, either because of the success of captive breeding or because of other reasons; and

(B) Whether the wild populations of the species are effectively protected from unauthorized taking as a result of the inaccessibility of their habitat to humans or as a result of the effectiveness of law enforcement.

(ii) The Director will follow the procedures set forth in the Act and in the regulations thereunder with respect to petitions and notification of the public and governors of affected States when determining the eligibility of species for purposes of this paragraph.

(iii) In accordance with the criteria in paragraph (g)(5)(k) of this section, the Director has determined the following species to be eligible for the provisions of this paragraph:

Laysan duck (*Anas laysanensis*).

(6) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by paragraph (g)(1) of this section may

do so without first registering with the Service with respect to the bar-tailed pheasant (*Syrnistris hawaiiensis*), Elliott's pheasant (*S. elioti*), Mikado pheasant (*S. mikado*), brown eared pheasant (*Crossoptilon mancharicum*), white eared pheasant (*C. crossoptilon*), cheer pheasant (*Catreus wallichi*), Edwards's pheasant (*Lophura edwardsi*), Swinhoe's pheasant (*L. swinhoi*), Chinese monal (*Lophophorus lhuysii*), and Palawan peacock pheasant (*Polyplectron emphanum*);

parakeets of the species *Neophema pulchella* and *N. splendida*; the Laysan duck (*Anas laysanensis*); the white-winged wood duck (*Cairina scutulata*); and the inter-subspecific crossed or "generic" tiger (*Panthera tigris*) (i.e., specimens not identified or identifiable as members of the Bengal, Sumatran, Siberian or Indo-chinese subspecies (*Panthera tigris tigris*, *P. t. sumatrae*, *P. t. altaica* and *P. t. corbetti*, respectively) provided;

(i) The purpose of such activity is to enhance the propagation or survival of the affected exempted species;

(ii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iii) Each specimen to be re-imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export of the specimen from the United States;

(iv) No specimens of the taxa in this paragraph (g)(6) of this section that were taken from the wild may be imported for breeding purposes absent a definitive showing that the need for new bloodlines can only be met by wild specimens, that suitable foreign-bred, captive individuals are unavailable, and that wild populations can sustain limited taking; and an import permit is issued under §17.22;

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

(vi) Each person claiming the benefit of the exception in paragraph (g)(1) of this section must maintain accurate written records of activities, including births, deaths and transfers of specimens, and make those records accessible to Service agents for inspection

at reasonable hours as set forth in §§13.46 and 13.47.

(40 FR 4441, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 44 FR 31580, May 31, 1979; 44 FR 54007, Sept. 17, 1979; 58 FR 68325, Dec. 27, 1993; 63 FR 48640, Sept. 11, 1998)

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

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by §17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See §17.32 for permits for threatened species.) The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

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

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

(ii) A statement as to whether, at the time of application, the wildlife sought

to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)(1) *Application requirements for permits for incidental taking.* A person wishing to get a permit for an activity prohibited by §17.21(c) submits an application for activities under this paragraph. The Service provides Form 3-5 for the application to which all of the following must be attached:

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

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

(iii) A conservation plan that specifies:

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

(B) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement

steps, and the procedures to be used to deal with unforeseen circumstances;

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

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

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

(A) The taking will be incidental;

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

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

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

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

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

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

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

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

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

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

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

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances,

the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

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

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

vival and recovery of the affected species in the wild.

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

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

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

(C)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). If the applicant wishes to engage in any activity prohibited by § 17.21, the applicant must submit an official Service application form (3-200.54) that includes the following information:

U.S. Fish and Wildlife Serv., Interior

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

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

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

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (C)(5) (i) of this section (C)(5) apply only to Safe Harbor permits issued in accordance with paragraph (C)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1989.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or

a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in §13.28(a) (1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in §17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

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

(d)(1) *Application requirements for survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as endangered and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by §17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as an endangered species. The applicant must submit an official Service application form (200.54) that includes the following information:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

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

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

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

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

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

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the com-

mitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

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

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

(2) Percentage of range adversely affected by the Agreement;

(3) Percentage of range conserved by the Agreement;

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

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

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

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

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in §13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

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

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

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient

means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

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

[50 FR 38687, Sept. 30, 1985, as amended at 63 FR 8871, Feb. 23, 1998; 63 FR 52635, Oct. 1, 1998; 64 FR 32711, June 17, 1999; 64 FR 52676, Sept. 30, 1999]

§ 17.23 Economic hardship permits.

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

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by §17.21. Each application must be submitted on an official application form (Form 3-200)

provided by the Service, and must include, as an attachment, all of the information required in §17.22 plus the following additional information:

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

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

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

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

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

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

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

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

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the

wildlife sought to be covered by the permit;

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

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

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

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

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

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

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

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

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

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

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

(4) Duration of permits issued under this section shall be designated on the face of the permit. No permit issued

under this section, however, shall be valid for more than one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 40 FR 58307, Dec. 16, 1975; 50 FR 389698, Sept. 30, 1985]

Subpart D—Threatened Wildlife

§17.31 Prohibitions.

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

(b) In addition to any other provisions of this part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

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

[43 FR 18181, Apr. 28, 1978, as amended at 44 FR 31580, May 31, 1979]

§17.32 Permits—General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A conservation plan that specifies:

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

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

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

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

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

(A) The taking will be incidental;

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

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

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

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

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

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

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

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

(5) *Assurances provided to permittee in case of changed or unforeseen cir-*

cumstances. The assurances in this paragraph (b)(6) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

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

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

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

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

terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

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

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

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

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

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

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

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

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 17.32 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding mitigation and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 17.32 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 17.32(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(9)(i) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed action is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.31. The applicant must submit an official Service application form (3-290-54) that includes the following information:

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

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

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

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

(e) for permit objection apply to any notice published by the Director under this paragraph (c).

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

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

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

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

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

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

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

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

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

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the per-

mit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

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

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

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

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

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

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity

would be inconsistent with the criterion set forth in 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

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

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

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as threatened and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. The applicant must submit an official Service application form (3-200.54) that includes the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment 2. Western Riverside County MSHCP Covered Species

| MSHCP Proposed Covered Species Species Name (146 species) | Listing Status State/ Federal | Adequately Conserved | Survey Required | Requirement to Achieve Adequately Conserved Status |
|---|-------------------------------------|-------------------------|--|--|
| LISTED CRUSTACEANS | | | | |
| Riverside fairy shrimp <i>Streptocephalus woottoni</i> | -/FE | ✓ | Riparian/Riverine/ Vernal Pool | |
| vernal pool fairy shrimp <i>Branchinecta lynchi</i> | -/FT | ✓ | Riparian/Riverine/ Vernal Pool | |
| LISTED INSECTS | | | | |
| Delhi Sands flower-loving fly <i>Rhaphiomidas terminatus abdominalis</i> | -/FE | ✓ | Delhi Sands flower- loving fly Survey Area | |
| Quino checkerspot butterfly <i>Euphydryas editha quino</i> | -/FE | ✓ | | |
| LISTED FISH | | | | |
| Santa Ana sucker <i>Catostomus santaanae</i> | SSC/FT | ✓ | | |
| LISTED AMPHIBIANS | | | | |
| arroyo toad <i>Bufo californicus</i> | SSC/FE | ✓ | Additional Survey Area: ASSA | |
| California red-legged frog <i>Rana aurora draytonii</i> | SSC/FT | ✓ | Additional Survey Area: ASSA | |
| mountain yellow-legged frog <i>Rana mucosa</i> | SSC/FE | ✓ | Additional Survey Area: ASSA | |
| LISTED BIRDS | | | | |
| bald eagle <i>Haliaeetus leucocephalus</i> | SP, SE/FT | ✓ | | |
| coastal California gnatcatcher <i>Poliotilta californica californica</i> | SSC/FT | ✓ | | |
| least Bell's vireo <i>Vireo bellii pusillus</i> | SE/FE | ✓ | Riparian/Riverine/ Vernal Pool | |
| southwestern willow flycatcher <i>Empidonax traillii extimus</i> | SE/FE | ✓ | Riparian/Riverine/ Vernal Pool | |
| western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i> | SE/FC | ✓ | Riparian/Riverine/ Vernal Pool | |
| LISTED MAMMALS | | | | |
| San Bernardino kangaroo rat <i>Dipodomys merriami parvus</i> | SSC/FE | ✓ | Additional Survey Area: MSSA | |
| Stephens' kangaroo rat <i>Dipodomys stephensi</i> | ST/FE | ✓ | | |
| LISTED PLANTS | | | | |
| California Orcutt grass <i>Orcuttia californica</i> | SE/FE | ✓ | NEPPSA | |
| Munz's onion <i>Allium munzii</i> | ST/FE | ✓ | NEPPSA | |
| Nevin's barberry <i>Berberis nevinii</i> | SE/FE | ✓ | Additional Survey Area: CASSA | |
| San Diego ambrosia <i>Ambrosia pumila</i> | -/FE | ✓ | NEPPSA | |
| San Diego button-celery <i>Eryngium aristulatum</i> var. <i>parishii</i> | SE/FE | ✓ | | |

| MSHCP Proposed Covered Species Species Name (146 species) | Listing Status State/ Federal | Adequately Conserved | Survey Required | Requirement to Achieve Adequately Conserved Status |
|--|--|---------------------------------|-----------------------------------|---|
| San Jacinto Valley crownscale <i>Atriplex coronata</i> var. <i>notatior</i> | -/FE | ✓ | Additional Survey Area: CASSA | |
| Santa Ana River woollystar <i>Eriastrum densifolium</i> ssp. <i>sanctorum</i> | SE/FE | ✓ | | |
| slender-horned spine flower <i>Dodecahema leptoceras</i> | SE/FE | ✓ | NEPPSA | |
| spreading navarretia <i>Navarretia fossalis</i> | -/FT | ✓ | NEPPSA | |
| thread-leaved brodiaea <i>Brodiaea filifolia</i> | SE/FT | ✓ | Additional Survey Area: CASSA | |
| Vail Lake ceanothus <i>Ceanothus ophiochilus</i> | SE/FT | ✓ | Additional Survey Area: CASSA | |
| CRUSTACEANS | | | | |
| Santa Rosa Plateau fairy shrimp <i>Linderiella santarosae</i> | -/- | ✓ | Riparian/Riverine/ Vernal Pool | |
| FISH | | | | |
| arroyo chub <i>Gila orcutti</i> | SSC/- | ✓ | | |
| AMPHIBIANS | | | | |
| coast range newt <i>Taricha tarosa tarosa</i> | SSC/- | ✓ | | |
| western spadefoot <i>Scaphiopus hammondi</i> | SSC/- | ✓ | | |
| REPTILES | | | | |
| Belding's orange-throated whiptail <i>Cnemidophorus hyperythrus beldingi</i> | SSC/- | ✓ | | |
| coastal western whiptail <i>Cnemidophorus tigris multiscutatus</i> | -/- | ✓ | | |
| granite night lizard <i>Xantusia henshawi henshawi</i> | -/- | ✓ | | |
| granite spiny lizard <i>Sceloporus orcutti</i> | -/- | ✓ | | |
| northern red-diamond rattlesnake <i>Crotalus ruber ruber</i> | SSC/- | ✓ | | |
| San Bernardino mountain kingsnake <i>Lampropeltis zonata parvirubra</i> | SSC/- | | | MOU with U.S. Forest Service |
| San Diego banded gecko <i>Coleonyx variegatus abbottii</i> | -/- | ✓ | | |
| San Diego horned lizard <i>Phrynosoma coronatum blainvillei</i> | SSC/- | ✓ | | |
| San Diego mountain kingsnake <i>Lampropeltis zonata pulchra</i> | SSC/- | | | MOU with U.S. Forest Service |
| southern rubber boa <i>Charina bottae umbratica</i> | ST/- | | | MOU with U.S. Forest Service |
| southern sagebrush lizard <i>Sceloporus graciosus vandenburgianus</i> | -/- | | | MOU with U.S. Forest Service |
| western pond turtle <i>Clemmys marmorata pallida</i> | SSC/- | ✓ | | |
| BIRDS | | | | |
| American bittern <i>Botaurus lentiginosus</i> | -/- | ✓ | | |

| | | | | |
|--|------------------|---|---------------------------------|---------------------------------|
| Bell's sage sparrow <i>Amphispiza belli belli</i> | SSC/- | ✓ | | |
| black swift (breeding) <i>Cypseloides niger</i> | SSC/- | ✓ | | |
| black-crowned night heron <i>Nycticorax nycticorax</i> | - / - | ✓ | | |
| burrowing owl <i>Athene cunicularia hypugaea</i> | SSC/- | ✓ | Additional Survey Area: BOSA | |
| cactus wren <i>Campylorhynchus brunneicapillus</i> | SSC/- | ✓ | | |
| California horned lark <i>Eremophila alpestris actia</i> | SSC/- | ✓ | | |
| California spotted owl <i>Strix occidentalis occidentalis</i> | SSC/- | | | MOU with U.S. Forest Service |
| Cooper's hawk <i>Accipiter cooperii</i> | SSC/- | ✓ | | |
| double-crested cormorant <i>Phalacrocorax auritus</i> | SSC/- | ✓ | | |
| downy woodpecker <i>Picoides pubescens</i> | - / - | ✓ | | |
| ferruginous hawk <i>Buteo regalis</i> | SSC/- | ✓ | | |
| golden eagle <i>Aquila chrysaetos</i> | SP, SSC/- | ✓ | | |
| grasshopper sparrow <i>Ammodramus savannarum</i> | - / - | | | Species-specific objectives |
| great blue heron <i>Ardea herodias</i> | - / - | ✓ | | |
| Lincoln's sparrow (breeding) <i>Melospiza lincolni</i> | - / - | | | Species-specific objectives |
| loggerhead shrike <i>Lanius ludovicianus</i> | SSC/- | ✓ | | |
| Macgillivray's warbler <i>Oporornis tolmiei</i> | - / - | ✓ | | |
| merlin <i>Falco columbarius</i> | SSC/- | ✓ | | |
| mountain plover (wintering) <i>Charadrius montanus</i> | SSC/- | ✓ | | |
| mountain quail <i>Oreortyx pictus</i> | - / - | ✓ | | |
| Nashville warbler <i>Vermivora ruficapilla</i> | - / - | ✓ | | |
| northern goshawk <i>Accipiter gentilis</i> | SSC/- | ✓ | | |
| northern harrier (breeding) <i>Circus cyaneus</i> | SSC/- | ✓ | | |
| osprey <i>Pandion haliaetus</i> | SSC/- | ✓ | | |
| peregrine falcon <i>Falco peregrinus</i> | SP, SE/ delisted | ✓ | | |
| prairie falcon (breeding) <i>Falco mexicanus</i> | SSC/- | ✓ | | |
| purple martin <i>Progne subis</i> | SSC/- | ✓ | | |

| | | | | |
|--|-------|---|--|------------------------------|
| sharp-shinned hawk <i>Accipiter striatus</i> | SSC/- | ✓ | | |
| So. California rufous-crowned sparrow <i>Aimophila ruficeps canescens</i> | SSC/- | ✓ | | |
| Swainson's hawk <i>Buteo swainsoni</i> | ST/- | ✓ | | |
| tree swallow <i>Tachycineta bicolor</i> | -/- | ✓ | | |
| tricolored blackbird (colony) <i>Agelaius tricolor</i> | SSC/- | ✓ | | |
| turkey vulture (breeding) <i>Cathartes aura</i> | -/- | ✓ | | |
| white-faced ibis <i>Plegadis chihi</i> | SSC/- | ✓ | | |
| white-tailed kite <i>Elanus leucurus</i> | SP/- | ✓ | | |
| Williamson's sapsucker <i>Sphyrapicus thyroideus</i> | -/- | | | MOU with U.S. Forest Service |
| Wilson's warbler <i>Wilsonia pusilla</i> | -/- | ✓ | | |
| yellow warbler <i>Dendroica petechia brewsteri</i> | SSC/- | ✓ | | |
| yellow-breasted chat <i>Icteria virens</i> | SSC/- | ✓ | | |

MAMMALS

| | | | | |
|--|-------|---|------------------------------|-----------------------------|
| Aguanga kangaroo rat <i>Dipodomys merriami collinus</i> | -/- | ✓ | Additional Survey Area: MSSA | |
| bobcat <i>Lynx rufus</i> | -/- | ✓ | | |
| brush rabbit <i>Sylvilagus bachmani</i> | -/- | ✓ | | |
| coyote <i>Canis latrans</i> | -/- | ✓ | | |
| Dulzura kangaroo rat <i>Dipodomys simulans</i> | -/- | ✓ | | |
| long-tailed weasel <i>Mustela frenata</i> | -/- | ✓ | | |
| Los Angeles pocket mouse <i>Perognathus longimembris brevinasus</i> | SSC/- | ✓ | Additional Survey Area: MSSA | |
| mountain lion <i>Puma concolor</i> | -/- | ✓ | | |
| northwestern San Diego pocket mouse <i>Chaetodipus fallax fallax</i> | SSC/- | ✓ | | |
| San Bernardino flying squirrel <i>Glaucomys sabrinus californicus</i> | SSC/- | | | Species-specific objectives |
| San Diego black-tailed jackrabbit <i>Lepus californicus bennettii</i> | SSC/- | ✓ | | |
| San Diego desert woodrat <i>Neotoma lepida intermedia</i> | SSC/- | ✓ | | |

PLANTS

| | | | | |
|--|------|---|--------|-----------------------------|
| beautiful hulsea <i>Hulsea vestita</i> ssp. <i>callicarpa</i> | -/- | | | Species-specific objectives |
| Brand's phacelia <i>Phacelia stellaris</i> | -/FC | ✓ | NEPPSA | |

| | | | | |
|--|------|---|-------------------------------|------------------------------|
| California beardtongue <i>Penstemon californicus</i> | -/- | ✓ | | |
| California bedstraw <i>Galium californicum</i> ssp. <i>primum</i> | -/- | | | MOU with U.S. Forest Service |
| California black walnut <i>Juglans californica</i> var. <i>californica</i> | -/- | ✓ | | |
| California muhly <i>Muhlenbergia californica</i> | -/- | | | Species-specific objectives |
| chickweed oxytheca <i>Oxytheca caryophylloides</i> | -/- | | | Species-specific objectives |
| Cleveland's bush monkeyflower <i>Mimulus clevelandii</i> | -/- | | | MOU with U.S. Forest Service |
| cliff cinquefoil <i>Potentilla rimicola</i> | -/- | | | Species-specific objectives |
| Coulter's goldfields <i>Lasthenia glabrata</i> ssp. <i>coulteri</i> | -/- | ✓ | Additional Survey Area: CASSA | |
| Coulter's matilija poppy <i>Romneya coulteri</i> | -/- | | | Species-specific objectives |
| Davidson's saltscall <i>Atriplex serenana</i> var. <i>davidsonii</i> | -/- | ✓ | Additional Survey Area: CASSA | |
| Engelmann oak <i>Quercus engelmannii</i> | -/- | ✓ | | |
| Fish's milkwort <i>Polygala cornuta</i> var. <i>fishiae</i> | -/- | | | Species-specific objectives |
| graceful tarplant <i>Holocarpha virgata</i> ssp. <i>elongata</i> | -/- | | | Species-specific objectives |
| Hall's monardella <i>Monardella macrantha</i> ssp. <i>hallii</i> | -/- | ✓ | | |
| Hammitt's clay-cress <i>Sibaropsis hammittii</i> | -/- | ✓ | NEPPSA | |
| heart-leaved pitcher sage <i>Lepechinia cardiophylla</i> | -/- | ✓ | Additional Survey Area: CASSA | |
| intermediate mariposa lily <i>Calochortus weedii</i> var. <i>intermedius</i> | -/- | | | Species-specific objectives |
| Jaeger's milk-vetch <i>Astragalus pachypus</i> var. <i>jaegeri</i> | -/- | ✓ | | |
| Johnston's rock cress <i>Arabis johnstonii</i> | -/- | ✓ | NEPPSA | |
| lemon lily <i>Lilium parryi</i> | -/- | | | MOU with U.S. Forest Service |
| little mousetail <i>Myosurus minimus</i> | -/- | ✓ | Additional Survey Area: CASSA | |
| long-spined spine flower <i>Chorizanthe polygonoides</i> var. <i>longispina</i> | -/- | ✓ | | |
| many-stemmed dudleya <i>Dudleya multicaulis</i> | -/- | ✓ | NEPPSA | |
| Mojave tarplant <i>Deinandra mohavensis</i> | SE/- | | | Species-specific objectives |
| mud nama <i>Nama stenocarpum</i> | -/- | ✓ | Additional Survey Area: CASSA | |
| Munz's mariposa lily <i>Calochortus palmeri</i> var. <i>munzii</i> | -/- | ✓ | NEPPSA | |
| ocellated Humboldt lily <i>Lilium humboldtii</i> ssp. <i>ocellatum</i> | -/- | | | MOU with U.S. Forest Service |

| | | | | |
|--|--------|---|----------------------------------|---------------------------------|
| Orcutt's brodiaea <i>Brodiaea orcuttii</i> | - / - | ✓ | | |
| Palmer's grapplinghook <i>Harpagonella palmeri</i> | - / - | ✓ | | |
| Palomar monkeyflower <i>Mimulus diffusus</i> | - / - | ✓ | | |
| Parish's brittlescale <i>Atriplex parishii</i> | | ✓ | Additional Survey Area: CASSA | |
| Parish's meadowfoam <i>Limnanthes gracilis</i> var. <i>parishii</i> | SE / - | ✓ | | |
| Parry's spine flower <i>Chorizanthe parryi</i> var. <i>parryi</i> | - / - | | | Species-specific objectives |
| Payson's jewelflower <i>Caulanthus simulans</i> | - / - | ✓ | | |
| peninsular spine flower <i>Chorizanthe leptotheca</i> | - / - | | | Species-specific objectives |
| Plummer's mariposa lily <i>Calochortus plummerae</i> | - / - | | | Species-specific objectives |
| prostrate navarretia <i>Navarretia prostrate</i> | - / - | ✓ | Additional Survey Area: CASSA | |
| prostrate spineflower <i>Chorizanthe procumbens</i> | - / - | ✓ | | |
| Rainbow manzanita <i>Arctostaphylos rainbowensis</i> | - / - | | | Species-specific objectives |
| round-leaved filaree <i>Erodium macrophyllum</i> | - / - | ✓ | Additional Survey Area: CASSA | |
| San Jacinto Mountains bedstraw <i>Galium angustifolium</i> ssp. <i>jacinticum</i> | - / - | ✓ | NEPPSA | |
| San Miguel savory <i>Satureja chandleri</i> | - / - | ✓ | NEPPSA | |
| shaggy-haired alumroot <i>Heuchera hirsutissima</i> | - / - | | | MOU with U.S. Forest Service |
| small-flowered microseris <i>Microseris douglasii</i> var. <i>platycarpa</i> | - / - | | | Species-specific objectives |
| small-flowered morning-glory <i>Convolvulus simulans</i> | - / - | ✓ | | |
| smooth tarplant <i>Centromadia pungens</i> ssp. <i>laevis</i> | - / - | ✓ | Additional Survey Area: CASSA | |
| sticky-leaved dudleya <i>Dudleya viscida</i> | - / - | | | MOU with U.S. Forest Service |
| vernal barley <i>Hordeum intercedens</i> | - / - | ✓ | | |
| Wright's trichocoronis <i>Trichocoronis wrightii</i> var. <i>wrightii</i> | - / - | ✓ | NEPPSA | |
| Yucaipa onion <i>Allium marvinii</i> | - / - | ✓ | NEPPSA | |

Status Codes:
ST - State threatened
SE - State endangered
SP - State Fully Protected
SSC - State species of concern

FT - Federally threatened
FE - Federally endangered
FP - Federally proposed threatened
FC - Federal candidate for listing

Table Codes:

| | |
|--------------------------------|---|
| Riparian/Riverine/Vernal Pools | If impacts are unavoidable, focused surveys are required for these species within the Plan Area in association with the implementation of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policy. |
| NEPPSA | Site specific focused surveys for narrow endemic plant species are required in association with the implementation of the Protection of Narrow Endemic Plant Species within a defined narrow endemic plant species survey area (NEPSSA). |
| Additional Survey Area | Site specific focused surveys are required for certain species in association with the implementation of the Additional Survey Needs and Procedures within defined survey areas: Criteria Area Species Survey Area (CASSA), Amphibian Species Survey Areas (ASSA), Burrowing Owl Survey Areas (BOSA), Mammal Species Survey Areas (MSSA). |
| MOU with U. S Forest Service | In order for these species to become a Covered Species adequately conserved, a Memorandum of Understanding with the U.S. Forest Service will need to be executed that addresses management for these species on Forest Service lands. |
| Species-specific objectives | In order for these species to become a Covered Species adequately conserved, achievement of species-specific conservation objectives will need to be demonstrated. |
| Delhi Sands flower-loving fly | With the Exception of Cells 21, 22, and 55 within Area Plan Subunit Survey Area ³ of the Jurupa Area Plan, surveys will be conducted for future projects within the approximately 5,100 acres of mapped Delhi Soils within the Plan Area (MSHCP Volume II-B, 1-3 and Exhibit 12) |

Attachment 3. Western Riverside MSHCP Covered Species Take Estimation by Loss of Individuals and/or Modeled Habitat¹.

| Species Name | Estimation of Amount and Extent of Take² | Management Actions³ |
|---|--|---------------------------------------|
| LISTED CRUSTACEANS | | |
| Riverside fairy shrimp <i>Streptocephalus woottoni</i> | loss of up to 25,832 acres of modeled vernal pool habitat | ✓ |
| vernal pool fairy shrimp <i>Branchinecta lynchi</i> | loss of up to 25,832 acres of modeled vernal pool habitat | ✓ |
| LISTED INSECTS | | |
| Delhi Sands flower-loving fly <i>Rhaphiomidas terminatus abdominalis</i> | Until the conservation of an additional 220 acres of modeled habitat, take will occur only within 25 percent of occupied areas and in areas where Delhi Sands flower-loving fly conservation is determined to be infeasible and the Fish and Wildlife Service concurs that conservation of the area will not contribute to long-term survival of the species; loss of up to 2,500 acres of modeled habitat | ✓ |
| Quino checkerspot butterfly <i>Euphydryas editha quino</i> | all life stages (eggs, larvae, pupae adults) of individuals within up to 98,839 acres of modeled habitat | ✓ |
| LISTED FISH | | |
| Santa Ana sucker <i>Catostomus santaanae</i> | loss of up to 443 acres of modeled habitat | ✓ |
| LISTED AMPHIBIANS | | |
| arroyo toad <i>Bufo californicus</i> | all individuals within up to 10,564 acres of modeled habitat | ✓ |
| California red-legged frog <i>Rana aurora draytonii</i> | zero (0) individuals; loss of up to 9,052 acres of modeled habitat | |
| mountain yellow-legged frog <i>Rana mucosa</i> | zero (0) individuals; loss of up to 8,094 acres of modeled habitat | |
| LISTED BIRDS | | |
| bald eagle <i>Haliaeetus leucocephalus</i> | zero (0) adults or eagle nests; loss of up to 1,801 acres of modeled habitat | |
| coastal California gnatcatcher <i>Polioptila californica californica</i> | loss of up to 62,613 acres of modeled habitat | ✓ |
| least Bell's vireo <i>Vireo bellii pusillus</i> | loss of up to 2,804 acres of modeled habitat | ✓ |
| southwestern willow flycatcher <i>Empidonax traillii extimus</i> | zero (0) breeding territories; no direct mortality of adults; loss of up to 3,027 acres of modeled foraging habitat | |
| western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i> | zero (0) breeding territories; no direct mortality of adults; loss of up to 77 acres of modeled foraging habitat | |
| LISTED MAMMALS | | |
| San Bernardino kangaroo rat <i>Dipodomys merriami parvus</i> | all individuals within up to 4,557 acres of modeled habitat | ✓ |

| Species Name | Estimation of Amount and Extent of Take ² | Management Actions ² |
|---|--|---------------------------------|
| Stephens' kangaroo rat <i>Dipodomys stephensi</i> | all individuals within up to 49,142 acres of modeled habitat | ✓ |
| CRUSTACEANS | | |
| Santa Rosa Plateau fairy shrimp <i>Linderiella santarosae</i> | loss of up to 342 acres of modeled vernal pool habitat | ✓ |
| FISH | | |
| arroyo chub <i>Gila orcutti</i> | loss of up to 638 acres of modeled habitat | ✓ |
| AMPHIBIANS | | |
| coast range newt <i>Taricha tarosa tarosa</i> | all individuals within up to 35,021 acres of modeled habitat | ✓ |
| western spadefoot <i>Scaphiopus hammondi</i> | all individuals within up to 298,000 acres of modeled habitat | ✓ |
| REPTILES | | |
| Belding's orange-throated whiptail <i>Cnemidophorus hyperythrus beldingi</i> | all individuals within up to 155,863 acres of modeled habitat | ✓ |
| coastal western whiptail <i>Cnemidophorus tigris multiscutatus</i> | all individuals within up to 306,492 acres of modeled habitat | ✓ |
| granite night lizard <i>Xantusia henshawi henshawi</i> | all individuals within up to 192,854 acres of modeled habitat | ✓ |
| granite spiny lizard <i>Sceloporus orcutti</i> | all individuals within up to 229,290 acres of modeled habitat | ✓ |
| northern red-diamond rattlesnake <i>Crotalus ruber ruber</i> | all individuals within up to 210,699 acres of modeled habitat | ✓ |
| San Bernardino mountain kingsnake <i>Lampropeltis zonata parvirubra</i> | all individuals within up to 4,969 acres of modeled habitat; This take is not authorized unless the conditions for coverage in the MSHCP, Section 9 (Table 9.3, pp. 9-20) are met and concurred with by the Service. | ✓ |
| San Diego banded gecko <i>Coleonyx variegatus abbotii</i> | all individuals within up to 149,898 acres of modeled habitat | ✓ |
| San Diego horned lizard <i>Phrynosoma coronatum blainvillei</i> | all individuals within up to 323,543 acres of modeled habitat | ✓ |
| San Diego mountain kingsnake <i>Lampropeltis zonata pulchra</i> | all individuals within up to 2,580 acres of modeled habitat | ✓ |
| southern rubber boa <i>Charina bottae umbratica</i> | all individuals within up to 9,373 acres of modeled habitat | ✓ |
| southern sagebrush lizard <i>Sceloporus graciosus vandenburgianus</i> | all individuals within up to 8,155 acres of modeled habitat | ✓ |
| western pond turtle <i>Clemmys marmorata pallida</i> | all individuals within up to 10,363 acres of modeled wetland habitat and up to 81,679 acres of modeled upland habitat | ✓ |
| BIRDS | | |

| Species Name | Estimation of Amount and Extent of Take ² | Management Actions ² |
|--|---|---------------------------------|
| American bittern <i>Botaurus lentiginosus</i> | no direct mortality of adults; loss of up to 189 acres of modeled habitat | |
| Bell's sage sparrow <i>Amphispiza belli belli</i> | loss of up to 175,119 acres of modeled habitat | ✓ |
| black swift (breeding) <i>Cypseloides niger</i> | zero (0) adults, eggs, nestlings | |
| black-crowned night heron <i>Nycticorax nycticorax</i> | no direct mortality of adults; loss of up to 3,175 acres of modeled habitat | |
| burrowing owl <i>Athene cunicularia hypugaea</i> | loss of up to 164,910 acres of modeled habitat; trapping and/or capturing and handling of burrowing owls for relocation efforts is authorized by the take statement | |
| cactus wren <i>Campylorhynchus brunneicapillus</i> | loss of up to 62,679 acres of modeled habitat | ✓ |
| California horned lark <i>Eremophila alpestris actia</i> | loss of up to 263,858 acres of modeled habitat | ✓ |
| California spotted owl <i>Strix occidentalis occidentalis</i> | no direct mortality of adults; loss of up to 12,905 acres of modeled habitat | |
| Cooper's hawk <i>Accipiter cooperii</i> | no direct mortality of adults; loss of up to 18,680 acres of modeled habitat | |
| double-crested cormorant <i>Phalacrocorax auritus</i> | no direct mortality of adults; loss of up to 1,693 acres of modeled habitat | |
| downy woodpecker <i>Picoides pubescens</i> | loss of up to 12,059 acres of modeled habitat | |
| ferruginous hawk <i>Buteo regalis</i> | zero (0) adults; loss of up to 234,978 acres of modeled foraging habitat | |
| golden eagle <i>Aquila chrysaetos</i> | no direct mortality of adults; loss of up to 177,814 acres of modeled habitat | |
| grasshopper sparrow <i>Anmodramus savannarum</i> | loss of up to 81,733 acres of modeled habitat | ✓ |
| great blue heron <i>Ardea herodias</i> | no direct mortality of adults; loss of up to 3,175 acres of modeled habitat | |
| Lincoln's sparrow (breeding) <i>Melospiza lincolnii</i> | loss of up to 313,519 acres of modeled habitat | ✓ |
| loggerhead shrike <i>Lanius ludovicianus</i> | loss of up to 295,625 acres of modeled habitat | ✓ |
| Macgillivray's warbler <i>Oporornis tolmiei</i> | loss of up to 232,036 acres of modeled habitat | |
| merlin <i>Falco columbarius</i> | zero (0) adults; loss of up to 280,647 acres of modeled habitat | |
| mountain plover (wintering) <i>Charadrius montanus</i> | zero (0) adults; loss of up to 985 acres of modeled foraging habitat | |

| Species Name | Estimation of Amount and Extent of Take ¹ | Management Actions ² |
|--|---|---------------------------------|
| mountain quail <i>Oreortyx pictus</i> | all nests, including eggs and chicks, within up to 66,695 acres of modeled habitat outside the Criteria Area; a small, but undeterminable, number of active nests, including eggs and chicks, within up to 11,620 acres within the Criteria Area, but outside of Additional Reserve Lands | ✓ |
| Nashville warbler <i>Vermivora ruficapilla</i> | loss of up to 232,043 acres of modeled habitat | ✓ |
| northern goshawk <i>Accipiter gentilis</i> | no direct mortality of adults; loss of up to 9,347 acres of modeled habitat | ✓ |
| northern harrier (breeding) <i>Circus cyaneus</i> | no direct mortality of adults; loss of up to 263,927 acres of modeled habitat | ✓ |
| osprey <i>Pandion haliaetus</i> | no direct mortality of adults; loss of up to 3,062 acres of modeled habitat | |
| peregrine falcon <i>Falco peregrinus</i> | no direct mortality of adults; loss of up to 1,668 acres of modeled habitat | |
| prairie falcon (breeding) <i>Falco mexicanus</i> | zero (0) adults; loss of up to 168,966 acres of modeled habitat | |
| purple martin <i>Progne subis</i> | loss of up to 18,680 acres of modeled habitat | |
| sharp-shinned hawk <i>Accipiter striatus</i> | no direct mortality of adults; loss of up to 232,043 acres of modeled habitat | |
| So. California rufous-crowned sparrow <i>Aimophila ruficeps canescens</i> | loss of up to 231,641 acres of modeled habitat | ✓ |
| Swainson's hawk <i>Buteo swainsoni</i> | zero (0) adults; loss of up to 237,492 acres of modeled habitat | |
| tree swallow <i>Tachycineta bicolor</i> | loss of up to 13,443 acres of modeled habitat | |
| tricolored blackbird (colony) <i>Agelaius tricolor</i> | no direct mortality of adults; loss of up to 46 acres of modeled nesting habitat and 174,450 acres of modeled foraging habitat | |
| turkey vulture (breeding) <i>Cathartes aura</i> | no direct mortality of adults; loss of up to 321,502 acres of modeled habitat | |
| white-faced ibis <i>Plegadis chihi</i> | no direct mortality of adults; loss of up to 32 acres of modeled nesting habitat and up to 92,536 acres of modeled foraging habitat | |
| white-tailed kite <i>Elanus leucurus</i> | no direct mortality of adults; loss of up to 375,583 acres of modeled habitat | |
| Williamson's sapsucker <i>Sphyrapicus thyroideus</i> | loss of up to 9,347 acres of modeled habitat | ✓ |
| Wilson's warbler <i>Wilsonia pusilla</i> | loss of up to 213,323 acres of modeled habitat | |
| yellow warbler <i>Dendroica petechia brewsteri</i> | loss of up to 12,059 acres of modeled habitat | ✓ |

| Species Name | Estimation of Amount and Extent of Take ¹ | Management Actions ² |
|--|--|---------------------------------|
| yellow-breasted chat <i>Icteria virens</i> | loss of up to 2,581 acres of modeled habitat | ✓ |
| MAMMALS | | |
| Aguanga kangaroo rat <i>Dipodomys merriami collinus</i> | all individuals within up to 2,890 acres of modeled habitat | ✓ |
| bobcat <i>Lynx rufus</i> | loss of up to 325,261 acres of modeled habitat | ✓ |
| brush rabbit <i>Sylvilagus bachmani</i> | loss of up to 217,740 acres of modeled habitat | ✓ |
| coyote <i>Canis latrans</i> | loss of up to 464,271 acres of modeled habitat | ✓ |
| Dulzura kangaroo rat <i>Dipodomys simulans</i> | all individuals within up to 143,411 acres of modeled habitat | ✓ |
| long-tailed weasel <i>Mustela frenata</i> | all individuals within up to 459,807 acres of modeled habitat | ✓ |
| Los Angeles pocket mouse <i>Perognathus longimembris brevinasus</i> | all individuals within up to 24,831 acres (25,831 acres with the loss of March ARB) of modeled habitat | ✓ |
| mountain lion <i>Puma concolor</i> | loss of up to 165,949 acres of modeled habitat | ✓ |
| northwestern San Diego pocket mouse <i>Chaetodipus fallax fallax</i> | all individuals within up to 305,507 acres of modeled habitat | ✓ |
| San Bernardino flying squirrel <i>Glaucomys sabrinus californicus</i> | all individuals within up to 6,763 acres of modeled habitat; This take is not authorized unless the conditions for coverage in the MSHCP, Section 9 (Table 9.3, pp. 9-22) are met and concurred with by the Service. | ✓ |
| San Diego black-tailed jackrabbit <i>Lepus californicus bennettii</i> | all individuals within up to 268,662 acres of modeled habitat | ✓ |
| San Diego desert woodrat <i>Neotoma lepida intermedia</i> | all individuals within up to 213,821 acres of modeled habitat | ✓ |

¹ Take will be in the form of harm, death, and injury. In general, modeled habitat for each individual species within the MSHCP Plan Area was based on vegetation communities. For further details on individual species' modeled habitat, refer to Biological Opinion (FWS-WRIV-870.19); Species by Species Evaluation.

²For all species with a checked box, monitoring and management activities may result in take of a small, but undeterminable, number of individuals.

³With the exception of mountain quail, potential take of nests, eggs, or young was not evaluated for Covered bird species due to required compliance by the Permittees with the Migratory Bird Treaty Act of 1918 prohibition on the take of active nests.

Attachment 3. Loss of Covered Species Habitats by Vegetation Communities.

| Collapsed Vegetation Category | Specific Vegetation Category | Acres Lost |
|--|---|-------------------|
| Montane Coniferous Forest | Jeffrey Pine | 3962 |
| | Lodgepole Pine | 1 |
| | Lower Montane Coniferous Forest | 1716 |
| | Mixed Evergreen Forest | 459 |
| | Southern California White Fir | 481 |
| | Subalpine Coniferous | 1 |
| Montane Coniferous Forest Total | | 6620 |
| Woodlands and Forest | Black Oak Forest | 0 |
| | Broadleaved Upland Forest | 83 |
| | Coast Live Oak Woodland | 3290 |
| | Dense Engelmann Oak Woodland | 1590 |
| | Oak Woodland | 3885 |
| Woodlands and Forest Total | | 8848 |
| Coastal Sage Scrub | Coastal Scrub | 1743 |
| | Diegan Coastal Sage Scrub | 9068 |
| | Riversidean Sage Scrub | 59142 |
| Coastal Sage Scrub Total | | 69952 |
| Riversidean Alluvial Fan Sage Scrub | Disturbed Alluvial | 229 |
| | Riversidean Alluvial Fan Sage Scrub | 1651 |
| Riversidean Alluvial Fan Sage Scrub Total | | 1880 |
| Desert Scrub | Big Sagebrush Scrub | 4264 |
| | Semi-desert Succulent Scrub | 80 |
| | Sonoran Desert Scrub | 121 |
| Desert Scrub Total | | 4465 |
| Chaparral | Chamise Chaparral | 268 |
| | Chaparral | 112048 |
| | Red Shank Chaparral | 24738 |
| | Semi-Desert Chaparral | 15 |
| Chaparral Total | | 137069 |
| Playas and Vernal Pools | Alkali Playa | 977 |
| | Southern Interior Basalt Vernal Pool | 7 |
| | Vernal Pool | 1 |
| Playas and Vernal Pools Total | | 985 |
| Grasslands | Non-native Grassland | 91660 |
| | Valley and Foothill Grassland | 26 |
| Grasslands Total | | 91686 |
| Riparian Scrub, Woodland, Forest | Arundo/Riparian Forest | 6 |
| | Montane Riparian Forest | 70 |
| | Montane Riparian Scrub | 0 |
| | Mule Fat Scrub | 184 |
| | Riparian Forest | 308 |
| | Riparian Scrub | 1110 |
| | Southern Cottonwood/Willow Riparian | 647 |
| | Southern Sycamore/Alder Riparian Woodland | 118 |
| | Southern Willow Scrub | 769 |
| Tamarisk Scrub | 0 | |
| Riparian Scrub, Woodland, Forest Total | | 3212 |

Attachment 3. Loss of Covered Species Habitats by Vegetation Communities.

| Collapsed Vegetation Category | Specific Vegetation Category | Acres Lost |
|--|---------------------------------------|-------------------|
| Meadows and Marshes | Coastal and Valley Freshwater Marsh | 33 |
| | Marsh | 34 |
| Meadows and Marshes Total | | 67 |
| Meadow | Meadow (Montane) | 89 |
| | Wet Montane Meadow | 299 |
| Meadow Total | | 387 |
| Peninsular Juniper Woodland | Peninsular Juniper Woodland and Scrub | 458 |
| Peninsular Juniper Woodland Total | | 458 |
| Cismontane Alkali Marsh | Cismontane Alkali Marsh | 122 |
| Cismontane Alkali Marsh Total | | 122 |
| Agricultural Land | Dairy & Livestock Feedyards | 4906 |
| | Field Croplands | 99237 |
| | Grove/Orchard | 34500 |
| Agricultural Land Total | | 138643 |
| Water | Open Water/Reservoir/Pond | 1384 |
| Water Total | | 1384 |
| Developed, Disturbed Land | Residential/Urban/Exotic | 247943 |
| Developed, Disturbed Land Total | | 247943 |
| Grand Total | | 713722 |
| | | |