

proposed action qualifies for categorical exclusion under the requirements of Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights," and preparation of a Takings Implication Assessment is not required. Regulations that reduce Federal restrictions on use of private property are designated as categorical exclusions under this order.

Author

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List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subpart D of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Section 17.31 is revised to read as follows:

SUBPART D—THREATENED WILDLIFE

§ 17.31 Prohibitions.

(a) *General.* Except as provided for in subpart A of this part, paragraph (d) of this section, or in a permit issued under this subpart, all of the prohibitions and provisions in § 17.21 shall apply to threatened wildlife, except § 17.21(c)(5).

(b) *Cooperative agreements.* 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, and who is designated by his or her agency for such purposes, may, when acting in the course of their official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

(c) *Special rules.* (1) Whenever a special rule in § 17.40 through § 17.48 applies to a threatened species of wildlife, none of the provisions of paragraphs (a), (b), or (d) of this section shall apply in those portions of the species' range covered by the special rule. The special rule will contain all of the applicable prohibitions and exceptions for the species: *Provided*, that where a special rule covers only a portion of a species' range, paragraphs (a), (b), and (d) of this section will apply to those portions of the species' range not covered by the special rule.

(2) Whenever the Fish and Wildlife Service determines that the individual or cumulative adverse effects of applying one or more exemptions under paragraph (d) of this section are likely to be significant for a given threatened species, the Fish and Wildlife Service shall issue a special rule for that species which shall contain only such exemptions or prohibitions as are deemed necessary and advisable for the species.

(d) *Landowner exemptions.* Notwithstanding paragraph (a) of this section, any person may take threatened wildlife incidentally in the course of otherwise lawful activities:

(1) Conducted on a contiguous parcel of land of 5 acres or less that is occupied by a single household dwelling and is used principally for residential, noncommercial purposes;

(2) Conducted on a parcel of land that results in the cumulative disturbance of no more than 5 total contiguous acres for the entire parcel;

(3) Identified by the Fish and Wildlife Service at the time of the final listing of the affected threatened species, in a subsequent general notice published in the **Federal Register**, or in a written response to voluntary inquiries from landowners, as likely to have negligible adverse effects upon the species; or

(4) Conducted in accordance with a State-authorized or -developed comprehensive habitat conservation planning program for the affected threatened species of wildlife that has been found by the Fish and Wildlife Service in a notice published in the **Federal Register** to address the threats to the species within that State and to promote its survival and recovery.

(5) Notwithstanding the provisions of paragraphs (d) (1) and (2) of this section, such exemptions shall not apply:

(i) In combination with each other for any one person or ownership and shall be mutually exclusive;

(ii) In any instance to more than one parcel of land per person or ownership;

(iii) In the case of any threatened species of wildlife listed after the date of final rulemaking establishing such exemptions, to individual smaller parcels of land which were subdivided from a larger contiguous parcel of land after the date of proposed listing of the affected threatened species; and

(iv) In the case of threatened species of wildlife listed prior to the date of final rulemaking establishing such exemptions, unless the Fish and Wildlife Service has completed an assessment of the affects of such exemptions upon such species and has published in the **Federal Register** either a specific finding of applicability of such exemptions to such species or a special rule in § 17.40 through § 17.48 of this part, as appropriate, barring the application of those portions of the exemptions which might result in significant adverse effects to such species. For species covered by the provisions of this paragraph (d)(5)(iv), no exemption established under the provisions of paragraphs (d) (1) and (2) of this section shall be extended to individual smaller parcels of land which were subdivided from a larger contiguous parcel of land after March 6, 1995.

Dated: June 14, 1995.

George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

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