

species as a whole as opposed to any one individual specimen.

Paragraph (d)(4) sets out a fourth exemption which is designed to provide an incentive to encourage the development of State-authorized or -developed comprehensive habitat conservation plans for threatened species. Premised upon the State of California's Natural Community Conservation Planning Program and the Service's special rule for the California gnatcatcher, this exemption would be triggered by a finding published by the Fish and Wildlife Service in the **Federal Register** that a given State has developed an adequate habitat conservation plan for a threatened species that comprehensively addresses the threats to the species within that State and promotes its survival and recovery. Any subsequent land use activity within that State which was in accordance with the approved State habitat plan, would be exempted from any further Federal taking prohibitions for threatened species under the Endangered Species Act. Thus, by taking the initiative and developing a State-authorized or -developed conservation plan, a State could eliminate a separate Federal set of regulatory guidelines which landowners would otherwise have to comply with. Further, this provision could apply to conservation plans developed at the regional or county level so long as such plans comprehensively address the threats to a species throughout its range or the primary portions of its range and are authorized by a State conservation program.

Paragraph (d)(5) contains various provisos limiting the application of the personal residence and 5-acre exemptions set out in paragraphs (d)(1) and (2) of this subsection. The first proviso is designed to clarify, as previously noted, that landowners could take advantage of either the 5-acre residential property exemption or the 5-acre disturbance exemption but not both together for a 10-acre cumulative total. The second proviso is intended to clarify that property owners with multiple ownerships are limited to one exemption for all of their properties and not one exemption per property. The third proviso is designed to avoid the potential abuse of these exemptions through the subsequent subdivision of property into smaller parcels, each qualifying for its own personal residence or 5-acre exemption. In the case of future listings, the Service proposes to bar the application of these exemptions to individual parcels of land where the parcels were subdivided from a larger block of land after the date of

proposed listing for the affected threatened species. For any subdivision created after the relevant cut-off date, the 5-acre exemption would apply in aggregate total to disturbances within the subdivision as a whole and not be tallied separately for the individual tracts of land. However, if certain parcels of land had been broken off or subdivided from a larger parcel prior to the proposal to list the species, the personal residence and 5-acre exemptions could still potentially be applied to each individual parcel.

For those species which are already on the threatened species list, the Service would propose to use a different exemption cut-off date to deal with the problem of land subdivision. Rather than use the date of a species' proposed listing, which may have occurred a long time ago, the Service proposes to use March 6, 1995, as the subdivision cut-off point. March 6, 1995 was chosen as the reference cut-off date since it was on that date that Secretary Babbitt announced the decision to authorize personal residence and 5-acre exemptions for threatened species, where appropriate. Thus, for presently listed species, parcels of land divided prior to March 6, 1995, could still qualify individually for an exemption.

The last proviso in paragraph (d)(5) also clarifies that the new exemptions set out in paragraphs (d)(1) and (d)(2) would not immediately and automatically apply to species which were already on the threatened species list as of the date of the finalization of these amendments to 50 CFR 17.31. As previously noted, the Service is beginning an immediate review of the potential effects of these amendments to species which are already listed as threatened and the agency intends to complete a preliminary assessment of this matter within 90 days. The Service will then begin the process of formally amending the existing regulations for those threatened species for whom the exemptions have been found to be appropriate. The Service could publish these proposed exemptions either for individual species or for clusters or groups of species.

Finally, the Service notes that there is nothing in the new proposed exemptions which would preclude a State, or a political subdivision of a State, that is the recipient of a Habitat Conservation Plan (HCP) permit under section 10(a)(1)(B) of the Act, from requiring any landowner within the permit area to pay a fee to contribute to mitigation of impacts resulting from issuance of the permit.

Public Comments Solicited

The Service intends any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. In particular, the Service seeks comments on the extent to which, or under what circumstances, the small landowner and low-impact activity exemptions should be applied to currently-listed threatened species and threatened species listed in the future. Final promulgation of the proposed rule will take into consideration all comments and any information received by the Service. Any information the Service receives during the comment period may lead to a final rule that differs from this proposed rule.

National Environmental Policy Act of 1969 (NEPA)

The Service believes this action may be categorically excluded under the Department's NEPA procedures. (See 516 DM 2 Appendix I Categorical Exclusion 1.10).

Required Determinations

This rule was reviewed under Executive Order 12866. The Fish and Wildlife Service also certifies that the proposed revisions to 50 CFR 17.31 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Significant adverse economic impacts are not expected as a result of the proposed rule because: (1) The rule is intended to reduce or eliminate altogether regulatory requirements on small entities under the Act with respect to threatened species; and (2) the rule restates internal administrative guidance and revises the regulatory presumption under 50 CFR 17.31 with respect to take of threatened species by small landowner activities, the effects of which will be triggered by future listing decisions under the Act. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this proposed rule, nor does the proposed rule contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1990. Further, this rule does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects as described in the order. Finally, the Service has determined that the