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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-ES-2023-0018; FXES1113090FEDR–245–FF09E23000]

RIN 1018–BF88

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

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

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), revise our regulations concerning protections of endangered species and threatened species under the Endangered Species Act (Act or ESA). We reinstate the general application of the "blanket rule" option for protecting newly listed threatened species pursuant to section 4(d) of the Act, with the continued option to promulgate species-specific section 4(d) rules. We also extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to the employees or agents of the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species. We also make minor changes to clarify or correct the existing regulations for endangered species and threatened species; these minor changes do not alter the substance or scope of the regulations.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Public comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available at *https://www.regulations.gov* at Docket No. FWS-HQ-ES-2023-0018.

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

SUPPLEMENTARY INFORMATION:

Background

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

Section 9 of the Act provides a specific list of prohibitions for endangered species but does not provide these same prohibitions to threatened species. Instead, the first sentence in section 4(d) of the Act requires that the Secretary issue regulations that are necessary and advisable to provide for the conservation of threatened species; these are referred to as "4(d)

rules." In addition, the second sentence of section 4(d) authorizes the Secretary to prohibit with respect to any threatened species any act prohibited under section 9 with respect to endangered species. With these two sentences in section 4(d), Congress delegated the authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions, for a given species. Early in the administration of the Act, the Service promulgated "blanket rules," two sets of protective regulations that generally applied to threatened species of wildlife and plants, at 50 CFR 17.31 and 17.71, respectively. These regulations extended the majority of the protections (all of the prohibitions that apply to endangered species under section 9 with certain exceptions to those prohibitions) to threatened species, unless we issued an alternative rule under section 4(d) of the Act for a particular species (i.e., a species-specific 4(d) rule). For species with a species-specific 4(d) rule, that rule contains all of the protective regulations for that species.

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

On January 20, 2021, the President issued Executive Order 13990 (86 FR 7037, January 25, 2021; hereinafter referred to as "the E.O."), which required all agencies to review agency

actions issued between January 20, 2017, and January 20, 2021, to determine consistency with the purposes articulated in section 1 of the E.O. Pursuant to the direction in the E.O., we reviewed our 2019 4(d) rule to assess whether to keep it in place or to revise any aspects. Our review included evaluating the benefits or drawbacks of the regulations as revised in the 2019 4(d) rule, the necessity of those regulations, their consistency with applicable case law, and other factors. Based on our evaluation, and for reasons discussed in more detail below, we revise our regulations at 50 CFR 17.31 and 17.71 to reinstate the "blanket rules" that apply the section 9 prohibitions to newly listed threatened species, and we also update other provisions in 50 CFR part 17. The updated prohibitions and exceptions differ from the previous "blanket rules" in two substantive ways. First, federally recognized Tribes are now included as entities authorized to aid, salvage, or dispose of threatened species without a permit. Second, as a result of updating our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988, threatened plants protected under the previous "blanket rule" are now protected from being maliciously damaged or destroyed on areas under Federal jurisdiction, or being removed, cut, dug up, or damaged or destroyed on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. With these regulation revisions, we are not required to reevaluate any previously finalized species-specific 4(d) rules. However, any threatened species with a species-specific 4(d) rule that refers to 50 CFR 17.31(b) or 17.71(b) now has the updated prohibitions and exceptions. In addition, any threatened species of wildlife or plant protected with the previous "blanket rules" has the updated prohibitions and exceptions as outlined under 50 CFR 17.31(a) or 17.71(a), respectively, for any future actions after the effective date of this rule (see **DATES**, above).

The Secretaries of the Interior and Commerce share responsibilities for implementing most of the provisions of the Act. Generally, marine species and some anadromous (sea-run) species are under the jurisdiction of the Secretary of Commerce, and all other species are under the jurisdiction of the Secretary of the Interior. Authority to administer the Act has been delegated by the Secretary of the Interior to the Director of the U.S. Fish and Wildlife Service ("the Service") and by the Secretary of Commerce to the Assistant Administrator for the National Marine Fisheries Service (NMFS). The Service and NMFS (jointly "the Services") each have separate regulations for implementation of section 4(d) protective regulations for species within their respective jurisdictions. As was the case when we amended our section 4(d) regulations in 2019, the amendments in this rule affect only species under Service jurisdiction.

The 2019 4(d) rule, along with other revisions to the Act's regulations finalized in 2019 (revisions to 50 CFR parts 402 and 424), were subject to litigation in the United States District Court for the Northern District of California. On July 5, 2022, the court issued a decision vacating the 2019 4(d) rule without reaching the merits of the case. On September 21, 2022, the United States Court of Appeals for the Ninth Circuit temporarily stayed the effect of the July 5th decision pending the District Court's resolution of motions seeking to alter or amend that decision. On October 14, 2022, the Services notified the District Court that we anticipated proceeding with a rulemaking process to revise the 2019 4(d) rule. Subsequently, on November 16, 2022, the District Court issued orders granting the Service's motion to remand the 2019 4(d) rule to the Service without vacating it. On June 22, 2023, we published in the *Federal Register* (88 FR 40742) a proposed rule to amend the regulations to reinstate the "blanket rule" for newly listed threatened species, to extend certain exceptions to federally recognized Tribes, and to make minor clarifications and corrections. We accepted public comments on the June 22, 2023,

proposed rule for 60 days, ending August 21, 2023. With this rule, the Service is finalizing these amendments to our regulations at 50 CFR part 17.

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

This Rulemaking Action

We are revising the regulations in 50 CFR part 17, subparts C, D, F, and G, with minor administrative revisions to subpart A. We reinstate the general application of the "blanket rule" option for protecting newly listed threatened species pursuant to section 4(d) of the Act, with the continued option to craft species-specific 4(d) rules (50 CFR 17.31(a) and 17.71(a)). We add federally recognized Tribes to the entities authorized to aid or salvage threatened species (50 CFR 17.31(b) and 17.71(b)(1)). We also update endangered plant regulatory protections to mirror existing protections at section 9(a)(2)(B) of the Act (50 CFR 17.61(c)(1)) and clarify that State conservation agencies have the authority to "take" threatened species when carrying out conservation programs unless a species-specific 4(d) rule specifically prohibits that take (50 CFR 17.31(c) and 17.71(c)). Finally, we make minor changes to clarify, without changing the scope or intent of, the existing regulations in several locations (e.g., 50 CFR 17.21, 17.31, 17.32), as well as technical corrections such as revising the use of the phrase "special rule" to "species-specific rule" in several locations (e.g., 50 CFR 17.8, 17.40). In the event any provision is invalidated or held to be impermissible as a result of a legal challenge, the "remainder of the regulation could function sensibly without the stricken provision." *Belmont Mun. Light Dep't* v. FERC, 38 F.4th 173, 187 (D.C. Cir. 2022) (quoting *MD/DC/DE Broad. Ass'n* v. *FCC*, 236 F.3d 13, 22 (D.C. Cir. 2001)). Because each of the provisions stands on its own, the Service views each of

the provisions as operating independently from the other provisions. To illustrate this with one possible example, in the event that a reviewing Court were to find that the provision extending to Tribes the authority to aid threatened species without a permit is invalid, that finding would not affect the revisions to our endangered plant regulations which incorporate the 1988 amendments to the Act. Therefore, in the event that any portion of this final rule is held to be invalid or impermissible, the Service intends that the remaining aspects of the regulatory provisions be severable.

Reinstatement of Blanket Rules

The primary revisions are to 50 CFR 17.31 and 17.71; the revisions reinstate the general application of the "blanket rule" options for protecting newly listed threatened wildlife and plant species, respectively, pursuant to section 4(d) of the Act. "Blanket rule" protections are but one option for protecting threatened species; thus, we also retain the option to promulgate species-specific 4(d) rules.

Our regulations describing the protections included in either "blanket rule" are found at 50 CFR 17.31(a) and 17.71(a) for wildlife and plants, respectively. They include protections from our endangered species regulations at 50 CFR 17.21 and 17.61, thereby incorporating all of the section 9 prohibitions, which make it illegal for any person subject to the jurisdiction of the United States to engage in the following actions:

- With respect to endangered fish or wildlife—take such a species within the United States or on the high seas; or possess, sell, deliver, carry, transport, or ship any such species that has been taken illegally;

- With respect to endangered plants—remove and reduce to possession, or maliciously damage or destroy, any such plants from areas under Federal jurisdiction; or remove, cut, dig up,

or damage or destroy such plants on any other area in knowing violation of any State law or regulation or in the course of violating any State criminal trespass law; and

- With respect to endangered fish or wildlife or plants—import or export any such species; deliver, receive, carry, transport, or ship any such species in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any such species (16 U.S.C. 1538(a)(1) and (a)(2); 50 CFR 17.21 and 17.61).

Our endangered species regulations also include a suite of exceptions, which allow for various entities to conduct otherwise prohibited acts without a permit under the Act (e.g., any person may take endangered wildlife in defense of their own life or the lives of others; Federal and State law enforcement officers may possess, deliver, carry, transport, or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties; certain individuals can take wildlife to aid, salvage, or dispose of endangered species).

Protections for threatened species under the "blanket rules" also include these standard exceptions; however, because threatened species are not in danger of extinction but are likely to become so within the foreseeable future, we provide additional flexibility for managing threatened species. At 50 CFR 17.31(b) and 17.71(b), we include for threatened species exceptions that are more numerous or broader than those for endangered species. These include additional exceptions for the Service and NMFS to conduct otherwise prohibited acts without a permit under the Act associated with carrying out conservation actions and broader exceptions for agents or employees of State conservation agencies operating a conservation program in accordance with section 6(c) of the Act to conduct otherwise prohibited acts without a permit under the Act. These specific exceptions were available in "blanket rules" prior to the 2019 4(d) rule, and we are reinstating them. We also extend to federally recognized Tribes the exceptions

to prohibitions for threatened species that the regulations currently provide to the employees or agents of the Services and other Federal and State agencies to aid, salvage, or dispose of threatened species (see the preamble of our June 22, 2023, proposed rule (88 FR 40742) at pp. 40745–40746 for further discussion of our rationale, which has not changed in this final rule). We have found these base protections and exceptions make sense for most threatened species (see *Necessary and Advisable Determination*, below).

While we can put these base protections into species-specific 4(d) rules and craft species-specific 4(d) rules for every threatened species, we find reinstating the "blanket rule" option to be a superior choice. This is because whenever we determine that the standard suite of protections and exceptions is appropriate, we will not need to develop any additional regulatory text to codify a species-specific 4(d) rule. It is more straightforward and transparent to have species-specific 4(d) rules in one place in the Code of Federal Regulations and "blanket rule" protections described in another, as we had done for the 40 years prior to September 26, 2019. This approach will result in less confusion, less duplication of regulatory text in the Code of Federal Regulations, a lower risk of error in transposing regulatory text, and reduced administrative costs associated with developing and publishing a rule in the *Federal Register* and Code of Federal Regulations.

Reinstating the "blanket rule" option also ensures there is never a lapse in threatened species protections. If we do not promulgate a species-specific 4(d) rule at the time of listing, the "blanket rule" protections will be in place to provide for the conservation of that threatened species. We are simply providing a streamlined option for protecting threatened species for situations in which we do not promulgate species-specific 4(d) rules.

Our ability to tailor "take" prohibitions or other protections to what is necessary and advisable for a given species is an important tool to further the conservation of threatened species and will not be affected by reinstating the "blanket rule" option. Prior to our 2019 4(d) rule, we also had the option to issue species-specific 4(d) rules, which we did approximately 25 percent of the time. Species-specific 4(d) rules can: (1) facilitate implementation of beneficial conservation actions and (2) reduce or otherwise tailor permitting requirements for prohibited actions (e.g., take) under circumstances that are considered inconsequential to the conservation of the species, which can also make better use of our limited personnel and fiscal resources and reduce regulatory burden.

For every newly listed threatened species, we will determine what section 4(d) protections are appropriate. We anticipate that for some species we will determine that a species-specific 4(d) rule would be appropriate while for other species we will determine that "blanket rule" protections are appropriate. When we find that the suite of protections (prohibitions and exceptions) at §§ 17.31(a) or 17.71(a) is appropriate for a given species, we will state it in the preamble of the proposed and final rule listing a species as a threatened species, and we will not develop any additional regulatory text that would appear as a species-specific 4(d) rule (at 50 CFR 17.40 through 17.48 (for wildlife) or 17.73 through 17.78 (for plants)). When we determine that species-specific 4(d) rules are appropriate, we intend to finalize those species-specific 4(d) rules concurrently with final listing rules. In most cases, we will propose the species-specific 4(d) rule concurrently with the proposed listing rule. Whether proposing to protect a threatened species with a "blanket rule" or a species-specific 4(d) rule, the public will be afforded an opportunity to provide public comment on the proposed action.

Effects to Currently Listed Threatened Species

Reinstating the "blanket rule" option and other regulation revisions will only result in minor changes to protections for currently listed threatened species, whether those species received 4(d) protections from the prior versions of the "blanket rules" or from a species-specific 4(d) rule. Species that were protected under prior versions of the "blanket rules" or under species-specific 4(d) rules that refer to any of the sections we are revising receive the updated protections for any actions occurring after the effective date of this rule (see **DATES**, above). As stated above, the revised prohibitions and exceptions make only two substantive changes to the protections for those previously listed threatened species. First, we add federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species. Second, as a result of updating our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988, threatened plants protected under the previous "blanket rule" are now protected from being maliciously damaged or destroyed on areas under Federal jurisdiction, or being removed, cut, dug up, or damaged or destroyed on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

All of the relevant changes associated with this rulemaking will similarly change any existing species-specific 4(d) rules for experimental populations that include references to 50 CFR 17.21 or 17.31 (there are no current experimental populations for plants).

Corrections and Clarifications

In addition to the revisions above, we are also revising multiple sections of 50 CFR part 17, including sections related to protections for endangered plants, to improve readability, increase consistency among sections, align with the Act, and correct inaccuracies. Here we

provide additional information on our update to our endangered plant regulations. See our June 22, 2023, proposed rule (88 FR 40742 at 40745–40746) for additional details about the remaining changes.

We are updating our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988 (16 U.S.C. 1538(a)(2)(B); ESA section 9(a)(2)(B); Pub. L. No. 100–478 (October 7, 1988)). The House Report at the time concluded that the amendments were necessary because, without them, "anyone [could] pick, dig up, cut or destroy an endangered plant with impunity" unless the action was committed on an area under Federal jurisdiction and the plant removed from that area (H. Rept. No. 100–467 (December 7, 1987)). To ensure that our regulations conform to the statutory language regarding prohibitions for endangered plants, we are adding a provision that also makes it unlawful to: (a) maliciously damage or destroy an endangered plant species on an area under Federal jurisdiction; or (b) remove, cut, dig up, or damage or destroy an endangered plant species on any area that is not under Federal jurisdiction in knowing violation of a State law or regulation or in the course of violating a State criminal trespass law. This regulatory revision does not alter existing protections for endangered plant species, as they already had these protections through the Act itself. This revision is a simple correction to our regulations to match the statutory language at section 9(a)(2)(B). As stated above, our "blanket rule" for threatened plant species incorporates the protections from our endangered plant regulations; therefore, threatened plants protected by the plant "blanket rule" receive this additional protection.

Necessary and Advisable Determination

As further discussed below, we are not required to make a "necessary and advisable" determination when we apply or do not apply specific section 9 prohibitions to a threatened

species (*In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmtys. for a Great Or.* v. *Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds*, 515 U.S. 687 (1995))). Nevertheless, even though we are not required to make such a determination, we have chosen to be as transparent as possible and explain below why applying our regulatory text at 50 CFR 17.31(a) and 17.71(a) is, as a whole, necessary and advisable to provide for the conservation of threatened species unless a species-specific 4(d) rule is developed.

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

The first sentence of section 4(d) in the Act has two components: a requirement (to issue regulations for threatened species, if there are any that meet the standard) and a standard (that the regulations be necessary and advisable to provide for the conservation of the species). Thus, we must determine what regulations, if any, are necessary and advisable to provide for the conservation of the species, and if so, promulgate them. We interpret the statutory language ("necessary and advisable to provide for the conservation of the species") to focus the standard for 4(d) rules on providing for the conservation of the species. Therefore, within that context we have interpreted the "necessary and advisable" language to establish a single standard, and we do not attempt to evaluate or make independent findings as to whether a 4(d) rule is separately "necessary" and "advisable." This interpretation was upheld by the court in *In re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 234 (D.D.C. 2011) (referring to "Congress's broad delegation of authority to the Secretary to determine what

measures are necessary and advisable to provide for the conservation of threatened species"). For species that we list as threatened in the future and protect using the "blanket rules" found at 50 CFR 17.31(a) and 17.71(a), we will not make separate "necessary and advisable" determinations for the use of those "blanket rules." Rather, we explain here why use of the "blanket rules" is generally necessary and advisable to provide for the conservation of threatened species unless we issue a species-specific 4(d) rule for a given species. (For species-specific 4(d) rules, we will continue to include the rationale for why the rule as a whole is necessary and advisable to provide for the conservation of the species that is the subject of the rule, as has been our past practice.)

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act provides a specific list of prohibitions for endangered species under section 9, but the Act does not provide these same prohibitions to threatened species. Therefore, when we conduct a rulemaking action to list a species as a threatened species, we recognize that the species is likely to become at risk of extinction within the foreseeable future, and we will either promulgate a species-specific 4(d) rule to establish regulations to provide for the conservation of the species or the species will be afforded protections under the "blanket rules" at §§ 17.31(a) or 17.71(a), as was the case for species listed prior to September 26, 2019.

The second source of authority in section 4(d) states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or 9(a)(2), in the case of plants. The use of the word "may," along with

the absence of any specific standards, in the second sentence grants us particularly broad discretion to put in place for threatened species any of the prohibitions that section 9 contains for endangered wildlife and plants. These prohibitions make it illegal for any person subject to the jurisdiction of the United States to engage in the following actions:

- With respect to endangered fish or wildlife—take such a species within the United States or on the high seas; or possess, sell, deliver, carry, transport, or ship any such species that has been taken illegally;

- With respect to endangered plants—remove and reduce to possession, or maliciously damage or destroy, any such plants from areas under Federal jurisdiction; or remove, cut, dig up, or damage or destroy such plants on any other area in knowing violation of any State law or regulation or in the course of violating any State criminal trespass law; and

- With respect to endangered fish or wildlife or plants—import or export any such species; deliver, receive, carry, transport, or ship any such species in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any such species (16 U.S.C. 1538(a)(1) and (a)(2); 50 CFR 17.21 and 17.61).

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

For every listed threatened species, we will determine what section 4(d) protections are appropriate. We anticipate that for some species we will determine that species-specific 4(d)

protections would be appropriate while for other species we will determine that "blanket rule" protections are appropriate. In circumstances in which we find that "blanket rule" protections are appropriate, we will reference this final rule as our explanation for why a "blanket rule" is necessary and advisable for the species. In contrast, in circumstances in which we determine species-specific 4(d) protections are appropriate, we will explain in the preamble to the rule why the species-specific 4(d) rule, as a whole, satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of that species. Further, when we develop species-specific 4(d) rules, we are not "removing" or "adding" protections compared to the "blanket rules"; therefore, for newly listed threatened species, we will not compare or contrast the protections at §§ 17.31(a) or 17.71(a) with any of the individual proposed species-specific protective regulations. We will simply discuss why the species-specific rule, as a whole, is necessary and advisable for that species.

We conclude for two primary reasons that applying section 9 prohibitions and exceptions to those prohibitions similar to our longstanding "blanket rules" that were available prior to the 2019 4(d) rule is necessary and advisable for the conservation of a threatened species unless we promulgate species-specific 4(d) protections for that species.

The first reason is biological: We want to prevent declines in the species' status, and section 4(d) provides that the Secretary shall promulgate regulations that are necessary and advisable to provide for the conservation of the species. Although threatened species are not currently in danger of extinction like endangered species, we have determined those species are likely to become in danger of extinction within the foreseeable future, and we have an opportunity to try to prevent that from happening. In furtherance of the conservation purposes of the Act identified in section 2(b) (16 U.S.C. 1531(b)), Congress put in place the section 9

prohibitions as an immediate way after listing endangered species to help prevent further declines in the species' status. The plain language of section 4(d) indicates that the Secretary may by regulation prohibit acts under section 9, and we have concluded that applying those prohibitions in the "blanket rules" upon the listing of threatened species will similarly help prevent further declines of the species and further the conservation purposes of the Act.

Another aspect of our biological reason to apply section 9 prohibitions similar to our longstanding "blanket rules" is that, for newly listed species, we often lack a complete understanding of the causes of a species' decline, and taking a precautionary approach to applying protections would proactively address potentially unknown threats. In addition, the initial listing of a species may bring new attention to the species, and that attention may increase the risk of collection or sale. Therefore, this approach of applying section 9 prohibitions to threatened species under the "blanket rules" assists our goal of putting in place protections that will both prevent the species from becoming endangered and promote the recovery of species. As we learn more about a given species and the reasons for its decline over time, we have the option to establish or revise species-specific 4(d) rules accordingly.

As discussed above, the "blanket rules" also include standard exceptions to the section 9 prohibitions. Providing these exceptions to threatened species afforded protections under a "blanket rule" helps to conserve the species by incentivizing conservation through reducing unneeded permitting (e.g., to allow take associated with aiding injured wildlife).

The second reason for applying the section 9 prohibitions for endangered species to threatened species under a "blanket rule" is a practical reason. The first sentence of section 4(d) is open-ended—requiring only that we issue protective regulations that are "necessary and advisable to provide for the conservation of the species." But in most situations, for purposes of

implementation and enforcement, it is easier to explain and comprehend protections for threatened species if they are modeled after the section 9 prohibitions for endangered species—with which agency staff and the public are widely familiar. Therefore, rather than craft similar, but slightly different, prohibitions for threatened species, we refer directly to endangered species regulations at 50 CFR 17.21 and 17.61, where appropriate, in our "blanket rules" as well as in most species-specific 4(d) rules.

For all these reasons, we have determined, even though we are not required to do so, that the "blanket rules" are necessary and advisable to provide for the conservation of threatened species except for those species for which we issue species-specific 4(d) rules.

Relationship to Section 10(j)

Pursuant to section 10(j) of the Act, members of experimental populations are generally treated as threatened species, and pursuant to 50 CFR 17.81, experimental populations are designated through population-specific regulations found in §§ 17.84 through 17.86. Under our existing practice, each population-specific regulation contains all of the applicable prohibitions, along with any exceptions to prohibitions, for that experimental population. Further, our regulations at 50 CFR 17.81(f) state that any population of an endangered species or a threatened species determined by the Secretary to be an experimental population in accordance with subpart H of part 17 will be identified by a species-specific 4(d) rule in §§ 17.84 and 17.85 as appropriate and separately listed in § 17.11(h) (wildlife) or § 17.12(h) (plants) as appropriate. Per those regulations, all experimental populations will have a species-specific 4(d) rule.

Additional Considered Provision

While not proposed as regulatory text, in the proposed rule we solicited comments on an additional potential exception in 50 CFR 17.31(b) and 17.71(b) that would extend an exception

to the prohibitions to certain individuals from federally recognized Tribes for take associated with conservation-related activities. After review of public comments received (see **Summary of Comments and Responses**, below), we are not revising the regulations to include this particular exception at this time. We are finalizing the regulations as proposed to allow federally recognized Tribes to aid or salvage threatened species without a permit.

Summary of Comments and Responses

In our June 22, 2023, proposed rule (88 FR 40742), we requested public comments by August 21, 2023. We received more than 150,000 comments by that date. We received comments from a range of sources, including individual members of the public, States, Tribes, industry organizations, legal foundations and firms, and environmental organizations. We received several requests for extensions of the public comment period. However, we elected not to extend the public comment period beyond the original 60-day public comment period because we found the 60-day comment period provided sufficient time for a thorough review of the proposed revisions. The majority of the proposed revisions are to portions of the regulations that were previously revised in 2019, and we publicly announced in a press release and on a Service website our intention to revise these regulations in June of 2021. The number of comments received indicated that members of the public were aware of the proposed rule and had adequate time to review it. In addition, we provided six informational sessions for a wide variety of audiences. Over 500 attendees participated in these sessions, and we addressed questions from the participants as part of the sessions. Finally, on our website, we provided additional information about the regulations, such as frequently asked questions and a prerecorded presentation on the proposed revisions.

Most of the comments we received were nonsubstantive in nature, expressing either general support for, or opposition to, provisions of the proposed rule with no supporting information or analysis. Other comments expressed opinions regarding topics not covered within the proposed regulation. For example, we received comments focused on issues that may arise during implementation of our regulations such as opinions as to the scope of the Service's discretion in extending section 9 prohibitions in future species-specific 4(d) rules. We note that, for each future application of a "blanket rule" or promulgation of a species-specific 4(d) rule, the Service will provide an opportunity for public comment. The vast majority of the comments received were nearly identical statements from individuals indicating their general support for the proposed changes to the regulations but not containing substantive content. We also received approximately 90 letters with detailed substantive comments with specific rationales for support of or opposition to specific portions of the proposed rule. Below, we summarize and respond to the significant, substantive comments we received by the close of the comment period.

Reinstatement of Blanket Rules

Comment 1: Multiple commenters supported reinstatement of the "blanket rules." Many agreed that we may not fully understand the threats to a species or threats may change after listing a species. They noted that, when appropriate, future species-specific 4(d) rules can be promulgated outside the time constraints required by the listing process, and after species and land-management needs are fully understood to further the conservation of the threatened species. Others suggested reinstating the "blanket rule" options allows the Service to best uphold the purposes of the Act while streamlining its implementation and maximizing efficiency.

Response: We appreciate the comments and include similar reasons for reinstating the "blanket rules" in our rationale in the preamble of this document.

Comment 2: Multiple commenters addressed the question of whether "blanket rules" are legal under the Act, including whether they are consistent with congressional intent. Some commenters suggested that the rules are not legal because the statutory language and legislative history indicate that Congress intended for the protections for threatened species to differ from, and be more flexible than, the protections for endangered species, as well as for the Service to develop a separate and individualized set of protective regulations for each threatened species. On the other hand, other commenters viewed the "blanket rules" as legal and consistent with congressional intent. These commenters pointed out that "blanket rules" further the purposes of the Act by allowing the Service to protect species quickly without having to develop a new set of regulations for each species, and that courts have upheld the "blanket rules" that were in place before the Service promulgated the 2019 4(d) rule.

Response: We considered all of the comments and have reached the conclusion that promulgating "blanket rules" is legal under the Act and consistent with the intent of Congress. Section 4(d) of the Act requires that, whenever a species is listed as a threatened species, the Service must issue protective regulations that are necessary and advisable to provide for the conservation of the species, but there is nothing in the statute that prevents us from first issuing "blanket rules" proactively that we can later decide whether to apply to species that we list as a threatened species or to promulgate a species-specific 4(d) rule for that species. Nor do the specific words that commenters quote from section 4(d) of the statute (such as "*any* threatened species" and "*any* act prohibited under section [9]") and from the legislative history (such as "*that* species" and "*particular* threatened species," S. Rpt. No. 93-307, at 8 (June 30, 1973)) require that regulations extending the section 9 prohibitions apply only to individual species. "Species" is both the single and the plural form of the word, so "any species" could refer to any

"one or more species." In addition, there are specific words in the legislative history that point towards multiple species (for example, a statement about threatened species in the context of section 4(d) that there is "almost an infinite number of options available to [the Secretary] with regard to permitted activities for *those species*" in H.R. Rep. No. 93-412, at 12 (1973)). The court in *Sweet Home Chapter of Communities for a Greater Oregon* v. *Babbitt* ruled that this approach is consistent with the ESA (1 F.3d. 1, 8 (D.C. Cir. 1993), *modified on other grounds on reh'g*, 17 F.3d 1463 (D.C. Cir. 1994), *rev'd on other grounds*, 515 U.S. 687 (1995)).

With respect to comments stating that in the statute Congress took differing approaches between the prohibitions in section 9 that apply automatically to endangered species upon listing and the more flexible provisions in section 4(d), we are retaining flexibility with the "blanket rules" because we still determine for each threatened species whether to adopt species-specific 4(d) protections or to retain the "blanket rule" protections. Reinstating the "blanket rules" does not itself prohibit any acts with respect to any future-listed threatened species; rather, the moment at which that occurs is when we list that species as a threatened species and decide either to retain the "blanket rule" protections or to promulgate a species-specific 4(d) rule that may include some or all of the section 9 prohibitions instead. At that point, we continue to have an "almost infinite number of options" (H. Rep. 93-412, at 12 (1973)), including the option of applying the "blanket rule," with regard to protecting the species through prohibitions and exceptions. Therefore, even if Congress did intend for the Service to issue species-by-species protective regulations, developing these "blanket rules" does not conflict with that intent. Finally, as we made clear during our rulemaking in 2019 ending the "blanket rule" option for species newly listed as threatened species after the effective date of those regulatory revisions, either approach (using "blanket rules" or requiring promulgation of species-specific 4(d) rules

for every species listed as threatened species) is consistent with the Act ([84 FR 44753 at 44754, August 27, 2019] (citing *Sweet Home Chapter of Communities for a Great Oregon* v. *Babbitt*, 1 F.3d. 1, 8 (D.C. Cir. 1993), *modified on other grounds on reh'g*, 17 F.3d 1463 (D.C. Cir. 1994), *rev'd on other grounds*, 515 U.S. 687 (1995)).

Comment 3: Some commenters suggested that the "blanket rules" represent a default precautionary approach to protecting threatened species and that such a precautionary approach or using a worst-case scenario is contrary to *Maine Lobstermen's Ass'n* v. *NMFS*, 70 F.4th 582, 599 (D.C. Cir. 2023) (*MLA*).

Response: We note at the outset that the *MLA* case involved a different situation that does not apply here because that case arose in the context of section 7, not section 4, of the Act. The holding of *MLA* is limited to the conclusion that the particular biological opinion before the Court in that case was unlawful because in deciding whether the proposed action was "likely to jeopardize the continued existence of" a listed species within the meaning of section 7, it applied worst-case assumptions without first analyzing whether those assumptions were scientifically appropriate in light of the information available to NMFS. The court characterized the NMFS's argument as insisting that legislative history required that, in order to "give the benefit of the doubt to the species," or apply a precautionary principle, the Services must rely upon "worst-case scenarios" in the face of scientific uncertainty (*MLA*, 70 F.4th at 586, 597). The "blanket rules" implement section 4 of the Act, not section 7, and as discussed below the bases for the "blanket rules" are completely different from the court's characterization of the bases underlying the biological opinion in the *MLA* case. We are not claiming that legislative history requires us to promulgate the "blanket rules" in order to "give the benefit of the doubt to the species." Nor are the "blanket rules" based on "worst-case scenarios." Rather, we are promulgating the "blanket

rules" in order to advance the efficient fulfillment of our responsibility under the Act to conserve threatened species. All threatened species, by definition, are likely to become in danger of extinction within the foreseeable future, and these species often need protections like the provisions in the "blanket rules" to recover them. In the time since the 2019 4(d) rule went into effect, nearly all of the species-specific 4(d) rules that the Service has promulgated have concluded that all of the section 9 prohibitions and the standard exceptions to those prohibitions provided for in the "blanket rules" are necessary and advisable to provide for the conservation of the species. In most cases, we also included one or more additional exceptions to those prohibitions. (As stated earlier, although the second sentence of section 4(d) does not require us to make a "necessary and advisable" finding to adopt for a threatened species one or more of the prohibitions that apply to endangered species under section 9, we have chosen to determine that each 4(d) rule in its entirety provides the protections that are necessary and advisable to provide for the conservation of that species.)

Comment 4: Several States expressed appreciation for the inclusion of the exceptions for States with cooperative agreements to conduct conservation actions. The regulatory text includes these exceptions as a default for all future species-specific 4(d) rules, as well as for any species currently or in the future protected by "blanket rules" at 50 CFR 17.31(a) and 17.71(a). Other commenters expressed concern about the treatment of States in reinstatement of the "blanket rules." Commenters suggested that "blanket rules" ignore the sovereignty of the States and give short shrift to the expertise of States and State agencies to manage their resources effectively and efficiently and preferred that we only use species-specific 4(d) rules as they incentivize State input and give States more authority for management of threatened species. Several commenters stated that putting in place "blanket rules" that give threatened species the same protections as

endangered species would interfere with the role that Congress intended for States to take in safeguarding species. They argued that giving threatened species the same protections as endangered species would have the effect of reducing the incentives for States and landowners to be proactive in improving the status of endangered species in an effort to reduce the severity of the prohibitions applicable to the species. As evidence that Congress intended a more active role for States, some of the commenters pointed to references to "federalism" in the legislative history.

Response: We recognize the authorities given to States in section 6 of the Act to conserve listed species and the partnership among the Service and the States in conserving federally listed species. As stated in our Revised Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities (81 FR 8663, February 22, 2016), it is our practice to use the expertise of, and coordinate and collaborate with, State agencies in developing the scientific foundation upon which the Services base their determinations for listing actions, including 4(d) rules that specify the prohibitions necessary and advisable for the conservation of species listed as threatened. We note that the preemptive effect of the Act and implementing regulations in part 17 with regard to State laws for endangered species or threatened species is pursuant to section 6(f) of the Act. (See 16 U.S.C. 1535(f); the Supremacy Clause of the U.S. Constitution; *H.J. Justin & Sons, Inc.* v. *Deukmejian*, 702 F.2d 758, 759–60 (9th Cir. 1983); *Man Hing Ivory & Imports, Inc.* v. *Deukmejian*, 702 F.2d 760 (9th Cir. 1983); *Cresenzi Bird Importers, Inc.* v. *New York*, 658 F. Supp. 1441, 1444–46 (S.D.N.Y.), *summarily aff'd*, 831 F.2d 410 (2d Cir. 1987)). In summary, by operation of the express preemption clause of the Act's section 6(f), and the U.S. Constitution's Supremacy Clause, where a species is listed as an endangered species or a threatened species under the Act, any State law or regulation that applies

with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively allow or permit what is prohibited by the Act or implementing regulations for endangered species or threatened species, or prohibit what is authorized pursuant to an ESA exemption or implementing regulations or permits for endangered species or threatened species. For species under the jurisdiction of the Service, implementing regulations and permits for endangered species or threatened species are provided for in part 17. Additionally, any State law or regulation respecting the taking of an endangered species or threatened species, or activities with unlawfully taken endangered species or threatened species, may be more restrictive, but not less restrictive, than Act exemptions or implementing regulations or permits for endangered species or threatened species provided for in part 17. Pursuant to section 6(f) of the Act, part 17 shall not otherwise be construed to void any State law or regulation that is intended to conserve fish or wildlife, or to permit or prohibit sale of fish or wildlife within the jurisdiction of a State.

The exceptions included in both the "blanket rules" and species-specific 4(d) rules for States to take federally listed threatened species in the course of carrying out conservation programs recognizes this authority and these partnerships. While we recognize and value the important role States play in conserving both endangered and threatened species, the Act requires that the Service issue protective regulations necessary and advisable for threatened species along with several other requirements to conserve threatened species (e.g., designating critical habitat, developing recovery plans, consulting with Federal agencies on their discretionary actions). We have concluded that reinstating the "blanket rules" would neither reduce incentives on the part of States to undertake proactive conservation efforts nor interfere with the congressional approach to federalism and the States' role in conservation through the Act. Even with the "blanket rules"

in place, State programs would still have the opportunity and the incentive to undertake proactive conservation for species under their jurisdiction to improve the species' status and potentially avoid the need for the Service(s) to list a species or to help achieve recovery of the species should it be listed. In addition, the Service would consider any such State efforts when it decides whether to protect a species by a "blanket rule" or to promulgate a species-specific 4(d) rule.

We note that the exceptions from threatened species permitting requirements for certain activities by employees or agents of the Service and certain other Federal, State, and Tribal entities under 50 CFR 17.31(b) and 17.71(b) do not remove the need for entities to comply with other laws and regulations. As with other exceptions from endangered or threatened species permitting requirements in 50 CFR part 17, these limited exceptions allow for the specified otherwise prohibited activities under the Act to occur without a permit under part 17. Permitting exceptions in part 17 are only in relation to ESA prohibitions for endangered and threatened species and the permitting requirements under part 17 and should not be construed to relieve a person from requirements of other parts in subchapter B, or any other applicable laws or regulations other than as provided by section 6(f) as described above. We take this opportunity to note that 50 CFR 10.3 provides, "No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subchapter B. In addition, nothing in this subchapter B, nor any permit issued under this subchapter B, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other Service enforced statutes or regulations."

Comment 5: Several commenters stated that we did not provide enough justification or logical rationale for the reinstatement of the "blanket rules." For example, one commenter stated

that the Service needs to explain how the 2019 4(d) rule was inconsistent with, or otherwise presented obstacles to, the policy articulated by Executive Order 13990. Other commenters suggested that we did not comply with the Administrative Procedure Act (APA). Of these, one commenter stated that we failed to conduct required outreach "in conformance with the requirements of the Administrative Procedure Act" including "reaching out to, and consulting directly with, non-Federal sponsors of projects and the communities they help to protect so these rules can be developed cooperatively, using objective criteria and approaches." Some commenters stated that, at a minimum, the Service has not shown that there are good reasons for the new policy (see *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (*FCC* v. *Fox*)).

Response: We have complied fully with the APA. We published notice of the proposed rulemaking in the *Federal Register*, we provided an opportunity for public comment, we considered the relevant matter presented in those comments, and we have provided a rational explanation for our action. The APA does not require the specific outreach suggested by a commenter. In addition, as discussed elsewhere, while not required, we held six informational sessions for a wide variety of audiences and over 500 attendees participated in these sessions.

In our 2019 4(d) rule (84 FR 44753–44754, August 27, 2019) we explained that we were ending the "blanket rule" option for application of section 9 prohibitions to species newly listed as threatened species after the effective date of those regulatory revisions because: It would make our regulatory approach for threatened species similar to NMFS's approach; either using "blanket rules" or promulgating species-specific rules is a reasonable approach to implementing the Secretary's discretion afforded under section 4(d) of the Act; and promulgating species-specific 4(d) rules that are tailored to the specific species can provide conservation benefits for

threatened species. After several years of experience operating under the 2019 4(d) rule, we now find—as explained further in our preambles to the June 22, 2023, proposed rule (88 FR 40742 at 40743–40745) and this final rule—that reinstating the "blanket rule" option is preferable to requiring promulgation of species-specific 4(d) rules every time we list a species as a threatened species. As we recognize throughout this final rule, we do not discount the importance of our ability to promulgate species-specific 4(d) rules. However, it is important for us to once again have the option of applying the "blanket rules" when appropriate. In summary, we have found that it makes sense to reinstate "blanket rules" that facilitate the application of the Act's section 9 prohibitions to threatened species because "blanket rules" allow for a more-efficient method to protect threatened species for which we find their protections are appropriate. In addition, it is more straightforward and transparent to have species-specific 4(d) rules in one place in the Code of Federal Regulations and "blanket rule" protections described in another, as we have done for 40 years. Finally, the reinstatement of the "blanket rules" also ensures there is never a lapse in threatened species protections. This is sufficient explanation under the Supreme Court's decision in *FCC* v. *Fox* (556 U.S. at 515 ("[I]t suffices that [this policy choice] is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates." (emphasis in original))).

Executive Order 13990 required all agencies to review agency actions issued between January 20, 2017, and January 20, 2021, that may be inconsistent with the policies it set forward. Following the issuance of that E.O., we undertook a review of the 2019 4(d) rule revoking the prior blanket rules. E.O. 13990 provided the impetus for the review, but the E.O. is not the legal basis of the revision. We are revising our regulations at 50 CFR part 17 on the basis of our legal authority under the Act (16 U.S.C. 1531 *et seq*.).

Comment 6: Multiple commenters suggested that by reinstating "blanket rules" we fail to recognize the benefits of species-specific 4(d) rules. Several commenters also requested that we continue to promulgate species-specific 4(d) rules.

Response: As stated in the preambles to the June 22, 2023, proposed rule (88 FR 40742 at 40745) and this final rule, we maintain in our regulations at 50 CFR 17.31(c) and 17.71(c) the ability to issue species-specific 4(d) rules. We do not deny the benefit of species-specific 4(d) rules as we referenced in our 2019 4(d) rule. As noted elsewhere in this document, species-specific 4(d) rules can incentivize known beneficial actions for the species by removing or reducing regulatory burden associated with those actions and can also remove or reduce regulatory burden associated with permitting of otherwise prohibited actions or forms or amounts of "take" considered inconsequential to the conservation of the species. Species-specific 4(d) rules should apply protections that will both prevent the species from becoming endangered and promote the recovery of species.

Comment 7: A commenter suggested that the Service does not need "blanket rules" because we can promulgate a species-specific 4(d) rule to adopt the same endangered species prohibitions.

Response: While we can and have done what the commenter suggested, it is more straightforward and transparent to have species-specific 4(d) rules in one place in the Code of Federal Regulations and "blanket rule" protections described in another, as we had for the 40 years prior to September 26, 2019. Any threatened species not included at 50 CFR 17.40 through 17.48 (for wildlife) or 17.73 through 17.78 (for plants) has the "blanket rule" protections. We will clearly state in proposed and final rules for each species whether there is a species-specific

4(d) rule or whether the species is protected under 50 CFR 17.31(a) (wildlife) or 17.71(a) (plants).

Comment 8: Several commenters suggested that reinstating the "blanket rule" options will further the recovery of threatened species. For example, one commenter suggested "blanket rules" provide more incentives for landowners and land managers to recover endangered species. We also received comments suggesting the opposite. For example, commenters suggested that "blanket rules" collapse the distinction between endangered and threatened species and diminish incentives for private property owners and other regulated entities to take actions that would result in the reclassification of a species from an endangered species to a threatened species. They suggest there would be no functional difference between an endangered species and a threatened species because the same protections could apply uniformly absent a species-specific rule.

Response: We disagree that reinstating the "blanket rule" options for threatened species influences whether the Services and our partners implement actions to recover endangered species. Further, all 4(d) rules, whether "blanket rules" or species-specific rules, play a role in recovering threatened species, since the statute requires that 4(d) rules be necessary and advisable to provide for the conservation of threatened species. Even with the "blanket rule" option, there are incentives for certain entities to conduct conservation actions for endangered species because "blanket rule" protections for threatened species include additional exceptions beyond those provided in our regulations for endangered species. In addition, we always have the option of promulgating species-specific 4(d) rules for any threatened species whose status improves as a result of conservation actions.

We anticipate promulgating species-specific 4(d) rules for most wildlife species when they are reclassified from an endangered species to a threatened species because we will have had many years of experience in determining how best to manage a species in that situation. Given the narrower protections for endangered and threatened species of plants, it may make sense in many cases for the Service to use "blanket rule" protections for plants reclassified from endangered species to threatened species.

Comment 9: Commenters stated that "blanket rules" will impose burdensome costs and regulatory requirements on both the Service and the regulated community. They suggested that reliance on the "blanket rules" will lead to an increased need for permitting by project proponents, taxing both project proponents and the Service, who will have to process and administer additional permits, as well as increasing the degree to which the Service must use its resources to enforce the prohibitions of section 9 of the Act. They also suggested that reinstatement of the "blanket rules" will, in fact, add to the agency's regulatory burden with an increase in the number of entities applying for section 10 authorization or seeking project-by-project coordination on issues that could have been adequately addressed pursuant to a species-specific 4(d) rule.

Response: As stated elsewhere in this document, for each threatened species we will either protect that species with "blanket rule" protections or a species-specific 4(d) rule depending on what is necessary and advisable to provide for the conservation of the species. For most currently listed threatened species, regardless of protections under "blanket rule" or species-specific regulations, we have included all of the section 9 prohibitions as well as exceptions to those prohibitions, such as allowing "take" of threatened species of wildlife in defense of life or other issues of human safety, for law enforcement activities, for aiding injured

or diseased individuals or disposing of dead individuals, and for conservation actions conducted by specific entities.

We do not envision that 4(d) rules will wholly replace the need for section 10 permits for most species. It is appropriate to continue to require recovery permits for otherwise prohibited acts in situations in which we must understand the qualifications and methods of the proposed recovery action. It is often similarly appropriate to continue to prohibit incidental take and issue permits under section 10(a)(1)(B) of the Act for take that is associated with threats that individually or cumulatively led to the listing of the species (or may be new threats to the species) so that project proponents and the Service can determine approaches to minimize and mitigate the impact of the take. Programmatic approaches are available for project proponents to reduce the time associated with developing permit applications such as general conservation plans and template habitat conservation plans. In addition, the Service and project proponents can reduce the need for such permits by developing standardized conservation measures to avoid the risk of "take."

Comment 10: One commenter agreed with our intention to implement the revised regulations on a prospective basis because they suggest it would avoid any confusion as to the management of already listed species.

Response: As discussed in the preamble of this rulemaking and to clarify here, reinstating the "blanket rule" option and other regulation revisions will result in minor changes to protections for currently listed threatened species, whether those species received 4(d) protections from the prior versions of the "blanket rules" or from a species-specific 4(d) rule. Species that were protected under prior versions of the "blanket rules" or under species-specific 4(d) rules that refer to any of the sections we are revising will receive the updated protections for

any actions occurring after the effective date of this rule (see **DATES**, above). Applying the revised prohibitions and exceptions makes only two substantive changes to the protections for those previously listed threatened species. First, we have added federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species. Second, as a result of updating our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988, threatened plants protected under the previous "blanket rule" are now protected from being maliciously damaged or destroyed on areas under Federal jurisdiction, or being removed, cut, dug up, or damaged or destroyed on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. The remaining changes are minor wording revisions or clarifications.

Comment 11: Several commenters suggested that we reevaluate current protections for threatened species (species currently protected under "blanket rules" or species-specific 4(d) rules).

Response: Although we have the discretion to revise protections for threatened species at any time, evaluating or reevaluating the protections for particular species is outside the scope of this rulemaking. Every species that is listed as a threatened species under the Service's jurisdiction is currently benefitting from protective provisions in a 4(d) rule. Species that were listed after the effective date of the 2019 4(d) rule (September 26, 2019) are all protected by species-specific 4(d) rules; species that were listed before the effective date of the 2019 4(d) rule are, and will continue to be, protected either by the "blanket rule" protections or by a species-specific 4(d) rule. For species that are currently protected by species-specific 4(d) rules, reinstating the "blanket rules" will have no effect because the species will continue to be protected by the previously promulgated species-specific 4(d) rules. In addition, as discussed

elsewhere in this document, for species that are currently protected by the prior "blanket rules," these "blanket rules" make only two substantive changes: (1) adding federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species; and (2) updating the protections for threatened plants. Therefore, there is nothing in these narrow changes that requires us to reevaluate current protections for already listed threatened species. In the future, we may still determine that it is appropriate to reevaluate the protective 4(d) regulations for particular threatened species.

Comment 12: Several commenters stated that species-specific 4(d) rules streamline the Act's section 7 consultation process for future Federal actions. They find that species-specific 4(d) rules help identify specific actions or activities that may be undertaken without impairing the listed species' conservation and protection, allowing project proponents to tailor their activities to avoid excessive or unnecessary take based on the contents of the species-specific 4(d) rule.

Response: Regardless of whether a threatened species is protected via "blanket rule" protections or a species-specific 4(d) rule, responsibilities under section 7 of the Act for Federal agencies to consult with the Services for actions that "may affect" a federally listed species or designated critical habitat apply. In the future, we will continue to develop species-specific 4(d) rules for many threatened species, and for others we will use "blanket rule" protections. With or without species-specific 4(d) rules, there are mechanisms to streamline section 7 consultations, including programmatic consultations and developing standardized conservation measures.

Comment 13: Several commenters suggested a blanket 4(d) rule has the potential to discourage species conservation efforts abroad. For example, a commenter noted zoos holding such species may be required to obtain new or additional permits from the Service to authorize

import, export, and other otherwise-prohibited activities, which would incur time and permitting fees for applicants and processing time and costs for the Service. Another commenter asserted that establishing blanket prohibitions on trade would remove any incentive to develop captive-breeding programs and have a disastrous effect on wild populations of a listed species. Some comments related to discouraging conservation efforts resulting from well-managed hunting of foreign species listed under the Act. They asserted that a blanket 4(d) rule could impair or eliminate the ability of American hunters to import legally harvested hunting specimens of threatened species acquired abroad. In their view, such restrictions would negatively impact foreign wildlife management agencies that rely on hunting revenue for significant portions of their budgets. They additionally asserted that establishing protections under a "blanket rule" may undermine conservation efforts for foreign species taken under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response: The purpose of CITES is to regulate international trade in plants and animals to ensure such trade is legal and does not threaten the survival of species in the wild. In determining the status of a species under the Act or the protective regulations that it needs, we take into consideration any protection provided by other laws, such as CITES. However, simply being protected by these other laws does not preclude the need to list a species under the Act if it meets the Act's definition of an endangered or threatened species. Additional conservation measures are provided to species listed as endangered or threatened under the Act, including recognition, requirements for Federal protection, and prohibitions against certain activities with the species. Recognition through listing results in public awareness and may encourage and result in conservation actions by foreign governments; Tribal entities; Federal, State, and local agencies; private agencies and interest groups; and individuals. For example, listing a species

under the Act can support the conservation efforts undertaken for the species in its range, including research efforts to address conservation needs and funding and other assistance to foreign countries to provide for the conservation of endangered species and threatened species. Listing under the Act can also help ensure that the United States and its citizens do not contribute to the further decline of the listed species through resulting Federal protections and prohibitions on certain activities such as import, export, take, interstate commerce, and foreign commerce. For instance, adding a violation under the Act on top of a CITES violation could serve as an additional disincentive for any illegal trade in the species.

We acknowledge that in well-managed circumstances some captive-breeding activities can contribute to the conservation of endangered or threatened species in the wild if, for example, they are part of a genetically managed conservation breeding program producing animals that could be used for reintroductions. We also acknowledge that well-managed trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human–wildlife conflict, and law enforcement efforts. Persons seeking to engage in otherwise prohibited activities with threatened wildlife for scientific purposes or to enhance the propagation or survival of these species may still seek authorization from the Service through threatened species permits (see 50 CFR 17.32) or captive wildlife registration (see 50 CFR 17.21(g)) as applicable.

Comment 14: Operation of the "blanket rule" impairs conservation of threatened species hunted abroad, when the import of a hunting trophy would otherwise not require an import permit under the existing import exemption for threatened species (CITES Appendix-II wildlife at 50 CFR 17.8) and when a threatened species is not listed under CITES.

Response: Nothing in this rulemaking affects the operation of 50 CFR 17.8. The only changes to 50 CFR 17.8 we are finalizing are technical corrections, as proposed, that would merely update the terminology "special rule" to "species-specific rule" for consistency with similar corrections we are making in other sections of part 17. As a result, section 9(c)(2) of the Act and our implementing regulations at 50 CFR 17.8 continue to provide the limited exception to the § 17.31 prohibition against the importation of threatened wildlife for species that are also included in CITES Appendix-II (provided that the other requirements of 50 CFR 17.8(b) are met).

However, as is always the case, the exception at 50 CFR 17.8 to the prohibition on importation in the "blanket rule" does not apply to threatened wildlife subject to a species-specific 4(d) rule (see 50 CFR 17.8(b)). Therefore, if we issue a species-specific 4(d) rule for a particular species, all of the prohibitions and exceptions for that species are contained in the species-specific rule, and the presumption that otherwise qualifying imports do not require a threatened-species permit is rebutted. If the species-specific 4(d) rule prohibits import and does not contain an applicable exception, any would-be importer of that species would be required to obtain an authorization or permit under the Act prior to import (see *Safari Club Int'l* v. *Zinke,* 878 F.3d 316, 328-29 (D.C. Cir. 2017); see also *Safari Club Int'l* v. *Babbitt*, No. MO-93-CA-001, 1993 U.S. Dist. LEXIS 21795, 1993 WL 13932673 (W.D. Tex. Aug. 12, 1993)). As the D.C. Circuit held in *Safari Club,* "[s]ection 9(c)(2) in no way constrains the Service's section 4(d) authority to condition the importation of threatened Appendix II species on an affirmative enhancement finding. Under section 4(d) of the Act, the Service 'shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species' and may 'prohibit with respect to any threatened species any act prohibited … with respect to

endangered species,' see 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* [section] 1538(a)(1)(A), it may do the same with respect to threatened species under section 4(d), *see id.* [section] 1533(d)." The D.C. Circuit went on to explain that "promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [species-specific 4(d) rule for African elephants]."

In other words, if a species-specific 4(d) rule prohibits import, then the limited exception at 50 CFR 17.8 to the requirement for import permits does not apply to the species, and an import permit is required unless the species-specific 4(d) rule provides a separate exception. The limited exception to the requirement for import permits also does not apply if the threatened wildlife is not listed under CITES or is listed under CITES Appendix I. These issues are further explained in the 2006 proposed rule and 2007 final rule promulgating 50 CFR 17.8 (see 71 FR 20168 at 20170–20171, April 19, 2006 ("[I]t is important to note that if a threatened species . . . has a special rule, proposed section 17.8 does not apply; the provisions of the special rule apply."); and 72 FR 48402 at 48404–48405, August 23, 2007 ("This exemption does not apply to species that have a special rule in 50 CFR part 17.")).

The application of the "blanket rule" to a species of threatened wildlife, on the other hand, does not affect the operation of 50 CFR 17.8 for qualifying imports. When applied to a threatened species, the "blanket rule" includes a prohibition on import under 50 CFR 17.31 unless a threatened species import permit is issued under 50 CFR 17.32. An exemption to the threatened species import permit requirement of the "blanket rule" is granted under the limited

circumstances provided at 50 CFR 17.8 for qualifying imports of CITES Appendix-II wildlife. Accordingly, for threatened species of wildlife protected by the "blanket rule" that are also included in Appendix II of CITES, the limited 50 CFR 17.8 exemption to the requirement to obtain import permits for threatened species applies to specimens that meet all the requirements of 50 CFR 17.8(b).

Comment 15: Several commenters requested that the Service include additional exceptions or requirements applicable to either the "blanket rules" or all future species-specific 4(d) rules. Examples of exceptions include exceptions for anyone conducting maintenance of existing infrastructure or conducting conservation-related efforts or aiding or salvaging threatened species. We also received requests to include exceptions for specific entities conducting conservation efforts or aiding or salvaging threatened species.

Some commenters recommended that we require States or Federal land managers to submit proposals before being allowed to use the current exception to take an individual member of a listed species that poses a demonstrable but non-immediate threat to human safety. Other commenters suggested that we revise regulations to require that: (1) 4(d) rules act as a recovery roadmap with triggers to reduce regulation over time; (2) species-specific 4(d) rules provide a "net conservation benefit" to the species; (3) species-specific 4(d) rules require mitigation associated with excepted actions or take; and (4) the Service commits to reevaluate 4(d) rules when we complete a recovery plan.

Response: We appreciate these additional suggestions and decline to include any additional exceptions or requirements that would apply to all future threatened species. However, it may be appropriate to include some of the suggested exceptions in species-specific 4(d) rules, and we can evaluate that possibility for specific species in the future based on the facts and

circumstances for those species. Regarding the "net conservation benefit" standard, we already have a standard under the Act, and that is to craft regulations that are necessary and advisable for the conservation of the species. Regarding the suggestion to require mitigation within all 4(d) rules for any excepted activities or take, we disagree that this is appropriate to require this either for the "blanket rules" or for future species-specific rules. As discussed elsewhere in this document, we include several exceptions to otherwise prohibited take in our "blanket rules." These include exceptions for allowing take in defense of life or other issues of human safety, for law enforcement activities, for aiding injured or diseased individuals or disposing of dead individuals, and for conservation actions conducted by specific entities, and none of these require mitigation. In addition, in our species-specific rules, we include exceptions that should help incentivize beneficial actions for the species by removing or reducing regulatory burden associated with those actions; we can also remove or reduce regulatory burden associated with permitting of otherwise prohibited actions or forms or amounts of "take" considered inconsequential to the conservation of the species. Because the take associated with the activities in the exceptions is either beneficial or de minimis, requiring mitigation for these exceptions is unnecessary. Finally, the Service can revisit protections for threatened species at any time, including after completion or revision of a recovery plan.

Comment 16: Several commenters expressed concern that we intend to apply "blanket rules" to experimental populations listed as threatened species under section 10(j) of the Act.

Response: In the preamble of the June 22, 2023, proposed rule (88 FR 40742 at 40747), we stated that, pursuant to 50 CFR 17.81, experimental populations are designated through population-specific regulations found in §§ 17.84 through 17.86, and under our existing practice, each population-specific regulation contains all of the applicable prohibitions, along with any

exceptions to prohibitions, for that experimental population. Further, our regulations at 50 CFR 17.81(f) state that any population of an endangered species or a threatened species determined by the Secretary to be an experimental population in accordance with subpart H of part 17 will be identified by a species-specific 4(d) rule in §§ 17.84 and 17.85 as appropriate and separately listed in § 17.11(h) (wildlife) or § 17.12(h) (plants) as appropriate. Per those regulations, all experimental populations will have species-specific 4(d) rules.

Plants

Comment 17: Several commenters supported our proposal to update regulations for endangered plants to include making it unlawful to maliciously damage or destroy the species on any area under Federal jurisdiction; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. Another commenter thought the proposed wording would expand and clarify the actions currently in § 17.61(c) that are prohibited without a permit, better comply with the Act (as amended), better implement Congress's intent, and provide greater conservation benefit to endangered plants. In contrast, several other commenters opposed this proposed change because they stated the Act does not allow for the new language. They stated that the plain language of the definition of "take" does not apply to either an endangered plant or a threatened plant, yet the proposed rule seemingly intends to sanction an apparent "take" of such species in direct contradiction to the Act, and that the Service should not promulgate a rule inconsistent with the plain language of the applicable statute.

Response: The intent of revising this portion of the regulations is to bring the regulatory protections afforded to endangered plants in alignment with the protections already provided by section 9(a)(2)(B) of the Act (16 U.S.C. 1538(a)(2)(B)). The Act does not contain a prohibition

against "take" of endangered plants in section 9(a)(2) that is equal to its prohibition against take of endangered fish and wildlife in section 9(a)(1)(B) and (C). However, with respect to endangered plants, the amendments to the Act that Congress enacted in 1988 (16 U.S.C. 1538(a)(2)(B); Act section 9(a)(2)(B), Pub. L. 100–478 (October 7, 1988)) included additional text in section 9(a)(2)(B) making it unlawful to maliciously damage or destroy the endangered plant species on any area under Federal jurisdiction; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. In this final rule, we add this same text to our regulations at § 17.61(c). To clarify our intent, in the preamble of this final rule, we emphasize that this particular revision merely brings our regulations into alignment with the Act.

Comment 18: Some commenters stated that the following proposed language in 50 CFR 17.61(c) and 50 CFR 17.71(b) is confusing: "may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those species."

Response: We note that the referenced language at 50 CFR 17.61(c)(2) and 17.71(b)(3) is slightly different than the language quoted by the commenter but matches the language currently in the Code of Federal Regulations at 50 CFR 17.61(c)(2) and our regulation revisions do not change that language. We are revising our regulations to include the same language at 50 CFR 17.71(b)(3). We regret that the noted language is confusing to commenters, but this text comes directly from the 1988 amendments to the Act (Pub. L. 100–478 (October 7, 1988)), and by including it in our regulations, we align our regulations with the Act. The exception allows for specified entities to remove (from areas under Federal jurisdiction) and reduce to possession endangered or threatened species of plants without the need for a permit under the Act.

Comment 19: Many commenters supported updating protections for plants listed as threatened species. However, other commenters opposed the updates because they believed that existing regulations adequately protect threatened species of plants and stated that the revisions may create confusion regarding compliance by creating a risk of enforcement where none existed before.

Response: In the past, the public has expressed confusion about what statutory and regulatory protections apply to threatened species of plants. The plain language of section 4(d) of the Act indicates that the Secretary may by regulation prohibit acts to threatened species of plants similar to those prohibited for endangered plants under section 9(a)(2). As discussed in the preamble of this document, we have concluded that providing an option to apply those prohibitions to threatened species of plants is necessary and advisable unless we promulgate a species-specific 4(d) rule for that species. As for wildlife species, having consistent prohibitions for plant species should reduce confusion regarding compliance.

Comment 20: Some commenters were concerned about the insertion of the text "knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law" at 50 CFR 17.61(c). The commenters noted that the proposed rule does not identify or give an example as to what "any law or regulation of any State" may be; and assuming any such law or regulation exists in a State, the proposed revisions do not exempt a well-meaning person unaware of the presence of listed species. The commenters stated it is not reasonable to label an inadvertent removal, cutting, digging up, damage, or destruction of a species as a violation, and that innocent, inadvertent behavior should not be subject to sanction.

Response: As noted elsewhere in this document, the intent of revising this portion of the regulations is to bring the regulatory language into alignment with section 9(a)(2)(B) of the Act

(16 U.S.C. 1538(a)(2)(B)). These protections for endangered plants have been in place since the 1988 amendments to the Act, and they do not prohibit "inadvertent" impacts from well-meaning people; they only prohibit acts that someone commits "in knowing violation" of the law.

With regards to the request for an example of a State law that may be applicable, one example would be a law that prohibits impacts to a State-listed plant species that is also federally listed. For example, Oregon Revised Statute (ORS) 564.120, titled "Transactions in threatened or endangered species; restrictions; prohibition," is under the section of State law titled, "Threatened or Endangered Plants," and it reads in part that "Except as otherwise provided pursuant to ORS 564.105, no person shall take, import, export, transport, purchase or sell, or attempt to take, import, export, transport, purchase or sell any threatened species or endangered species."

Comment 21: Many commenters suggest that we will not determine whether the "blanket rule" is appropriate for a given species at the time of listing but simply default to blanket protections. Several commenters were concerned that we will rarely use species-specific 4(d) rules if we have the "blanket rule" option in place. Commenters suggested that because the "blanket rule" adopts a "one size fits all" approach for all threatened species, this approach creates additional burdens for the regulated public. Other commenters stated that for newly listed threatened species, we should clearly indicate whether the "blanket rule" or a species-specific 4(d) rule will apply.

Response: For every threatened species, when we list that species, we will determine what protections are appropriate. We also intend to clearly state what protections apply for a listed species in each proposed and final listing rule.

For threatened species of plants, we expect that we may use "blanket rules" frequently because the prohibitions for plants under the Act are narrower than those for wildlife, likely resulting in fewer options for exceptions to those prohibitions. However, for wildlife species, we expect to continue to routinely use both species-specific 4(d) rules and the "blanket rule." Finalizing these regulations will allow us the flexibility to apply the appropriate protective regulations in the most efficient manner based on the best available scientific and commercial information.

Comment 22: Several commenters suggest that when using the "blanket rule" protections, threatened species will be treated the same as endangered species, resulting in overregulation.

Response: The Act's section 9 prohibitions that apply to an endangered species will also apply to a threatened species when we use the blanket rule. As discussed above, our endangered species regulations also include a suite of exceptions, which allow for various entities to conduct otherwise prohibited acts without a permit under the Act (e.g., any person may take endangered wildlife in defense of their own life or the lives of others; Federal and State law enforcement officers may possess, deliver, carry, transport, or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties; certain individuals can take wildlife to aid, salvage, or dispose of endangered species). Protections for threatened species under the "blanket rules" also include these standard exceptions; however, because threatened species are not in danger of extinction but are likely to become so within the foreseeable future, we provide additional flexibility for managing threatened species. At 50 CFR 17.31(b) and 17.71(b), we include for threatened species exceptions that are more numerous or broader than those for endangered species. These include additional exceptions for the Service and NMFS to conduct otherwise prohibited acts without a permit under the Act associated with carrying out

conservation actions and broader exceptions for agents or employees of State conservation agencies operating a conservation program in accordance with section 6(c) of the Act to conduct otherwise prohibited acts without a permit under the Act. Therefore, we are not treating threatened species the same as endangered species, and the "blanket rule" does not result in overregulation.

Comment 23: Several commenters suggest that we continue with (or commit to) issuing species-specific 4(d) rules concurrently with threatened species listings, as doing so would ease the Service's administrative burden by ensuring the Service only has to receive and respond to one round of public comments and finalize one rulemaking as opposed to two.

Response: When we determine that species-specific 4(d) rules are appropriate, we intend to finalize those species-specific 4(d) rules concurrently with final listing rules. We agree this approach is the most efficient. Similarly, when we do not promulgate a species-specific 4(d) rule, and thereby provide for the conservation of the species through the blanket rule, those protections too will occur concurrently with the final listing rule.

Comment 24: Some commenters expressed concern that reinstating the "blanket rules" will result in inconsistency between the Service and NMFS, creating unnecessary confusion for the regulated community and the public about how the Act's section 4(d) is implemented. At least one commenter suggested that species with overlapping jurisdiction would result in unintended consequences that could negatively affect the species.

Response: As discussed in the preamble to the June 22, 2023, proposed rule (88 FR 40742 at 40745), we recognize that reinstating the "blanket rules" will again result in different approaches to protecting threatened species under the Act. NMFS does not have "blanket rules" for threatened species; therefore, NMFS approaches each species on a case-by-case basis based

on the discretion afforded under section 4(d) and promulgates species-specific 4(d) rules at 50 CFR part 223. The Service will continue to maintain the option to promulgate species-specific 4(d) rules and will determine the appropriate protections for each species at the time of listing. Given that our agencies applied these different approaches for more than 40 years beginning early in the administration of the Act, and we do not have any evidence to suggest there was confusion resulting from this difference, we do not find a risk of increased confusion from reverting to these differing approaches. Further, we have few species with overlapping jurisdiction to cause such potential confusion.

Exceptions for Federally Recognized Tribes

Comment 25: Commenters requested including Tribes in the exception to aid or salvage endangered species at 50 CFR 17.21(c)(3) and 50 CFR 17.61(c)(2).

Response: The Act provides no authority to extend existing exceptions for endangered species to additional entities not listed in the statute.

Comment 26: Many commenters supported the proposal to add federally recognized Tribes to the list of entities that are excepted from the take prohibition for aiding a sick, injured, or orphaned specimen or disposing/salvaging of a dead specimen of a threatened species. Several commenters said this change was a recognition that Tribes are independent governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage and control their natural resources, similar to States, and that adding them to this exception recognizes their sovereignty and the government-to-government relationship with Tribes. A commenter stated that Tribal wildlife managers need clear authority under the Act to take these actions without having to first get a permit. The commenter noted that Tribal land includes remote locations, some without Service or State offices; as a result, finding someone to get to the

scene in a timely manner to euthanize a suffering animal can be very difficult. They add that in some locations, even waiting for a reply from Service law enforcement can sometimes take hours, a long time in a suffering animal's life; therefore, giving Tribes the ability to make these on-the-ground decisions is a good step forward. Another commenter said that, while they anticipated "take" under these permissions would be nominal and not negatively impact the overall population or health of a species, any new permissions should not extend beyond what is already granted to Federal and State agencies.

Response: This revision to the threatened species regulations is in recognition of the sovereignty of Tribes and the merit of allowing any employee or agent of a federally recognized Tribe, who is designated by the Tribe for such purpose, to be able to aid injured or diseased wildlife or plants or dispose of dead individuals without a permit. Consistent with various Executive orders, Secretary's orders, and memoranda, and in recognition of the governmental authority of Tribes and their expertise in managing natural resources on Tribal lands, we are now extending this exception to Tribes to the same extent and in the same manner that it is given to the Service, NMFS, Federal land management agencies, and State conservation agencies. We agree that time is of the essence in aiding or salvaging threatened species and that this revision will give Tribes the ability to make on-the-ground decisions regarding threatened species in remote areas of their lands. This will have a beneficial impact on the conservation of threatened species without any negative impact on their health. We, therefore, find that extending this exception is necessary and advisable to provide for the conservation of the species.

Comment 27: Several commenters suggested that the Service should conduct thorough and meaningful consultation with federally recognized Tribes on how adding the exception to take for aiding or salvaging threatened species affects them and should continue to engage Tribes

about how best to craft these regulations. Another commenter recommended requiring a cooperative agreement for Tribes to aid or salvage threatened species.

Response: The longstanding policy of the Department of the Interior (DOI) has been to carry out responsibilities under the Act and other statutes in harmony with the Federal trust responsibility to Tribes and to strive to ensure that Tribes do not bear a disproportionate burden for the conservation of listed species (DOI Secretary's Order 3206 (June 5, 1997). Additionally, the commitments described in recent Executive orders and memoranda (including Tribal Consultation and Strengthening Nation-to-Nation Relationships (86 FR 7491; January 29, 2021), Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009; January 25, 2021), and Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders (86 FR 29675; June 3, 2021)) include ensuring that Federal agencies conduct regular, meaningful, and robust consultation with Tribal officials in the development of Federal research, policies, and decisions, especially decisions that may affect Tribal Nations and the people they represent. In light of the unique relationship between Tribes and the United States, we will continue to engage in meaningful government-to-government consultation with Tribes on the conservation of listed species. We are extending this exception to Tribes because Tribes have the authority and expertise to manage natural resources on their own lands, and we do not see it as appropriate to require them to obtain a permit or to develop a cooperative agreement with the Service for aiding injured or diseased threatened species of wildlife or plants or dispose of dead individuals.

Comment 28: We received comments supporting and opposing extending to Tribes the exception to take of threatened species for conservation activities. As with the exception for aiding an ailing specimen or disposing or salvaging of a dead specimen, many commenters

thought that the proposed change recognized the sovereignty of Tribes, their extensive wildlife expertise and experience, and the importance of bringing Indigenous Knowledge to species conservation. Commenters noted the Service has the authority to modify, renew, or terminate a cooperative agreement with the States and that applying this same mechanism to federally recognized Tribes would be consistent with current implementation practices of the Act. One commenter stated that, while anticipated "take" under these permissions should be nominal and not negatively impact the overall population or health of a species, any new permissions should not extend beyond what is already granted to Federal and State agencies. Many commenters stated that the Service should work closely with Tribes to define an appropriate mechanism and agreement for this change. Other commenters questioned whether the Act applies to Tribal lands and whether this exception was needed given that Tribes are sovereign entities. One commenter added that many Tribes have species and habitat protections and restrictions codified into their laws and regulations that are enforced by other divisions or departments of the Tribe or by the Tribe itself. One commenter noted that the exception would merely trade out one requirement (obtaining a take permit with Service permission) with another (obtaining a cooperative agreement with Service permission) and that the Service should be making it easier for Tribes to undertake conservation activities, not harder. Another commenter stated that the requirement that a cooperative agreement must be initiated, negotiated, and signed conflicts with the sovereign nature of federally recognized Tribes and their jurisdiction and authority to manage their own on-reservation resources, including federally listed species.

Response: In light of comments received and further consideration, we are not at this time moving forward with an additional provision excepting from the prohibitions any take by federally recognized Tribes in the course of conducting conservation activities. Instead, we

intend to take the time to coordinate and collaborate with Tribes to craft language that best meets their needs. As stated elsewhere in this document, we are finalizing this rule as we proposed, including authorizing federally recognized Tribes to aid or salvage threatened species without a permit under the Act.

Comment 29: A commenter expressed concern about our reference to Indigenous Knowledge in the preamble of the June 22, 2023, proposed rule and suggested that this directly and illegally conflicts with the unambiguous language of section 4(b)(1)(A) of the Act, which states that the Secretary shall make determinations required by section 4(a)(1) of the Act solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas. They also stated that the Secretary has no legal or constitutional authority to revise the Act and implement such revisions through regulations.

Response: We disagree that consideration of Indigenous Knowledge conflicts with section 4(b)(1)(A) of the Act. The statute does not define the phrase "best scientific and commercial data available" in section 4(a)(1), and this regulation merely applies the Act rather than revising it in any way. We undertake this rulemaking in accordance with the delegated authority to the Service to implement the Act, and this rulemaking falls within the broad discretion that section 4(d) of the Act provides the Secretary to put into place protections deemed necessary and advisable for the conservation of threatened species. We provide references to multiple memoranda, Executive orders, and Secretarial orders in the preamble to the June 22,

2023, proposed rule (88 FR 40742 at 40746) that describe the rationale for our inclusion of federally recognized Tribes as entities authorized to aid or salvage threatened species. Further, under the White House Council on Environmental Quality and the White House Office of Science and Technology Policy Guidance for Federal Departments and Agencies on Indigenous Knowledge (November 30, 2022), Indigenous Knowledge is a valid form of evidence for inclusion in Federal policy, research, and decision making, including decision making under the Act.

Comment 30: A commenter said that along with extending certain section 4(d) exceptions or other opportunities to federally recognized Tribes, the Service must explicitly recognize, and commit to fulfill, its obligations to conduct regular, meaningful, and robust consultation with Alaska Native Corporations (ANCs) and, in consultation with ANCs, it should consider whether it would be appropriate to extend to ANCs the exceptions that it is considering providing to federally recognized Tribes.

Response: A number of recent memoranda and Executive orders describe the commitment of the U.S. Government to strengthening the relationship between the Federal Government and Tribal Nations and to advance equity for Indigenous Peoples, including Native Americans, Alaska Natives, Native Hawaiians, and Indigenous Peoples of the U.S. Territories. These include the Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (86 FR 7491; January 29, 2021); Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009; January 25, 2021); Executive Order 14031: Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders (86 FR 29675; June 3, 2021); the Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making

(November 15, 2021); and the Memorandum on Uniform Standards for Tribal Consultation (87 FR 74479; December 5, 2022). The commitments described in these recent Executive orders and memoranda include ensuring that Federal agencies conduct regular, meaningful, and robust consultation with Tribal officials in the development of Federal research, policies, and decisions, especially decisions that may affect Tribal Nations and the people they represent. Our obligation to have a government-to-government relationship with federally recognized Tribes is paramount and, in addition to Executive orders and policies on the government-to-government relationship, is covered by Secretaries' Orders (S.O.) 3206 and 3225. While S.O. 3225 discusses "Alaska Natives" and "other Native organizations," its purpose is to protect subsistence rights and ways of life, and states that the Departments of Commerce and the Interior will seek to enter into cooperative agreements for the conservation of specific species, such as marine mammals and migratory birds, and the co-management of subsistence uses with these organizations.

In the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, Div. H, sec. 161), Congress required that the Director of the Office of Management and Budget (and, subsequently, all Federal agencies) consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order 13175. Consistent with this obligation, the Service will consult on Federal decisions that have a substantial, direct effect on an ANC. This obligation to consult does not extend beyond the E.O. 13175 context. Extending protections to specific employees of Federal, State, and Tribal governments who are designated to handle threatened species for the stated purposes is within the Service's authority, but the fact that E.O. 13175 states that we must consult with ANCs does not mean that it is appropriate to extend the same protections to employees of for-profit corporations. If this is a service that an ANC wants their employees to

provide to rural communities, then the Service can assist them with the process to be granted a permit to do so.

Required Determinations

Comment 31: Several commenters requested, and asserted reasons for, additional economic analyses for this rulemaking. One commenter suggested that the Service must undertake a detailed economic analysis under Executive Order (E.O.) 12866 and related E.O.s because the Service characterized the rulemaking as a "significant regulatory action," and that we must include an economic analysis as specified in Office of Management and Budget (OMB) Circular A–4. Other commenters suggested that the requirement in section 4(d) of the Act for the Service to issue protective regulations that are "necessary and advisable" for the species' conservation means that the Service is required to undertake an economic analysis or cost/benefit analysis pursuant to the Supreme Court's decision in *Michigan* v. *Environmental Protection Agency (Michigan* v. *EPA)*, 576 U.S. 743, 769 (2015).

Commenters also offered ways in which the Service could undertake such an analysis for this rulemaking. One such commenter stated the Service has experienced periods of time both with and without a "blanket rule" and could analyze the differences between those periods to estimate how reauthorizing the "blanket rules" would affect the Service's implementation of section 4(d), the costs it imposes on States and private landowners, and the likelihood that species recover. Another commenter stated that the Service had studied the resource impacts of switching to species-specific "take" prohibitions as part of our 2019 4(d) rule, including using data on resource burdens from the Service's previous species-specific 4(d) rules to estimate the potential increased resource burden associated with a switch from a "blanket rule" approach to

an approach tailored to specific species; these commenters suggested that we could undertake a similar study for these regulations.

Response: After considering the authorities that commenters cite as requiring the Service to undertake a detailed economic analysis for this rulemaking, we have concluded that none of them establishes such a requirement. First, OMB did designate the June 22, 2023, proposed rule (88 FR 40742) as "significant" pursuant to section 3(f) of E.O. 12866 but did not characterize the rulemaking specifically as significant under section 3(f)(1). Therefore, we are not required to provide a detailed economic analysis of the costs and benefits of the rule. See E.O. 12866 sec. 6(a)(3)(B), (C).

We retain the conviction that—to ensure we can defend listing decisions by demonstrating, as Congress has required, that we make the decisions "solely on the basis of the best scientific and commercial data available"—we must maintain separation between listing decisions and any information not related to whether the species meets the definition of an endangered or a threatened species. To maintain this separation, the Service does not compile or describe the costs or benefits of 4(d) rules that are promulgated concurrently with listing the species.

With respect to the "necessary and advisable" language in section 4(d), we have concluded that the phrase does not create a *de facto* requirement for the Service to analyze the costs and benefits of all 4(d) rules. First, as we discuss in the **Necessary and Advisable Determination** section, the Service has not interpreted the "necessary and advisable" phrase to apply to the "blanket rules" because it does not apply to regulations that extend section 9 prohibitions to threatened species. Second, as we explain in the following paragraphs below about the *Michigan* v. *EPA* decision, the standard that the Act sets out for evaluating "necessary

and advisable"—that the protective regulations must be necessary and advisable *to provide for the conservation of the* species—does not incorporate any requirement to undertake an economic analysis or other cost/benefit analysis.

We have analyzed the Supreme Court decision in *Michigan* v. *EPA* and have concluded that it does not require the Service to consider the costs of reinstating the "blanket rules" because the Court's ruling there was specific to the statutory language at issue in that case, and section 4(d) of the Act lacks the statutory attributes that were pivotal to the Court's decision. In *Michigan* v. *EPA*, the Supreme Court interpreted a provision of the Clean Air Act (CAA) that "directs the [EPA] to regulate power plants if it 'finds such regulation is appropriate and necessary.'" 576 U.S. at 751 (quoting 42 U.S.C. 7412(n)(1)(A)). The Court disapproved of EPA's interpretation that, under that statute, cost was irrelevant, and held that EPA "must consider cost … before deciding whether regulation is appropriate and necessary." *Id.* at 759. Although commenters assert that the relevant CAA standard ("appropriate and necessary") is similar to the standard in section 4(d) of the Act ("necessary and advisable"), the language in the two statutes differs in significant ways, confirming that the Supreme Court's ruling in that case does not apply in the context of 4(d) rules. The Court's decision in *Michigan* v. *EPA* revolved around three central attributes in the CAA language—in particular, that: (1) the statute was mandating a decision about whether or not to regulate; (2) the standard that the statute prescribed for determining whether to regulate was whether it was necessary and "appropriate," and the statute did not include additional considerations that might narrow that consideration; and (3) related provisions within the statute expressly factored in cost. See *id.* at 752–55. The standard in section 4(d) of the Act shares none of those attributes: (1) section 4(d) does not involve a decision on whether or not to regulate or protect threatened species—instead, under the Act, the

Service must issue protective regulations for threatened species and must determine what provisions to include in those regulations, [16 U.S.C. 1533(d)]; (2) the standard in section 4(d) of the Act does not contain the term "appropriate," which the Court focused on as "the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors," *id.* at 752 (quotation omitted); and (3) the Act's requirement to issue such regulations as the Secretary "deems necessary and advisable to provide for the conservation of such species" is not surrounded by other provisions identifying cost as a factor—rather, with the limited exceptions of recovery planning under section 4(f) and potential exclusions from critical habitat under section 4(b)(2), there are no references at all to costs in section 4 of the Act.

With respect to comments about approaches to undertaking an economic analysis, we disagree with the assertions that we have data either prior to or after 2019 that would allow for their suggested approaches. In addition, the Service did not estimate any resource burden differences associated with the 2019 4(d) rule in the document entitled, "Effects Data for the Revision of the Regulations on Prohibitions That Apply to Threatened Wildlife and Plants," and we do not have the data to conduct such analyses. Instead, we forecasted the number of potential species listed as threatened species and the increased number of species-specific rules that would be required due to the removal of the "blanket rule" options.

Between the time that the 2019 4(d) rule went into effect in September 2019 and early January 2024, we listed or reclassified 44 threatened species (33 wildlife and 11 plant species) and finalized associated species-specific 4(d) rules for each of those species. During that time, there were no newly listed threatened species for which time elapsed between listing and putting in place protective regulations because we finalized species-specific rules concurrently with each final classification action. Since all of the 4(d) rules promulgated after September 2019 were

species-specific 4(d) rules, this data would not shed light on the potential costs or benefits of reinstating the "blanket rules."

Comment 32: Several commenters believed the Service's findings under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq*.) and consideration of responsibilities under Executive Order (E.O.) 13132 (Federalism) and E.O. 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) were insufficient or incorrect. Commenters suggested that protecting threatened species in the future through the use of "blanket rules" would result in much greater impacts than protecting threatened species in the future through the use of species-specific 4(d) rules. The commenters also disagreed with our finding for E.O. 12630 (Takings) that the proposed rule would not have significant takings implications and that a takings implication assessment is not warranted. They urged us to conduct additional assessments before finalizing the rule.

Response: Regarding all required determinations for the rulemaking, the primary change that this final rule makes is simply to put a regulatory framework in place for future application. In the future, for each threatened species, we will apply regulatory protections for that threatened species that are necessary and advisable—either by promulgating a species-specific 4(d) rule or by applying a "blanket rule" to that species.

Similarly, the changes that this rule makes to currently listed species will not result in significant differences in outcomes. As discussed elsewhere in this document, the substantive changes to protections for currently listed threatened species are limited to: (1) allowing Tribes to aid/salvage dead, injured, or diseased individuals without a section 10 permit, which reduces regulatory burden for Tribes; and (2) incorporating the existing provisions of the 1988 amendments to the Act that prohibit the malicious damage or destruction of threatened plants on

an area under Federal jurisdiction or the removal, cutting, digging up, or damage or destruction of such plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. These minor changes for threatened species of plants will not substantially affect anyone.

Regarding the RFA and E.O. 13211, because the changes are primarily instructive regulations, this rulemaking does not directly affect small entities or any other entities and is unlikely to cause any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies).

Regarding E.O. 13132, "Federalism," that E.O. includes federalism implications from regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking has no such federalism implications. The Service is the only entity that is directly affected by this rule, as we are the only entity that will apply these regulations to protect threatened species, and the regulatory changes to endangered species result in no material changes. In addition, as stated below under **Required Determinations** in *Federalism (E.O. 13132)*, both the "blanket rules" and species-specific 4(d) rules include explicit exceptions for States that have entered into cooperative agreements with the Service to conduct conservation programs for threatened species. This rule will further the goals of conservation and recovery of endangered species and threatened species, as the Service is mandated to do. Further, the Act requires that for any threatened species the Service issue protective regulations that are necessary and advisable to provide for their conservation. This is a duty that cannot be delegated to States. While serving to advance the conservation purposes of the Act, this rule will not have

substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regarding E.O. 12630, as discussed in the June 22, 2023, proposed rule and below under **Required Determinations**, this rulemaking will not directly affect private property, nor will it cause a physical or regulatory taking. It will not result in a physical taking because it will not effectively compel a property owner to suffer a physical invasion of property. Further, the rulemaking will not result in a regulatory taking because it will not deny all economically beneficial or productive use of the land or aquatic resources and it will substantially advance a legitimate government interest (conservation and recovery of endangered species and threatened species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Comment 33: Some commenters asserted that the Service needs to prepare an environmental assessment or environmental impact statement pursuant to National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq*.) for these revisions to the regulations and that this rulemaking action should not be categorically excluded. Specifically, they suggest that we need to take a hard look at the foreseeable impacts of the regulatory changes, along with a reasonable range of alternatives. One commenter requested that we make any NEPA documentation available prior to issuing a final rule.

Response: We have complied with NEPA by determining that the rule is covered by a categorical exclusion found at 43 CFR 46.210(i). We explained this determination in an environmental action statement (EAS) that is posted in the docket for this rule. As explained in the EAS, this rulemaking primarily provides the framework for protections to threatened species

but does not apply this framework to any species; it is not until we list a species as threatened and decide whether to issue a species-specific 4(d) rule or protect the species with a "blanket rule" that this framework applies to that species. Another aspect of this rulemaking is to make edits to the regulatory protections for endangered species to bring those protections into conformity with the 1988 amendments to the statute. In addition, the rulemaking makes two substantive changes for currently listed threatened species that were protected under prior versions of the "blanket rules" or under species-specific 4(d) rules that refer to any of the sections we are revising. First, we add federally recognized Tribes to the entities authorized to aid, salvage, or dispose of threatened species. Second, as a result of updating our endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988, the implementing regulations now also make clear that threatened plants protected under the previous "blanket rule" are protected from being maliciously damaged or destroyed on areas under Federal jurisdiction; or being removed, cut, dug up, or damaged or destroyed on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

In light of this information, the framework and minor regulatory changes in this rulemaking will not have any significant impacts on the human environment. Further, when the Service proposes any future species-specific 4(d) rules that are not concurrent with the final listing rule, the proposed action will be subject to the NEPA process at that time.

Comment 34: Some commenters asserted the need to complete intra-Service consultation pursuant to section 7 of the Act on the issuance of the final regulations.

Response: We address this below under *Endangered Species Act* in **Required Determinations**.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. Executive Order 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this rule in a manner consistent with these requirements.

We are revising portions of the implementing regulations at 50 CFR part 17. The preamble to this rule details how the regulatory changes we are adopting will improve the implementation of the Act. The revisions to 50 CFR 17.31 and 17.71 reinstate the general application of the "blanket rule" option for protecting newly listed threatened wildlife and plant species, respectively, pursuant to section 4(d) of the Act. The regulations retain the continued option to promulgate species-specific 4(d) rules.

When we removed the "blanket rule" options in 2019, we compiled certain historical data regarding the numbers of threatened wildlife and plant species that the Service had listed, along with the number of species-specific 4(d) rules that we had adopted, each year between 1997 and 2018 (the analysis timeframe) in an effort to describe for OMB and the public the potential

effects of those regulations (on https://www.regulations.gov/, see Supporting Document No. FWS-HQ-ES-2018-0007-69539 of Docket No. FWS-HQ-ES-2018-0007). For those species listed prior to September 26, 2019, we also had the option to issue species-specific rules, which we did approximately 25 percent of the time. Between that rule's effective date in September 2019 and early January 2024, we listed or reclassified 44 threatened species (33 wildlife and 11 plant species) and finalized associated species-specific rules for each of those species. During that time, there were no newly listed threatened species for which time elapsed between listing and putting in place protective regulations because we finalized species-specific rules concurrently with each final classification action.

With reinstatement of the "blanket rules," we anticipate that in some cases we will continue to propose and finalize species-specific 4(d) rules that are designed to meet the specific conservation needs of particular species. However, in other situations, we may find that the standard suite of prohibitions and exceptions for threatened species in the "blanket rule" is appropriate because that is what is necessary and advisable to provide for the protection of those species. We can anticipate only that, because the "blanket rule" option had been available for the more than 40 years between early in the administration of the Act and the effective date of the 2019 4(d) rule (September 26, 2019), we do not anticipate any material effects to the process or outcomes as a result of reinstatement of the "blanket rules." However, because protections for threatened species are so highly fact-specific, it is not possible to specify future benefits or costs stemming from the revisions.

The updates we are finalizing to the endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988 (ESA section 9(a)(2)(B), 16 U.S.C. 1538(a)(2)(B); Pub. L. No. 100–478 (October 7, 1988)) and other minor edits, also

referred to as technical corrections (e.g., in 50 CFR 17.8, 17.21, 17.31, 17.61, and 17.71), will improve readability, increase consistency among sections, provide alignment with the Act, and correct other inaccuracies. These minor edits will not materially change the protections provided to threatened or endangered species or their effects on any potentially regulated entities.

We are also revising 50 CFR 17.31 and 17.71 to extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species. These revisions reduce the regulatory burden or potential legal risks on Tribes associated with conducting these activities. There may also be cost savings for the Service for reduced permit application processing. We cannot specify the extent to which there may be reduced costs to Tribes associated with permit applications or risk of law enforcement action, as we cannot predict which species may be listed as threatened species, and of those species, which may occur in areas in which federally recognized Tribes may conduct these actions.

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq*.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or that person's designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certified at the proposed rule stage that the proposed rule would not have a significant economic impact on a substantial number of small entities (88 FR 40742, June 22, 2023). Nothing in this final rule changes the basis for that conclusion, and we received no information that changes the factual basis of this certification.

This rulemaking revises the Service's regulations protecting endangered and threatened species under the Act. The changes in this rule are instructive regulations and do not directly affect small entities. The Service is the only entity directly affected by this rule, as we are the only entity that applies these regulations to protect threatened species, and the regulatory changes to endangered species result in no material changes. External entities, including any small businesses, small organizations, or small governments, are not directly regulated by this rule and thus will not experience any direct economic impacts from this rule.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.): (a) On

the basis of information presented under *Regulatory Flexibility Act* above, this rule will not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. As explained above, small governments will not be affected because the rule will not place additional requirements on any city, county, or other local municipalities.

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

Takings (E.O. 12630)

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

Federalism (E.O. 13132)

In accordance with E.O. 13132, we have considered whether this rule will have significant federalism effects and have determined that a federalism summary impact statement is not required. This rule pertains only to the Service's protective regulations for endangered

species and threatened species promulgated under the Act and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The Service is the only entity that is directly affected by this rule, as we are the only entity that will apply these regulations to protect threatened species, and the regulatory changes to endangered species result in no material changes. In addition, both the "blanket rules" and species-specific 4(d) rules include explicit exceptions for States that have entered into cooperative agreements with the Service to conduct conservation programs for threatened species, recognizing the important role that States play in the conservation of listed species.

Civil Justice Reform (E.O. 12988)

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

Government-to-Government Relationship with Tribes

In accordance with E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior's manual at 512 DM 2, we have considered possible effects of this rule on federally recognized Indian Tribes and Alaska Native Corporations. We held three informational webinars for federally recognized Tribes in January 2023, before the June 22, 2023, proposed rule published, to provide a general overview of, and information on how to provide input on, a series of rulemakings related to implementation of the Act that the Service and NMFS were developing, including the June 22, 2023, proposed rule to revise our regulations at 50 CFR part 17. In July 2023, we also held six informational webinars after the proposed rule published, to provide additional information to interested parties,

including Tribes, regarding the proposed regulations. More than 500 attendees, including representatives from federally recognized Tribes and Alaska Native Corporations, participated in these sessions, and we addressed questions from the participants as part of the sessions. We received written comments from Tribal organizations; however, we did not receive any requests for coordination or government-to-government consultation from any federally recognized Tribes. We received one request to consult with Alaska Native Corporations.

These regulations will not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule is general in nature and does not directly affect any specific Tribal lands, treaty rights, or Tribal trust resources. Therefore, we conclude that this rule does not have Tribal implications under section 1(a) of E.O. 13175. Thus, formal government-to-government consultation is not required by E.O. 13175 and related DOI policies. This rule revises regulations for protecting endangered and threatened species pursuant to the Act. The only provision in these regulations that could appear to have an effect on Tribes is the exception to aid, salvage, or dispose of threatened species. However, the inclusion of this exception does not require any Tribe to do anything or change their management practices. Further, we are not changing the relationship between the Service and Tribes. The provision simply provides a new mechanism for compliance with the Act. These regulations will not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

We will continue to collaborate with Tribes and Alaska Native Corporations on issues related to federally listed species and their habitats and will work with them as we implement the

provisions of the Act. See Secretaries' Order 3206 ("American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," June 5, 1997) and Secretaries' Order 3225 ("Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)," January 19, 2001).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.). OMB has previously approved the information collection requirements associated with permitting and reporting requirements and assigned OMB Control Number 1018-0094 (expires 01/31/2024). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the NEPA (42 U.S.C. 4321 *et seq*.), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8). On June 3, 2023, NEPA was amended by the Fiscal Responsibility Act (Pub. L. 118–5). These amendments codified a procedure for determining the appropriate level of NEPA review. Under these statutory standards, which generally reflect the same standards previously applicable by regulation, an environmental impact statement is only required for an action that has a reasonably foreseeable significant effect on the quality of the human environment. An environmental assessment is not required for actions that do not have a reasonably foreseeable significant effect on the quality of the human environment, or have effects of unknown

significance if the agency finds, *inter alia*, that the action is excluded pursuant to one of the agency's categorical exclusions. We have determined that a detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. We find that the categorical exclusion found at 43 CFR 46.210(i) applies to these regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following category of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. We have also considered whether any of the extraordinary circumstances described in 43 CFR 46.215 is present, and we did not identify any extraordinary circumstances that apply to this rulemaking. When the Service proposes any 4(d) rules that are not concurrent with the listing rule for the respective species, the proposed action will be subject to the NEPA process at that time.

Endangered Species Act

As discussed in our June 22, 2023, proposed rule (88 FR 40742 at 40750), in developing aspects of this rule, we are acting in our unique statutory role as administrator of the Act and are engaged in a legal exercise of interpreting the standards of the Act. Our promulgation of interpretive rules that govern our implementation of the Act is not an action that is in itself subject to the Act's provisions, including section 7(a)(2). For this reason, we have a historical practice of issuing our general implementing regulations under the Act without undertaking

section 7 consultation. Given the plain language, structure, and purposes of the Act, we find that Congress never intended to place a consultation obligation on our promulgation of implementing regulations under the Act.

As part of this rulemaking, we are revising implementing regulations to interpret the statute or to align the regulations with changes Congress has made to the statute. These revisions include updating endangered plant regulations at 50 CFR 17.61(c)(1) to match amendments to the Act that Congress enacted in 1988. This revision does not alter any protections for endangered plants. We also make corrections or clarifications to regulations for both endangered species and threatened species that result in no substantive change in protection for either currently listed species or species listed in the future. For example, we make minor changes to clarify, without changing the scope or intent of, the existing regulations in several locations (e.g., 50 CFR 17.21, 17.31, 17.32), as well as technical corrections such as revising the use of the phrase "special rule" to "species-specific rule" in several locations (e.g., 50 CFR 17.8, 17.40). We make these revisions for the purpose of improving readability, increasing consistency among sections, and correcting other inaccuracies. These aspects, if proposed on their own, would not result in our undertaking section 7 consultation.

In addition to discussing in the proposed rule that aspects of the proposal fell within our unique statutory role as administrator of the Act, we also recognized that we may need to conduct a section 7 analysis on some aspects of the rulemaking. After further consideration, we find that, for one aspect of this rulemaking, application of section 7(a)(2) is appropriate because our role is more akin to our role as an "action agency" principally implementing provisions of the Act, rather than defining the Act's standards as an administrator of the Act. This aspect is reinstating the "blanket rule" options at 50 CFR 17.31(a) and 17.71(a), which will automatically

apply to every future threatened species unless we issue a species-specific 4(d) rule. Reinstating the "blanket rules" determines the protections that are necessary and advisable for species that are listed as threatened species in the future without a species-specific 4(d) rule.

Because this aspect of the rulemaking is more akin to our role as an "action agency" principally implementing provisions of the Act, we fulfilled our section 7 responsibilities to determine whether the overall action of reinstating and updating the "blanket rules" "may affect" listed species or critical habitat. We found there will be no effects to listed species or critical habitat, as we have no information identifying any generalized environmental changes that would not occur but for this rule and are reasonably certain to occur. See our section 7 determination at *https://www.regulations.gov* for additional information.

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

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

Authority

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

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

Subpart A—Introduction and General Provisions

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

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

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

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

* * * * *

Subpart C—Endangered Wildlife

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

§ 17.21 Prohibitions.

* * * * *

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

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

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

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

(ii) Dispose of a dead specimen; or

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

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

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

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

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

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

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

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

(6) Notwithstanding paragraph (c)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.76 of this subchapter may take endangered migratory birds without an endangered species permit if such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee is adhering to the conditions of the migratory bird rehabilitation permit.

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

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

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

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

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

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

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

(4) Notwithstanding paragraph (d)(1) of this section, and consistent with § 21.76(a) of this subchapter, persons exempt from the permit requirements of § 21.12(b)(2) and (c) of this subchapter may possess and transport sick and injured endangered migratory bird species

without an endangered species permit in performing the activities authorized under § 21.12(b)(2) and (c) of this subchapter.

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Subpart D—Threatened Wildlife

4. Revise § 17.31 to read as follows:

§ 17.31 Prohibitions.

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

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

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

(ii) Dispose of a dead specimen; or

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

(iv) Remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or

injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in an appropriate area.

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

(3) Notwithstanding § 17.21(c)(1), and unless otherwise specified, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of an approved cooperative agreement with the Service that covers the threatened species of wildlife in accordance with section 6(c) of the Act, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take those species.

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

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

§ 17.32 Permits—general.

Upon receipt of a complete application, the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. The permit shall be governed by the provisions of this section unless a species-specific rule applicable to the wildlife and set forth in §§ 17.40 through 17.48 of this part provides otherwise. A permit issued under this section must

be for one of the following purposes: scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

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

§ 17.40 Species-specific rules—mammals.

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

§ 17.41 Species-specific rules—birds.

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

§ 17.42 Species-specific rules—reptiles.

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

§ 17.43 Species-specific rules—amphibians.

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

§ 17.44 Species-specific rules—fishes.

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

§ 17.45 Species-specific rules—snails and clams.

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

§ 17.46 Species-specific rules—crustaceans.

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

§ 17.47 Species-specific rules—insects.

§ 17.48 [Removed and Reserved]

14. Remove and reserve § 17.48.

Subpart F—Endangered Plants

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

§ 17.61 Prohibitions.

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

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

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

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

(i) Care for a damaged or diseased specimen;

(ii) Dispose of a dead specimen; or

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

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

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

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

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

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

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Subpart G—Threatened Plants

16. Revise § 17.71 to read as follows:

§ 17.71 Prohibitions.

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

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

(i) Care for a damaged or diseased specimen;

(ii) Dispose of a dead specimen; or

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

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

(3) Notwithstanding § 17.61(c)(1) and unless otherwise specified, any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of an approved cooperative agreement with the Service that covers the threatened species of plants in accordance with section 6(c) of the Act, who is designated by

their agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those species.

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

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

§ 17.72 Permits—general.

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

* * * * *

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

§ 17.73 Species-specific rules—flowering plants.

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

§ 17.74 Species-specific rules—conifers and cycads.

/s/ Shannon Estenoz, 3/26/2024,

Assistant Secretary for Fish and Wildlife and Parks.