
ENDANGERED SPECIES LISTING HANDBOOK

**Procedural Guidance for the Preparation and
Processing of Rules and Notices Pursuant to the
Endangered Species Act**



U.S. Fish and Wildlife Service
Division of Endangered Species
Washington, D.C.

Fourth Edition
March 1994

ENDANGERED SPECIES LISTING HANDBOOK

Procedural Guidance for the Preparation and Processing
of Rules and Notices Pursuant to the Endangered Species Act

U.S. Fish and Wildlife Service
Division of Endangered Species
Washington, D.C.

Fourth Edition

March 1994

Executive Summary

Endangered Species Listing Handbook

Background

This is the fourth edition of the Endangered Species Listing Handbook (Handbook). It provides technical guidance for the preparation of Federal Register notices and proposed and final rules for listings, delistings, reclassifications, critical habitat designations, section 4(d) rules, and experimental populations under the Endangered Species Act of 1973 (Act), as amended. The Handbook will assist managers, biologists, and clerical staff in the preparation of rulemaking documents and associated packages. Compliance with these guidelines is critical to production of uniform documents, adherence to Fish and Wildlife Service (Service) policies, and conformance with Office of the Federal Register (OFR) document requirements.

This edition of the Handbook changes the title of the document from "Policy and Guidance for Preparing and Processing Actions to List, Delist, or Reclassify Endangered or Threatened Species" to "Procedural Guidance for the Preparation and Processing of Rules and Notices Pursuant to the Endangered Species Act" to clarify that the Handbook provides procedural guidance for compiling the administrative record and preparing Federal Register documents. It does not establish policy upon which the Service bases listing decisions. Such policy is established through other guidance documents. The Handbook may repeat policy and provide guidance on documenting compliance, but does not itself establish the policy.

Significant Points in the Guidance

- o The Regional Directors are responsible for providing scientifically accurate, biologically and legally sound rulemaking recommendations that adhere to Service policy. Regional Directors also are responsible for ensuring that the administrative record clearly supports the rulemaking decision and that the rule or notice is coherently written and grammatically correct. In short, Regional Directors are responsible for ensuring the integrity of the decision and the quality of the administrative record.
- o The Washington Division of Endangered Species functions as staff to the Director in the review of these documents. Staff review encompasses examination for national consistency, adherence to policy and procedural guidance, and compliance with the Act, including the Act's requirement that certain decisions be based on the best available scientific information, and includes review of tone and clarity of expression.
- o The Director or Assistant Secretary must sign all proposed and final rules, notices of petition findings, notices extending the proposed rule period (6-month limit), and notices withdrawing proposed rules. He/she also must sign any notices extending the comment period beyond 6 months from the date of publication of the proposed rule.
- o Regional Directors have signature authority for Federal Register notices announcing public hearings, availability of recovery plans or other documents, and reopening comment periods that do not extend more than 6 months after the publication date of the proposed rule. (The Assistant Secretary reserves the right to review and sign all notices and rulemakings.)
- o Regional Solicitors are expected to surname all rules and notices. Rules involving international listings, special rules, experimental populations, or major precedents also will

- be surnamed by the Assistant Solicitor for Fish and Wildlife in Washington. Others may be reviewed by the Washington Solicitors if requested by the Region or the Director.
- o Proposed rule packages that are a result of a warranted 12-month petition finding are due in Washington 60 days before the 12-month anniversary of the petition's receipt. This guidance supersedes guidance in the March 14, 1994, Endangered Species Petition Management Guidance.
 - o Packages for final rules (or notices of withdrawal or extension, when appropriate) are due in the Washington Office 60 days prior to their statutory deadlines. This revises the previous requirement that packages arrive in Washington 90 days prior to their statutory deadline.
 - o Pre-proposal coordination with Federal, State, and local agencies and landowners is the responsibility of the Region. Coordination with State conservation agencies is mandatory (see Director's Order No. 64), and coordination with all key landowners (those controlling the largest or most important tracts) is strongly encouraged.
 - o Multi-species listings are encouraged when several species have common threats, habitat, distribution, landowners, or features that would group the species and provide more efficient listing and subsequent recovery.
 - o The lead Region for a multi-Regional species is responsible for coordinating with the other affected Regions and for establishing consensus on the biological basis for listing decisions. The Regional Director of each non-lead Region is responsible for providing a concurrence (or nonconcurrence) memorandum to the lead Regional Director for all petition findings and proposed and final rules before submission to Washington. The Washington Office will coordinate any unresolved disagreements between the Regions, but the Director expects these instances to be rare.
 - o Summaries of comments in final rules should be issue-oriented rather than on a commenter-by-commenter basis when several issues are raised. Summaries need only address comments that are germane to the rulemaking decision (e.g., questioning biological status, threats, findings, determinations, or interpretation of pertinent sections of the Act) and other relevant endangered species issues.
 - o The package prepared for each action must constitute a complete copy of the administrative record for the rule or notice and, as such, must be properly filed and maintained. Copies of all relevant pages from the reports, letters, publications, etc., that were used in the rulemaking process must be included in the package.
 - o It is imperative that the supporting materials clearly justify the recommended decision and that all comments disagreeing with the decision are adequately addressed. Any package that is returned to a Region for revision must be returned to Washington with the original surname page of the Federal Register document and an explanation of all changes made.
 - o Draft rules and notices are considered internal Service documents. Permission of the Director must be obtained prior to disclosure of any decision or draft document that requires the signature or approval of the Director or higher authority in the Department.
 - o Regions are to include with rule or notice packages information on the known or anticipated media interest in the action. If media interest already exists or is expected, the Region must

include in the rule or notice package a draft press release cleared by the Regional Public Affairs Office. The Region shall also forward a copy to the Washington Public Affairs Office. Proposed or final rules to delist species due to recovery should always include a press release.

- o Each rule or notice package must include a summary sheet attached to the inside of the front cover of the binder. The summary sheet serves to briefly describe the action, summarize the status and threats of the species, inform the reviewer of significant prelisting activities, and alert the reviewer to potential conflicts, controversy, or congressional sensitivity.
- o When submitting rules and notices to the Office of the Federal Register, the Service is including diskettes with WordPerfect copies of the documents. This saves 20 percent on page charges in the Federal Register. Therefore, Regions are requested to provide WordPerfect copies of documents simultaneous to submitting a package. These can be transmitted through electronic mail or on a diskette included with the package. The Washington Division of Endangered Species may convert larger documents to Government Printing Office typeset codes, which earns a 30 percent saving for the Service in Federal Register publication costs.

TABLE OF CONTENTS

Executive Summary	iii
TABLE OF CONTENTS	vii
I. INTRODUCTION	
A. <u>Overview</u>	1
B. <u>Supersession/Updates of the Handbook</u>	2
C. <u>Release of Draft Documents</u>	2
D. <u>Pre-proposal Coordination/Contacts</u>	3
E. <u>Internal Service Coordination</u>	3
F. <u>Status Surveys and Status Reviews</u>	4
G. <u>Ex Parte Communication</u>	5
H. <u>Administrative Record</u>	5
I. <u>Federal Register Reprints</u>	6
J. <u>Reference Materials</u>	6
II. GUIDANCE FOR TYPING AND PACKAGE ASSEMBLY	
A. <u>Package Assembly and Organization</u>	9
B. <u>Guidance for Typing Federal Register Documents</u>	10
Providing Electronic Copy to Washington	11
Typing the Federal Register Document	11
C. <u>General Drafting Rules for Biologists</u>	15
III. FORMAT AND CONTENT OF RULES	
A. <u>Proposed Rule (Listings)</u>	17
Background	21
Previous Federal Action	21
Summary of Factors Affecting the Species	22
Critical Habitat	27
Available Conservation Measures	33
Hardship Exemption	38
Public Comments Solicited	39
National Environmental Policy Act	41
Required Determinations	41
References Cited	43
Author(s)	44
Proposed Regulation Promulgation	45
TABLE FOR PLANT LISTINGS	49
TABLE FOR ANIMAL LISTINGS	50
B. <u>Final Rule (Listings)</u>	57
Background	59
Previous Federal Action	60
Summary of Comments and Recommendations	60
Summary of Factors Affecting the Species	65
Critical Habitat	67
Economic Analysis	69
Exclusion Process	69
Available Conservation Measures	70

Hardship Exemption	70
National Environmental Policy Act	70
Required Determinations	71
References Cited	72
Author(s)	72
Regulation Promulgation	73
TABLE FOR PLANT LISTINGS	76
TABLE FOR ANIMAL LISTINGS	77
C. <u>Critical Habitat</u>	83
What Areas Should or Should Not Be Designated as Critical Habitat?	83
Developing the Critical Habitat Description	85
Preparing Critical Habitat Maps	86
D. <u>Economic Analysis</u>	87
E. <u>National Environmental Policy Act (NEPA) Compliance</u>	88
F. <u>Required Determinations</u>	89
G. <u>Emergency Rules</u>	90
H. <u>Similarity of Appearance Rules</u>	91
I. <u>Special Rules</u>	92
J. <u>Experimental Population Rules</u>	93
K. <u>Delistings and Reclassifications</u>	96
 IV. FORMAT AND CONTENT OF RULEMAKING NOTICES	
A. <u>General Information</u>	99
B. <u>Petition Findings</u>	99
C. <u>Public Hearings and Comment Period Extensions</u>	110
D. <u>Withdrawals</u>	117
E. <u>Extension of Proposed Rule</u>	118
F. <u>Correction of Published Documents</u>	119
 V. NOTIFICATIONS AND PUBLIC HEARINGS	
A. <u>Public Notification</u>	121
Notifications Necessary for Rules and Notices	124
Department of Defense Contacts	125
Model Letter for Proposed Rule Notification to State/Federal Agencies	126
Model Letter for Proposed Rule Notification to Interested Parties	127
Sample Letter for Proposed Rule Notification to Foreign Government	128
Sample Letter for Final Rule Notification to Foreign Government	129
List of Interested Parties	130
B. <u>Public Hearing Guidance</u>	131
 VI. LISTING PROCESS AND ASSIGNED RESPONSIBILITIES	
A. <u>Washington and Regional Roles</u>	135
B. <u>Lead and Non-Lead Region Responsibilities</u>	135
C. <u>Listing Process: Step-by-Step</u>	136
D. <u>Tracking Mechanisms</u>	142
 APPENDICES	
I. <u>Handbook Updates and Addenda</u>	145
II. <u>Director's Order #64</u>	147
III. <u>Suggested Pre-proposal Measures</u>	153
IV. <u>Solicitor's Memorandum on Ex Parte</u>	155

V.	<u>Control Sheet</u>	161
VI.	<u>Summary Sheets</u>	165
VII.	<u>Package Table of Contents</u>	171
VIII.	<u>CITES Fact Sheets, Lists and Party Nations</u>	175
IX.	<u>Matrix for Public Comments</u>	187
X.	<u>Takings Implication Assessment Example</u>	191
XI.	<u>Executive Order 12866</u>	197
XII.	<u>Experimental Populations - 1982 Conference Report Excerpt</u>	211
XIII.	<u>1984 Regulation Promulgating Experimental Populations</u>	217
XIV.	<u>Examples of Published Federal Register Documents</u>	229

I. INTRODUCTION

A. Overview

The Endangered Species Listing Handbook (Handbook) provides technical guidance for the preparation of Federal Register proposed and final rules for listings, delistings, critical habitat designations, reclassifications, section 4(d) rules, and experimental populations. It also includes guidance on the preparation of notices of petition findings.

In addition to technical guidance on preparation of Federal Register documents and associated packages, the Handbook contains sample correspondence and newspaper notices and extensive guidance on conducting public hearings. **Section VI** of the Handbook includes a description of Washington Office and Regional Office roles and responsibilities and a fairly comprehensive step-by-step description of the entire listing process, from initial consideration of a species as a candidate through its final listing or removal from consideration as a candidate. The appendices contain various types of sample documents and supporting materials, including examples of published Federal Register documents.

Revisions have been made throughout the Handbook. Service staff involved in developing, typing, and reviewing Federal Register documents are urged to take time to review pertinent sections as they prepare or review documents. A description of some of the more significant revisions follows:

1. The Service is now providing electronic copies of Federal Register documents, some including Government Printing Office (GPO) typeset codes, to the Office of the Federal Register (OFR) along with the signed documents. This should save the Service more than \$100,000 annually in Federal Register publication costs. In order to do this, Regions are requested to transmit electronic copies of rules and notices to the Washington Division of Endangered Species. A section with instructions for typing Federal Register documents has been added to the Handbook. Regions are also requested to transmit electronic copies of the summary sheet to assist in preparation of briefing papers in Washington. The preferred method of transmittal is through cc-mail. Otherwise, a diskette should be included with the package.
2. The information requirements for the summary sheet should be reviewed carefully. In particular, it should be noted that the summary sheet should now indicate the Congressional districts affected and identify Federal laws that provide for conservation of the species in the rule or notice (not just those that kick in upon listing), as well as congressional districts affected. It is also suggested that a map depicting the species' current and historic range be attached to the summary sheet.
3. Several changes have been made to the language in the regulatory amendment section of proposed and final rules. Also note such changes as the use of seven asterisks in the §§ 17.11 and 17.12 tables. (A WordPerfect template of each table is available from the Washington Division of Endangered Species.)
4. Sections have been added for experimental populations, delistings and reclassifications, petition finding notices, and other types of actions.
5. Proposed rule packages that are a result of a warranted 12-month petition finding are due in Washington 60 days before the 12-month anniversary of the petition's receipt. (This guidance supersedes guidance in the March 14, 1994, Endangered Species Petition Management Guidance.) Packages for final rules (or notices of withdrawal or extension, when appropriate) are due in the

Washington Office 60 days prior to their statutory deadlines. This revises the previous requirement that final rule packages arrive in Washington 90 days prior to their statutory deadline.

6. The Draft Interim Endangered Species Consultation Handbook includes a provision for acknowledging "recovery units" when determining the basis for jeopardy or adverse modification in biological opinions. The decision is based on the effects of the action on the continued existence of the entire listed entity (species, subspecies, or vertebrate population) unless the final listing or the recovery plan identifies discrete recovery units, which may also be a discrete subset of critical habitat designated in the final rule. Jeopardy analyses in biological opinions may be based on recovery units when described in the final rule listing the species or designating critical habitat as necessary to its survival and recovery. When applicable, recovery units should be addressed in the "Summary of Factors Affecting the Species" in both proposed and final rules and noted in the summary sheet.

It is imperative that all listing staff and their managers are familiar with the Endangered Species Act (Act), implementing regulations and current policies--not only those pertaining to listing but recovery as well, because the ground work for recovery often is set with the listing. In addition, staff who draft listing rules and notices are strongly urged to assemble a selection of published rules and notices that pertain to a variety of situations. These will be invaluable in the development of thorough documents. A small selection of published documents is included in the Handbook appendices. These documents do not necessarily conform to current Handbook guidance. Where the two differ, please defer to the guidance.

Suggestions for improvements to this handbook are welcome at any time. Please direct comments or suggestions to the Chief, Division of Endangered Species in Washington.

B. Supersession/Updates of the Handbook

This fourth edition of the Handbook supersedes all previous editions. Because format and content requirements of Federal Register documents change, updates will be provided periodically in the form of revised pages with a date in the upper right corner of the page (example: REV. 1-3/26/94). These will be transmitted to the Regions by memorandum from the Director or Assistant Director for Ecological Services, depending on their content. A list of all updated pages will be maintained in **Appendix I**.

C. Release of Draft Documents

Release of a draft rule, notice, or other decision document that requires signature or approval of the Director or a higher authority in the Department is not allowed without prior notice and permission of the Director. Drafts must remain internal Service documents until the decision is official and the decision document is placed on file for public review at the OFR. Disclosure of the contents of drafts and other internal agency deliberative documents may be construed as a waiver of any protection from public disclosure of the documents afforded by exemption (5) of the Freedom of Information Act.

D. Pre-proposal Coordination/Contacts

As competition for natural resources increases, it is inevitable that the protection of vanishing species and their habitats will be viewed by some as an undue burden on legitimate human activities.

The Service must continue to base the listing of endangered and threatened species "solely on the basis of the best scientific and commercial data available..." as required by the Act, but controversy associated with these decisions can frustrate the rulemaking process. While there is no way of entirely avoiding conflict and controversy and still fulfill the Service's obligations under the Act, opposition to listing and recovery activities due to incomplete or erroneous information can be minimized by early communication with groups or individuals that may be affected. Explanation of the reasons for and the effects of our actions may transform opposition into support, or at least significantly reduce the level of opposition.

The primary objectives of pre-proposal coordination should be to (1) advise parties that the Service is considering taking a particular regulatory action, and (2) request information. Each Regional Director is responsible for directing pre-proposal coordination in his or her Region and for managing any controversy generated by rulemaking actions. The appropriate means is a matter of Regional discretion. Regions are strongly encouraged to contact all landowners with property supporting the species prior to publishing a proposed rule. When dozens of landowners are involved, contacting at least the key landowners (those controlling the largest or most important tracts of habitat) is recommended. If there is concern that a landowner may destroy the species on his/her land, it may be wise to establish contact very early in the process and work closely with the party in person rather than through the mail.

Early coordination with affected State agencies is mandatory (see September 29, 1993, Director's Order No. 64 - **Appendix II**). Regions are also responsible for initiating congressional contacts (at their home offices, initially) on controversial listings. Contact with the following groups also is suggested:

- Involved or affected local agencies
- Involved or affected Federal agencies
- Affected or interested conservation or industry groups
- Biologists or scientific groups interested in and/or knowledgeable about the species or species group

It is important to keep good records of all significant contacts throughout the rulemaking process. Filing of signed and dated conservation or meeting records is recommended.

Pre-proposal coordination need not and must not result in significant delays or avoidance of high priority listing actions. Delays or avoidance could result in further losses to species and could be illegal in the context of section 4 of the Act. Measures that can be taken prior to a proposed rule are provided in **Appendix III**.

E. Internal Service Coordination

Regional Offices are responsible for coordinating recommendations and concurrence for 12-month petition findings and rules with the Assistant Regional Directors for Fisheries and Refuges and Wildlife for fishes and migratory birds, respectively, or, if specific expertise is lacking in the Region, arranging for review and concurrence by those program offices in Washington.

For species that occur in more than one Region, the lead Region is responsible for ensuring coordination with all other affected Service Regions throughout the listing process. Non-lead Regions are responsible for coordination within their Region and providing requested information to the lead Region. Regions are expected to reach consensus on listing issues prior to submission of any listing

package to Washington. The Regional Director of each non-lead Region must provide a concurrence (or nonconcurrence) memorandum to the Director prior to or simultaneous with submission of a draft proposed or final rule, or notice of withdrawal of a proposed rule, to the Washington Office. (A similar requirement exists for 12-month petitions findings--see the Petition Management Guidance.) This memorandum serves in lieu of a non-lead Regional Director's surname on the rule going to the Director. A copy of each non-lead Region concurrence/nonconcurrence memorandum should be included in the listing package submitted to Washington.

All Regions are responsible for making sure the Washington Office is informed of significant or controversial listing issues as far in advance as possible. This should be accomplished with briefing statements.

F. Status Surveys and Status Reviews

Some confusion exists regarding the difference between status surveys, status reports, status reviews, and status information. Status surveys are activities that are funded or conducted by the Service or others to study the status of a species. Status surveys generally include, as appropriate, field surveys, museum research (e.g., for historic distribution), and literature searches in order to compile complete information. A status report is a written document that is the end product of a status survey. (Status surveys are unnecessary when sufficient reliable status information already is available.)

Status reviews are required by section 4(b)(1)(A) of the Act. A status review is the act of reviewing all the available information on a species to determine if it should be provided protection under the Act. The review must be conducted by the Service after soliciting comments from the public by publishing a notice in the Federal Register and notifying State and Federal officials and other interested parties of the need for information. The Service's comprehensive Federal Register notices of review for plant and animal candidates serve as notices to the public that the Service is seeking status information on all of the species included in the lists. However, sometimes it is appropriate to publish notices for specific candidate species that have already been included in a comprehensive notice of review to inform the public that the Service is continuing its review of a candidate species and to solicit public comments on specific issues. Status reviews may be initiated for non-candidate species when the Service receives a listing petition for the species and announces a "substantial" 90-day finding in the Federal Register or for non-petitioned species when the Service deems it appropriate. Consult the Service's Endangered Species Program: Candidate Assessment Guidance and Petition Management Guidance for further detail on status surveys and status reviews.

The "Supporting Information" section of each Federal Register package must contain the major documents supporting the action being announced, proposed, or finalized, including status information. Status information may include scientific or commercial literature, status reports prepared by non-Service or Service personnel, and other documents. All documents listed in the "References Cited" section also must be copied and included behind the "Supporting Information" tab. In the case of large references, such as books, only the relevant pages (e.g., title page, species' accounts, and other pertinent pages in the document) are included in the package. When a large body of literature is available concerning a species, only the most comprehensive documents and status reports, and the most useful summaries should be included and referenced. If the total volume of the reference material is excessive, place it in one or more separate binders of the same color and label the front cover(s).

G. Ex Parte Communication

Pursuant to the Endangered Species Act and the Administrative Procedure Act, the public has the right to review and comment on all information upon which an agency bases a rulemaking decision. All comments received in response to a proposed rule become part of the administrative record and are available to the public.

Ex parte refers to communication (oral or written) made without the knowledge of other interested parties and the opportunity for them to comment or respond. The Service may only receive and consider information on a proposed rule that is received during an open comment period. Once the public comment period for a proposed rule closes, agency personnel associated with the listing decision are discouraged from engaging in activities or substantive discussions related to the rulemaking with anyone outside the Department. This precludes the admittance into the agency proceedings of new information that may influence the agency or Department decision without the opportunity for public review and comment. Once the comment period closes, any substantive contacts with individuals outside the Department must be documented for the record; any meetings with individuals outside the Department should include a representative from the Solicitor's office. Once a final decision is made on the rule, these restraints would no longer apply.

If important new information is received near the end or after the close of the comment period, the public would be unable to comment on that information, and consideration should be given to extending or reopening the comment period.

For elaboration of this topic, refer to the February 24, 1987, memorandum from the Office of the Solicitor in **Appendix IV**.

H. Administrative Record

For each listing action, an administrative record is assembled. This record should include all completed rule packages, correspondence, newspaper notices, records of important telephone conversations, all comments and hearing transcripts, and other documents used in considering the action taken. It is important to keep good records that can be followed. Document contacts made, date them, and maintain them. All of these documents can simply be filed in the species' file or wherever the Region wishes, but this information must be maintained. If a listing or other action were challenged, all these documents could become part of the court record. There is no time limit as to retaining the administrative record for a listed species. These records are major reference documents and must be available at all times. One of the principal purposes for the rather elaborate production of a "package" and its inclusive materials is to create a historical record that can physically survive intact far beyond what is required for routine correspondence. (For example, there are no compiled administrative records for any listings prior to 1974.) These packages are also used in developing recovery plans and any subsequent rulemakings (e.g., delisting, reclassification, special rules). All relevant listing files must be reviewed prior to the proposal of any reclassification or delisting actions.

I. Federal Register Reprints

The Regional Office should inform the Washington Division of Endangered Species if reprints of a Federal Register document will be needed soon after the listing package is submitted to Washington. Reprints can be ordered only if the Service requests that the document be published as a

separate part at the time the document is submitted to the OFR for publication. The Region should determine the number of copies needed and the addresses to which the boxes should be shipped, and provide this information and the account code to which the order should be charged to the Washington Division of Endangered Species. The Division of Endangered Species can submit the necessary paperwork as soon as the OFR confirms the publication date and separate part number.

There are two means of obtaining Federal Register reprints through GPO. One involves an "overrun" of the daily Federal Register issue at GPO. The other involves purchasing photo prints from GPO from which copies may be printed. Overruns and photo prints may only be ordered before publication.

- (1) Overruns - The overrun method produces copies on standard newsprint within about 1 week. Costs are about \$.60 per copy for up to about 30 to 35 Federal Register pages (approximately six manuscript pages equals one Federal Register page). The minimum order is approximately 300 copies. Once the daily Federal Register has been published, no additional overruns may be ordered.
- (2) Photo prints - Photo prints of the separate part may be ordered from GPO. Once the photo prints are purchased, they may be used to print unlimited quantities of high quality reprints on white paper (covers can also be heavier stock). Photo prints may be mailed to the Region for local printing, or reprints may be ordered through the Departmental printing office. Costs are about \$3 per page for the photo prints and then about \$.015 per page per copy thereafter if ordered through the Departmental printing office. Expedited printing is extra. These usually take an extra week or more to produce. The photo print method of obtaining reprints is more expensive, but it yields better copies and additional copies may be printed from the photo prints any time.

Shipping costs are extra. Ground transportation is used unless other service is specifically requested.

J. Reference Materials

Each listing biologist should have ready access to the following reference materials. General familiarity with the regulations and Service policies is essential to development of listing rules. Refer to these materials often while preparing and processing listing documents and actions.

1. Endangered Species Act of 1973, including all amendments
2. Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11(h) and 17.12(h) (latest republication)
3. The following parts of 50 CFR:
 - a. Part 17 - contains prohibitions, exceptions, the lists, critical habitats, special rules including experimental populations and manatee sanctuaries
 - b. Part 424 - contains the section 4 regulations for listing and critical habitat designation
 - c. Part 402 - contains the section 7 regulations

4. Document Drafting Handbook. 1991. (revised edition) Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408
5. All comprehensive notices of review (plants and animals)
6. All pertinent listing policies and guidance (e.g., candidate species guidance (assessment, monitoring, and conservation, Petition Management Guidance, Vertebrate Population Policy, Hybrid Policy, designating critical habitat, development of economic analyses, etc.)-- Contact the Division of Endangered Species for the most current guidance
7. Service National Environmental Policy Act (NEPA) Handbook (30 AM 2-4)
8. Current CITES list - to determine if species is regulated
9. Copies of international treaties, State laws and regulations, and other Federal laws and regulations that affect the species being considered
10. National Wildlife Federation Conservation Directory
11. Council of Biology Editors Style Manual
12. Current fiscal year prospective listing actions
13. Examples of recent Federal Register rules and notices

II. GUIDANCE FOR TYPING AND PACKAGE ASSEMBLY

A. Package Assembly and Organization

A rule or notice "package" consists of the Federal Register document, a summary sheet, and various other documents that support (though not necessarily favor) the decision contained in the Federal Register document. Packages should be submitted to the Director's Office from the Region in a complete and organized form ready to begin the surname route.

The package must contain all the information necessary for the signing authority to make an informed decision. It comprises the principal component of the public record, although additional supporting records may be maintained in Regional files. All significant comments, reports, and other materials cited or alluded to in the Federal Register document must be included with the package. For proposals, this also means any significant correspondence or other information received prior to submission of the proposed rule.

(1) Binder

The package should be submitted in a durable (plastic or heavy card stock) binder with a binding system other than clamp, screw-post, or loose-leaf. Binders such as "ACCOHIDE" or "ACCOPRESS" compression or equivalent are suitable. (The binder must protect the package during extensive handling in Washington and subsequent permanent filing.)

The following binder colors should be used to facilitate processing and filing:

red - finals and emergency rules

yellow or beige - proposals

blue - notices

black - any special determinations (previously Determinations of Effects of Rules for critical habitat and special rules)

More than one binder (use the same color) may be necessary for rules with voluminous supporting materials.

(2) Control Sheet

A control sheet identifying the reviewing offices must be taped to the front of the package. Sufficient space should be provided at the bottom of the sheet to allow for notations during the review process. The sheet should be affixed 1½ to 2 inches from the top of the binder to allow placement of a plastic label in Washington. The appropriate control sheet is provided in **Appendix V**.

(3) Tabs

Heavy paper stock dividers should be inserted between sections of the package. The tabs should be labeled to correspond with the table of contents.

(4) Summary Sheet

A 1- to 2-page summary sheet must be attached to the inside of the front cover of all rule and notice packages. The summary sheet should serve to (1) briefly describe the action; (2) provide a brief overview of the species' range and biological status, including threats; (3) inform the reviewer of significant prelisting activities or coordination that have occurred; and (4) alert the reviewer to potential conflicts, controversy, or congressional sensitivity.

The format and content of the summary sheet is provided in **Appendix VI**. Three new information needs are included--(1) listing priority number, (2) congressional districts that may be affected by the action, and (3) existing regulatory authorities that affect the conservation of the species. For the benefit of reviewers and the signing official, Regions also are requested to attach to the summary sheet a map indicating the species' current and historic ranges.

Regions should provide the summary sheet electronically to the Washington Division of Endangered Species, along with the Federal Register document, to facilitate preparation of briefing statements in Washington.

(5) Table of Contents

The first page of each package should be a table of contents. The table of contents will vary slightly depending upon whether the package is for a proposed rule, a final rule, or a notice. The format and content of a table of contents is provided in **Appendix VII**. Only the items appropriate to the type of document being submitted should be included in the table of contents.

If available, attach a drawing or photograph of the species to the table of contents page for the benefit of reviewers.

(6) Miscellaneous Documents

Other documents that should be submitted with a listing package include:

(a) Press release -- If media interest exists, or if the Region recognizes that the listing action or petition finding may generate significant media interest, the Region is to submit a draft press release, cleared by the Regional Public Affairs Office, with the rule or notice package. The copy should be included behind the "Press Release" tab. A copy also is to be sent to the Washington Public Affairs Office. Any rules to reclassify or delist a species due to recovery must include a press release.

(b) Recovery outline -- A 1- to 2-page recovery outline is to be submitted to the Washington Division of Endangered Species within 60 days after the date a final listing rule is published in the Federal Register. If possible, this should accompany the final rule to Washington.

B. Guidance for Typing Federal Register Documents

Federal Register documents are decision documents or notices of Service decisions that must be prepared for signature in manuscript format. Upon signature by the Director or Assistant Secretary, clearance by the Departmental Office of Regulatory Affairs, and, for certain documents, approval by the Office of Management and Budget (OMB), three copies of the document with three original signature pages are submitted to the Office of the Federal Register (OFR). Following its review, OFR forwards one copy to the Government Printing Office (GPO) for typesetting and publication.

The Service spent roughly \$400,000 in each of the last two fiscal years (1992 and 1993) on Federal Register publication costs (one Federal Register page--about six manuscript pages--costs \$375 to publish). To reduce costs, rules and notices are now being provided to the OFR on a WordPerfect diskette along with the signed documents. This earns the Service a 20 percent savings in publication costs.

The Washington Division of Endangered Species also has begun encoding some documents for GPO typesetting, which earns the Service an additional 10 percent savings, resulting in a total 30 percent savings for the Service in publication costs. (The billing code, which is printed at the end of the published document, will end in "P" if the WordPerfect version was accepted by GPO; "F" indicates a fully coded document; "M" appears for a manuscript without any discounts.)

(1) Providing Electronic Copy to Washington

To enable the Service to take advantage of this savings, Regions are requested to transmit electronic copies of Federal Register documents to the Washington Division of Endangered Species simultaneous to submitting the package to Washington. Electronic copies may be transmitted through cc-mail (preferred method) or provided on a diskette enclosed with the package. Regions are also requested to forward the summary sheet electronically to facilitate the preparation of briefing papers in Washington.

It is imperative that the electronic version submitted corresponds exactly to the document surmised by the Regional Director and submitted in the package. The Washington Office must provide a letter to the OFR with each diskette certifying that it is a true and correct copy of the signed document. It is also imperative that typists comply with the instructions (settings, etc.) not only to ensure production of a proper printed document for signature and submission to the OFR, but so that the electronic version of the document can be efficiently converted to GPO typesetting codes.

(2) Typing the Federal Register Document

The Federal Register documents are not prepared for their appearance but rather as a means to typeset the material at GPO. These are simply manuscripts. The following settings and format should be used when typing Federal Register documents:

(a) WordPerfect Settings--All Federal Register documents must be typed using the following settings:

- ! Use **elite type (12 characters per inch)** in either a **Letter Gothic** or **Prestige Elite** (or similar) font and 6 vertical lines per inch.
- ! The top and bottom margins must be 1 inch.
- ! The left margin must be 1½ inches. The right margin must be 1-1¼ inches.
- ! At the beginning of the document, set a tab at the left margin. This will be used to create "hanging indents" when typing the "References Cited" section of the document. Set several more tabs at ½-inch intervals.

- ! The page number for page 1 should print at the center bottom of the page. For subsequent pages, the page number should be centered one inch from the top of the page.

(b) Document Style and Punctuation--The OFR has very strict requirements for punctuation and format. The standards and the examples provided later in the Handbook must be followed exactly when typing Federal Register documents. OFR staff do not hesitate to contact the Washington Division of Endangered Species regarding errors or omissions, and publication of rules may be delayed as a result.

- ! Federal Register documents must be typed in manuscript style. Double space the entire document, including all tables (tables are typeset by GPO even if provided on the diskette). Double spacing the document enables GPO to typeset from the printed manuscript if there is a problem with the diskette.
- ! Indent all paragraphs five spaces or about ½ inch using the "Tab" feature.
- ! Major headings (e.g., ACTION) must be flush with the left margin, all caps, and followed by a colon (:). Subheadings (e.g., Summary of Comments and Recommendations) must be flush with the left margin, lower case except first letters, and have no punctuation.
- ! References under the References Cited section should be typed as follows: Begin by typing F4 (indent), then Shift-Tab (left margin release), then type the reference. (Placing a tab at the left hand margin at the beginning of the document makes this possible.) This "hanging indent" will allow the citation to wrap properly.
- ! Place two spaces between sentences within a paragraph. Do not use tabs, indents, extra spaces or hard returns within paragraphs to make lines wrap or indent material, etc. Do use two hard returns between paragraphs.
- ! Do not use right-justified margins.
- ! Do not hyphenate words at the end of a line. Federal Register editors and GPO typesetters cannot always differentiate hyphens that are part of the word from those indicating continuation. Use "hard hyphens" (keyboard: Home,-) in hyphenated words (e.g., hook-billed kite).
- ! Use semi-colons in a series of items that contain commas within one or more items (e.g., series of calendar dates, cities and States).

Capitalization

- ! Use lower case for common names unless a proper noun is included as part of the name (e.g., Tennessee purple coneflower).
- ! Use lower case for "endangered," "threatened," "category," and "critical habitat," except in titles.
- ! The following terms should be lower case in the preamble text and regulatory language: "section" (when referring to a part of an Act of Congress), "part," "chapter," and "title."

- ! The term "State" is capitalized when referring to any one (or more) of the individual 50 States. "Federal" is capitalized; "federally" is not. "Agency" is not capitalized except in a proper name.

Abbreviations

- ! When using abbreviations, spell them out the first time with the abbreviation in parentheses.
- ! At first mention of the Act in the Background section, give its full name and citation: the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.); thereafter, use only "the Act" or "the Endangered Species Act."
- ! Refer to parts of the Code of Federal Regulations (CFR) as follows: use "50 CFR part 17" when referring to an entire part, but "50 CFR 17.3" when referring to a particular section. Once the title and part have been referenced, additional sections may be identified using "\$" or "\$\$" (e.g., § 17.11 or § 17.11(h) and §§ 17.94-17.96 or § 17.21(a)-(e)). Spell out "section" at the beginning of a sentence (do not use "\$"). Do not use the § symbol in referencing a section of the Act--use "section."
- ! When citing Federal Register documents in text, use the abbreviation "FR" (e.g., 58 FR 51144, which is the citation for the 1993 Plant Notice of Review.) Do not underline "FR."
- ! Use parentheses, not square brackets, in parenthetical CFR citations: e.g., (§ 17.11(h)). Use the brackets only for insertions you are making inside a quotation.
- ! "Percent" should be spelled out in Federal Register text.
- ! Units of measurement and time are expressed in figures (e.g., 5 kilometers, 6 centimeters, 15 years). Abbreviated units of measure do not include punctuation except for inches ("in.") when necessary to distinguish it from the word "in."

(c) Punctuation Marks, Symbols, and Typesetting

Certain WordPerfect punctuation marks and symbols should not be used in manuscripts for Federal Register publication because, while okay for visual typesetting, they can slip by in the computerized typesetting conversion process and convert to entirely wrong symbols in the document. Typists should follow the instructions below. The procedures will prove simple once tried. One major alternative is to modify the WordPerfect keyboard map in include these under the CTL-letter combinations to generate many of these special characters rapidly.

- ! GPO quotation marks do not use the shift apostrophe symbol ("). Instead they consist of open quote marks made of paired grave symbols (``) (a single grave is also the correct Hawaiian glottal stop symbol), and close quote marks made of paired apostrophes ("). These symbols can be created using keyboard macros if desired.
- ! Do not use the WordPerfect symbols (½), (¼), (<), (>), ({), or (}) in manuscripts. Use 1/2 or 1/4 and spell out "less than" and "greater than." There is no use for braces ({}) in Federal Register documents.

- ! Do not use WordPerfect italics or bold in manuscripts. The correct manuscript code for italics is WordPerfect underline. GPO conversion codes will automatically typeset certain headings and "Federal Register" in bold type.
- ! WordPerfect symbols acceptable for use in package manuscripts are listed below. To execute the WordPerfect composition code in the right hand column, press <CONTROL>V, then the code, then <ENTER>; or change the keyboard map.

<u>Symbol</u>	<u>Symbol name</u>	<u>WordPerfect compose code</u> "<CONTROL>V" then:
)	en dash (^`nut" dash)	3,8
§	section mark, (^`twist")	4,6 (or ALT-keypad 21)
°	degree sign, degrees of arc	6,36
'	minutes of arc	apostrophe key
”	seconds of arc (not shown on screen but will print)	4,31
`	Hawaiian glottal stop	grave key
Ñ	Spanish letter	1,56
ñ	"	1,57
	<u>Spanish accented vowels</u>	
á	a acute	1,27
é	e acute	1,41
í	i acute	1,49
ó	o acute	1,59
ú	u acute	1,67

The GPO Style Manual describes the correct uses of the en dash in Chapter 8.73. It is longer than a hyphen and looks better than a hyphen when typeset in series of numbers and capital letters, which are larger than lower case letters. The en dash should be used when typing RIN numbers (e.g., RIN)AC31), telephone numbers, legal citations, page numbers in bibliographic citations, etc.

Do not use colons within paragraphs in Federal Register documents. Use em dashes--two hyphens without spaces before or after. The Federal Register essentially limits colons to two uses--1) in major titles such as ``FOR FURTHER INFORMATION CONTACT:"", and 2) to introduce lists whose items are separate paragraphs, such as ``comments particularly are sought concerning:". Notice that the ending punctuation of each item in such a ``paragraph list" is not necessarily a period. The five ``factors affecting the species" are such a list, whose separate items are, in fact, usually multiple paragraphs. Various uses of the em dash are explained in

Chapter 8.60) 70 of the GPO Style Manual. Refer to almost any listing rule in the Federal Register for examples. The ``SUPPLEMENTARY INFORMATION" section of the 1993 Plant Notice of Review cited above makes liberal use of em dashes.

(d) Corrections

Documents submitted to the OFR cannot have white-out or taped-over changes. Only very minor changes are acceptable, and those must be neatly printed in black ink. Each correction must be initialed and dated in the right-hand margin. Insertion of additional pages is to be avoided, but, if necessary, number the page(s) with alpha-numeric numbers (e.g., 14A), and include a marginal explanatory note on the each page at that point indicating what page follows (e.g., on p. 14, state: "pages 14A-B follow" or on page 14B indicate in the top margin that "p. 15 follows").

C. General Drafting Rules for Biologists

- ! Before attempting to draft a rule or notice, review several recently published documents.
- ! Make liberal use of the references listed in **Section I.J.** of this handbook. They contain fundamental guidance on listing and the preparation of Federal Register documents.
- ! Try to keep all paragraphs under one typewritten page for the convenience of readers, and make sure it is limited to a single topic. (One typewritten page equals 1/2 of a Federal Register column.)
- ! For most plants, the scientific name is more stable than the common name(s) and should be used throughout the document to refer to the species. The common name should follow the scientific name the first time it is used and in the "Summary of Factors Affecting the Species" section. (The reverse applies for animals.) The authority for the plant name should be given once--in the "Summary of Factors Affecting the Species" section.
- ! When using the term "species," make sure it is clear whether it refers to the term as defined by the Act (i.e., used collectively to include subspecies and vertebrate populations) or as used in the scientific sense.
- ! Metric and English measurements: Use metric measurements and give the English equivalent in parentheses. Do not convert to more significant digits than indicated in the original value. Examples: 1,000 meters (1,000 yards [not 1,094] or 3,000 feet [not 3,281]); 36 centimeters (14 inches).
- ! Refer back to other sections of a Federal Register document whenever possible. For example, refer to the "ADDRESSES" section rather than repeating an address already given.
- ! This handbook contains suggested or standard language for many sections of Federal Register documents. Boiler plate is acceptable to a point, but drafters should tailor it to specific circumstances and avoid sounding mechanical.
- ! Maps, graphs, charts, or other illustrations or figures must follow immediately after the point in the text that indicates where they are to be inserted, even if this means only partially filling pages.

- ! Personal communication and correspondence references should be included in the text only and should include name, affiliation (give first time only), and year. These references are not placed in the "References Cited" section at the end of the document, but should be included in the package behind the "Supporting Information" tab. For reference citations within the text, do not use commas between the author and date (author date).

Examples: Brad Jones, University of Idaho, pers. comm. 1988; Jones 1987; Jane Doe, Denver Utilities, in litt. 1987. ("Pers. comm." are phone calls and other documented conversations. "In litt." means in a letter or other similar document.)

- ! Remember these are public documents. Be sure all language is understandable to the general public to the extent possible. All terms used should either be easily found in a standard desk dictionary or should be defined in the text where initially used.
- ! Make sure all sections tie together well and are consistent. For example, do not state that locality data and critical habitat maps would lead vandals and poachers to the site and then elsewhere describe the site's location in great detail.

Common Drafting Errors

- ! Improper use of "that" and "which." "That" is ordinarily used to introduce a clause that is essential to the sentence. "Which" is generally used to introduce nonessential clauses and usually is preceded by a comma or a preposition when used within a sentence.
- ! Failure to cite all previous Federal Register documents that mention the species (petition findings, notices of review, notices of public hearings, etc.) and what transpired since those public notices resulting in the present decision document. To date, the latest comprehensive plant notice of review was published on September 30, 1993 (58 FR 51144), and the latest animal notice of review was published on November 21, 1991 (56 FR 58804).
- ! Failure to include published synonyms in the §§ 17.11 and 17.12 tables. The tables should not include all previous nomenclature for a species, but should include names that may be in current use. For example, if a species has recently been placed in a different genus, include the old genus as a synonym (e.g., Melicope lydgatei (=Pelea l.) for plant or Epioblasma (=Dysnomia) penita for an animal). Also, if a species is known to be traded under a synonym, it should be included in the table. The entry in the table is generally the **only** information available to Customs, Law Enforcement and Department of Agriculture port inspectors, and other regulatory agents. Failure to include synonyms can result in illegal taking and trade of listed species identified under unlisted synonyms. All names previously used in notices or proposals must be included to ensure the continuity in the public record on that taxon. Follow the separate formats in §§ 17.11 or 17.12 for proper composition of the actual entry.

III. FORMAT AND CONTENT OF RULES

A. Proposed Rule (Listings)

Rules consist of two parts--the preamble and the regulatory language. The preamble provides the background and justification for the regulation. The regulatory language comes at the end of the rule and contains the language that will appear in the Code of Federal Regulations (CFR) published annually.

An example of the format and content of a proposed rule is provided below. Guidance information generally will be enclosed in brackets or contained in a footnote, while required headings and suggested language will appear outside brackets. Follow prescribed format, spacing, style, paragraph indentation, and punctuation carefully. These standards have been developed to meet Department, Service, and OFR requirements. Deviations from the standards often result in complaints from staff at the OFR and publication delays.

Please remember that a Federal Register document is a manuscript to be used by a typesetter at GPO. Even though GPO may be provided an electronic version of the document, it must have an acceptable printed copy to view and fall back on, if necessary, to ensure that the material is properly printed in the daily Federal Register and later (after the final rule) in the annual compilation of title 50 of the Code of Federal Regulations (50 CFR). Federal Register documents must conform to the 1991 version of the Document Drafting Handbook (Office of the Federal Register, revised ed., 1991). This is available at cost by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The stock number is #69-000-00037-1.

Prior to submitting a package to Washington, Regional staff should make sure that the information contained in the supporting documents clearly and logically supports the recommended action. For example, where one status survey concludes one thing and another reaches a significantly different conclusion (such as grossly different population estimates), make sure an explanation is given, such as why the Service believes one to be accurate rather than the other. Anticipating questions by the Director and Washington staff, and addressing them in the package, will facilitate the review process and timely publication.

Billing Code 4310)55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[DIRECTIONS: Run two original copies of the first page to go in the package--one with a surname stamp in the upper right-hand corner, followed by a clean copy. Staple a blue surname tag to the first copy. It should be surnamed by all individuals indicated in the "Action Required" column on the control sheet on the front cover, as well as other appropriate staff.]

RIN 1018)

[The complete regulation identifier number is assigned in Washington.]

Endangered and Threatened Wildlife and Plants; Type of Action and Name of Species [Provide the common name for animals and scientific and common name for plants. Do not cite the authority for the plant name here. If the species' name is not descriptive for the general public, indicate whether it is a plant, fish, snail, etc. If more than two species, generalize. Capitalize the first letter of all major words. There should be no punctuation at the end of the subject heading. Be very brief--this is just a subject heading.]

[Examples of the Type of Action: Proposed Threatened Status for the Plant Eutrema penlandii (Penland Alpine Fen Mustard); Proposed Rule

to List the Southwestern Willow Flycatcher as Endangered with Critical Habitat; Proposal to Determine Four California Plants and One Snail as Endangered Species. Number this page at bottom center.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule. [or] Proposed rule and notice of petition finding.

SUMMARY: [The summary of any Federal Register document must answer three questions--What action is being taken? Why is it necessary? What is the intended effect of this action? The summary of a proposed rule should very briefly summarize the type of action, give the scientific and common names and, if useful, the type of species (e.g., freshwater fish, shrub, aquatic plant), describe general range and threats, and describe resulting action (i.e., protection under Endangered Species Act, etc.). If more than four or five species are being proposed, do not provide the scientific or common names; instead refer to them as a group. Limit the SUMMARY to one short paragraph of fewer than 13 lines. (The OFR has refused to print several lengthy summaries.) A slightly longer paragraph for multiple

species is permissible, but try to keep it under 25 lines. The summary should not attempt to justify the action; it is simply an abstract to enable anyone reading the daily edition to understand the nature of the issues within the document. Do not request comments. Do not give citations (e.g., Federal Register, U.S.C., literature). Breaking sentences into sections with numbers or letters (e.g., (a)...(b)...) is not acceptable in Federal Register summaries.]

DATES: Comments from all interested parties must be received by [the following is bracketed: [insert date 60 days from Federal Register publication]]. Public hearing requests must be received by [the following is bracketed: [insert date 45 days from Federal Register publication]]. [The Act requires that 45 days be allowed during which the public may request a public hearing on proposed listings; the Service is not obligated to extend this period if the comment period is extended. The minimum for a public comment period is 60 days. If desired, the comment period may be more than 60 days (e.g., 90 or 120), as is often done with foreign species. The comment period may be reopened at a later date if necessary. If hearings are scheduled see Section V of this handbook and refer to the Federal Register Document Drafting Handbook.]

ADDRESSES: Comments and materials concerning this proposal should be sent to (insert Regional Office, Field Office, and/or Washington Office, as appropriate. Provide appropriate mailing address). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address[es].

FOR FURTHER INFORMATION CONTACT: [Provide name, address (or refer to ADDRESSES section), and telephone and facsimile numbers of the most appropriate staff person--e.g., John Smith, Field Supervisor, Salt Lake City Field Office (see ADDRESSES section) (telephone xxx/xxx)xxxx; facsimile xxx/xxx)xxxx).]

SUPPLEMENTARY INFORMATION:

Background

[Indent (tab) the first line of all paragraphs five spaces or 1/4 inch. In nontechnical terms, briefly discuss the date the species was discovered and described, physical description of species, species' distribution (including estimates of the number of

individuals or populations, if known) and habitat type, and landownership of locations. Describe the history of the species' decline and its overall status, being very brief since this information should be developed in detail in the "Summary of Factors Affecting the Species" section. If multiple species are proposed, provide a brief explanation of why they are being proposed together and continue with a discussion of the information described above for each species.]

Previous Federal Action

[Discuss all previous Service actions in the public record that involved this species, such as notices of review, notices of petition findings (e.g., 12-month and subsequent annual findings), previous proposals, notices of comment period extensions or public hearings, withdrawals, etc. Be sure to acknowledge any nomenclature changes that occurred for a species from one notice of review or other public record to the next. For multiple species listings, this information can be grouped--for instance: "On December 15, 1980 (45 FR 82480), the Service published a notice of review. This notice included (insert all appropriate species) as category 1 candidates." The

appropriate Federal Register citation must follow each item. If this is a petitioned species with a "warranted but precluded" finding, in addition to a reference to any previous 12-month findings, the following statement should be included in the proposal: "This proposal constitutes the final finding for the petitioned action." The Washington Division of Endangered Species maintains databases on listing history and petition findings and may be consulted in compiling this part of the rule. Please note that many species are covered by a petition that included multiple species. The petition may have been previously identified only by a grouping (e.g., "four desert fish") rather than by the individual species. Briefly discuss in general terms any pertinent information or comments received in relation to these earlier documents.]

Summary of Factors Affecting the Species

[Use the following standard language:] Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or

more of the five factors described in section 4(a)(1). These factors and their application to (insert the scientific name with common name in parentheses; reverse for animals); include synonyms and give the authority for plant names; if more than 5 species are proposed, refer to them as a group] are as follows: [If the package deals with more than one species, the five factors must be discussed specifically, though not necessarily separately, for each species.]

A. The present or threatened destruction, modification, or curtailment of its habitat or range. [Describe threats to the species' habitat and range. Discuss the species' historical and present known range as it relates to this factor (note declines in available habitat and give reasons for decline, if known). For species in need of specific protection and management planning, this can be noted. Discuss any land use practices, such as water control projects, ranching, grazing, agriculture, forestry, mining, urban development, etc., that may be adversely affecting the species' habitat. Cite references appropriately throughout (published and unpublished articles, status reports, etc.). Information already included in the "Background" section need not be repeated here; simply refer to that section as support, but clearly spell out the

threat(s) to the species' habitat and range here. Be careful not to "mix" factors. This factor is related to habitat and range of the entire species. It should address populations lost to certain activities but not the loss of individuals.]

B. Overutilization for commercial, recreational, scientific, or educational purposes. [Discuss any threats arising from these types of exploitation. Taking and vandalism (cite cases) should be discussed here--especially if a finding is being made that critical habitat designation is not prudent due to taking or vandalism. Cite references and cases of taking.]

C. Disease or predation. [Discuss any threats due to these factors. Direct removal of plants by grazing animals (usually domestic or introduced) should be discussed here as predation, while damage to the species' habitat through this or other land use practices should be discussed in factor A. Cite references.]

D. The inadequacy of existing regulatory mechanisms. [Discuss any Federal, State, or local laws, treaties, and/or regulations that apply to the species. Discuss any enforcement difficulties. Taking

threats discussed in factor B should be tied to lack of regulation and/or enforcement in this section. Include, as appropriate, organic legislation of Federal land management agencies and State and Federal regulatory authorities affecting land use and water quality/quantity. State specifically what the existing mechanisms provide and explain why they are inadequate. For instance, some authorities may prohibit collection but not habitat destruction. For species that are regulated under the Convention on International Trade in Endangered Species (CITES), include a paragraph similar to one of the following depending on whether the species is listed in Appendix I or II. Fac sheets, a list of CITES species and a list of the signatory countries are included in Appendix VIII. Since the list is amended at least every 2 years, the Office of Management Authority (703/358-2104) should be contacted for current lists.]

[For species in Appendix I:]

On (insert date), (insert species' name) was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a treaty established to prevent international trade that may be detrimental to the survival

of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. [For plants, add the following:] However, plants that are certified by the Service as artificially propagated in accordance with CITES conference resolutions may be exported for commercial purposes with only CITES export documents from the exporting country. [For both plants and animals, include the following:] CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

[For species in Appendix II:]

On (insert date), (insert species' name) was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be

shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

E. Other natural or manmade factors affecting its continued existence. [Discuss vulnerability due to low numbers and any climatic, successional, reproductive, genetic, or other factors affecting the species. Environmental pollution, fire suppression, and other human-caused factors should be discussed here. Be careful not to imply that the species cannot survive natural events (e.g., floods, droughts, hurricanes, fires) if the species' ecology is based, in part, on surviving those events. Rather, explain, for example, that individuals may not survive such events, and because of low numbers and now highly restricted range, such events do pose a threat to the species. Competition (though not predation) by nonindigenous species should be discussed here.]

[If the threat situation is very complex (e.g., factor X is impacted by Y, which is impacted by Z, etc.), offer a brief summary that finally relates all the threats to one another.]

[A very brief discussion of the alternatives to this proposed action that were considered (i.e., different status or no action) should follow the discussion of the five factors. Standard language follows:] The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list (insert species' name) as (insert either "endangered" or "threatened"). [Briefly state why the status chosen seems appropriate and why the alternatives would be inappropriate. If discrete recovery units have been identified for the species, describe their role in survival and recovery (see paragraph 5 in Handbook section I.A.). Refer to the "Critical Habitat" section of the rule for a discussion of why critical habitat is or is not being proposed. If the species is proposed as threatened, a statement such as the following should be included:] While not in immediate danger of extinction, the (insert species' name) is likely to become an endangered species in the foreseeable future if the present threats and declines continue. [If the Service does not have sufficient evidence to make this affirmative statement, listing should be reconsidered.]

Critical Habitat

[FOR PROPOSALS WITH CRITICAL HABITAT]

[Include the following standard language.]

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat a

the time the species is determined to be endangered or threatened.

Critical habitat is being proposed for (insert species' name).

[Continue with a general description of the areas being proposed, and provide an explanation of why designation of critical habitat is necessary for the conservation of the species. This discussion should include a description of the principal biological or physical features within the defined area that are essential to the conservation of the species and that may require special management considerations. The primary constituent elements must be listed in the regulation section at the end of the proposed rule with the critical habitat description. Consult 50 CFR 424.12(b)-(e) and the most current critical habitat guidance (June 26, 1992, draft guidance) for further information.]

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. [Continue with a brief discussion of all the activities that may adversely modify the proposed critical habitat, such as oil and gas development, grazing, timber harvesting, road building, dredging for channel

maintenance, water flow regulation, water quality degradation from point discharges, etc. Follow that with a brief discussion of the activities that may be affected by the designation, such as channel maintenance, permit regulation programs, and the regulation of water flows from reservoirs by the Corps of Engineers; relicensing of hydropower plants by the Federal Energy Regulatory Commission; grazing on Bureau of Land Management lands; Department of Defense training and weapons testing activities, etc.]

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained before making a decision on whether to issue a final rule.

[FOR PROPOSALS WITH CRITICAL HABITAT "NOT DETERMINABLE"]

[Include the following standard language.]

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, a

the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical

habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

The Service finds that critical habitat is not determinable for (insert species' name) at this time. When a "not determinable" finding is made, the Service must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. [This requirement should be mentioned prominently if a "not determinable" conclusion is reached. The subsequent paragraphs should explain why critical habitat is not determinable, what data needed to determine it, and how we intend to acquire that data.]

[FOR PROPOSALS WITH CRITICAL HABITAT "NOT PRUDENT"]

[Include the following standard language.]

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for (insert species' name) at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist-- (1) The species is threatened by taking or other human activity, and

identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

[The next paragraph should contain an explanation of why designation is "not prudent." If appropriate, tie the discussion back to the threats discussed in the "Summary of Factors Affecting the Species." Describe the provisions for protection of habitat that will be afforded by virtue of the species' listing.]

Available Conservation Measures

[This section should address the conservation actions that may result from the potential listing. The following language should be tailored to the particular species.]

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal,

State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm [omit "taking and harm" and substitute "certain activities involving listed plants" for plant rules] are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical

habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

[In an additional paragraph(s), discuss what Federal involvement, if any, is known or expected for this species. For rules with critical habitat, refer to the section 4(b)(8) discussion but, if section 7 activities were discussed there, do not repeat the discussion here. Language similar to the following may apply for some rules:] Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers involvement in projects such as the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 et seq.) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.), U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System (NPDES), and Soil Conservation Service and U.S. Housing and Urban Development projects.

[FOR PLANTS: The following paragraphs pertain to section 9(a)(2) prohibitions and section 10 (a)(1)(A) permits for plants.]

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all (insert either "endangered" or "threatened") plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR (insert either "17.61 for endangered plants" or "17.71 for threatened plants"), apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. [For threatened plants, add:] Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future

if regulations are promulgated. [For threatened plants, also add:] Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." [The following sentence should be included for both threatened and endangered plants:] Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR (insert "17.62 and 17.63" for endangered plants or "17.72" for threatened plants) also provide for the issuance of permits to carry out otherwise prohibited activities involving (insert "endangered" or "threatened") plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. [For threatened plants, add the following:] For threatened plants, permits also are available for botanical or horticultural exhibition educational purposes, or special purposes consistent with the purposes of the Act. [Add an appropriate statement describing the extent of trade in the species covered and how permit information may be obtained. For example:] It is anticipated that few trade permits would ever be sought or issued because the species is not in

cultivation or common in the wild. [OR] It is anticipated that permits will be sought for cultivated specimens, which are common in domestic trade. [In either case, add:] Requests for copies of the regulations regarding listed species and inquiries about prohibition and permits may be addressed to (insert the address, phone number and facsimile number of the appropriate Regional Office; for foreign species, insert "Office of Management Authority, U. S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203-3507 (phone 703/358-2104, facsimile 703/358-2281)).

[FOR ANIMALS: The following paragraphs pertain to section 9 prohibitions and section 10 (a)(1)(A) and (B) permits for animals.]

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all (insert "endangered" or "threatened," as appropriate) wildlife. The prohibitions, codified at 50 CFR (insert "17.21" for endangered wildlife and "17.21 and 17.31" for threatened wildlife), in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these),

import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving (insert "endangered" or "threatened") wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR (for endangered wildlife, insert "17.22 and 17.23," and for threatened wildlife, insert "17.32"). Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. [For threatened wildlife, add the following:] For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

[NOTE on Hardship Exemption: There is a provision in section 10(b)(1)(A) that allows a 1-year hardship exemption for disposing of

specimens or products of species that become listed and are already in possession or for which a contract has been granted. The provision applies to endangered and threatened plants and animals (5 CFR 17.23, 17.32, 17.63 and 17.72). However, the exemption period expires 1 year after any notice of review or previous proposal is published in the Federal Register. Consequently, it would be extremely unlikely for the exemption to still be available by the time a final listing rule is published and interstate and foreign trade of the species is prohibited. If this period will not have elapsed by the time the final rule is published, insert the following language in the previous paragraph for proposed rules:] Under some circumstances, permits may be issued for a specified period for species in trade in order to relieve undue economic hardship that would be suffered if such relief were not available. [If the species is not in trade, state that applications for such permits are not expected.]

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to (insert the address, phone number and facsimile number of the appropriate Regional Office).

Special Rule

[A paragraph (or more) must be included if a special rule is being proposed for a threatened species pursuant to section 4(d) of the Act. Special rules can provide relief, where appropriate, from the general prohibitions in §§ 17.21 and 17.31, but they must be "necessary and advisable to provide for the conservation of such species." Discuss the nature of the special rule and explain how it meets this requirement, in particular justifying how it contributes to the conservation of the species. The "Proposed Regulation(s) Promulgation" section will include the regulatory language for the special rule. It is imperative that the drafting of special rules is coordinated with Service permit staff and Division of Law Enforcement staff since the language in the rule will determine how take will be regulated, permitted, and enforced. See Section III.I of this handbook for further information.]

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible.

Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning: [Only biological and threat information may be requested for listings that do not also propose critical habitat.]

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

(5) [For rules that propose critical habitat, add:] Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

(6) [Include other items as appropriate.]

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the Federal Register. Such requests must be made in writing and be addressed to (insert Regional Office, Field Office, or the Washington Office address, as appropriate, or refer to ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

[Include this section only for proposals for special rules or critical habitat designations that do not include listings, and for proposed experimental populations. Assess whether the rule is significant under Executive Order 12866 and the Regulatory Flexibility Act. If the rule will not have a significant impact on the public, the paragraph below should be used. If it will have a significant impact, contact the Washington Division of Endangered Species for guidance. Additional guidance on required determination is contained in Section III.F. of this handbook.]

This proposed rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Based on the information discussed in this rule concerning public projects and private activities within (insert "critical habitat," "the experimental population area," or, for special rules "the range of the species"), significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action, and the rule contains no recordkeeping requirements, as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

[If the rule proposed critical habitat separate from a listing, add the following:] The Service has analyzed the potential takings implications of designating critical habitat for (insert species' name) in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Government Actions and

Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

References Cited

[List references cited in rule. Correspondence and personal communications cited in the rule are not to be included. The "hanging indent" should be used when typing this section. A tab should have been set at the left-hand margin at the beginning of the document. A hanging indent is executed with WordPerfect using "indent" (F4) then "margin release" (shift-tab) at the beginning of the citation. A copy of all relevant pages of each citation must be included behind the "Supporting Information" tab. This section should not be treated as a "bibliography." If more than 12 to 15 entries are cited (or longer than about two pages of text), do not list them in the rule. Instead, insert the following statement:]

complete list of all references cited herein, as well as others, is available upon request from (insert Regional Office, Field Office, or Washington Office, as appropriate, or refer to the ADDRESSES

section). [Include an additional tab in the rule package for the complete list as part of the administrative record.]

[The Council of Biology Editors Style Manual should be used as a standard for citations, with the exception of continuing to include the year of publication following the author's name. Ordering information for the style manual is available from the Council of Biology Editors at 312/616-0800. Major journals can also be consulted. The pertinent Federal agency should be the "author" of all Federal Register documents or other similar government publications on policy, rules, etc., rather than a particular individual. Be consistent in capitalizing major words in the title of all references (i.e., all or first word and proper names only). Do not abbreviate (or underline) journal names, as the general public is often not knowledgeable of such conventions. Examples follows:]

Smith, E. L., editor. 1986. Guide to preparing and processing actions to list, delist, or reclassify endangered and threatened species. Second edition. U.S. Fish and Wildlife Service, Washington, D.C. 137 pp.

Jones, R. M , and I. M A. Watcher, II. 1990. A status report on the American robin. Journal of the North American Bird-Watchers Association 7: 23)29. [note use of comma after first author's initials.]

Author(s)

The primary author(s) of this document is/are (insert name, address, and telephone number or refer to ADDRESSES section). [Note major contributors of data or editor(s), as appropriate. Only Service personnel may be acknowledged as "author" or "editor." Non-Service individuals cannot be the author of a decision document such as this.]

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation [Not "Regulations"]

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

PART 17-- [AMENDED] [This "[AMENDED]" is to appear in brackets.]

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

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

2. Section (insert "17.12(h)" for plants or "17.11(h)" for animals) is amended by adding the following, in alphabetical order under (insert the animal group or plant family), to the List of Endangered and Threatened (insert "Wildlife" or "Plants") to read as follows:

[FOR PLANT PROPOSALS THAT WILL BE THE FIRST ENTRY UNDER A NEW FAMILY IN THE LIST OF ENDANGERED AND THREATENED PLANTS--use the following example:]

2. Section 17.12(h) is amended by adding a new family, _____, in alphabetical order, to the List of Endangered and Threatened Plants to read as follows: [Note: no need to mention species' name.]

[FOR PROPOSALS REVISING AN EXISTING ENTRY OR RULE-- two examples follow:]

2. Section 17.11(h) is amended by revising the "Status" column in the table entry for "Snake, garter" under REPTILES to read "T" instead of "E".

2. In § 17.11(h), the table entry for "Bison, American" under MAMMALS is revised to read as follows: [The table then reflects all entries for this species and adds or revises as needed. For example reclassification of only one subspecies or vertebrate population of previously listed species to show all entries--see table entries for bald eagle, peregrine falcon, grizzly bear, gray wolf, etc.]

§ 17.11 [or "17.12"] Endangered and threatened wildlife [or "plants"].

* * * * *

(h) * * *

[A page break **must** be placed here because the table **must** appear on a separate page. The table **must** be paginated in approximately the top center of the page, consistent with all other pages in the document, which **may** require typing on a typewriter.]

[Except for the headings, everything in the table must be double-spaced and contain no hyphenation. Information falling to an additional line or more in the same column (e.g., names, ranges) **must** be indented two spaces within the column. Asterisks are used in Federal Register documents to indicate existing text in the CFR. The exact number of asterisks shown in the example below **must** be used in this section to meet the requirements of the CFR codification process. Seven asterisks (not five, as required previously) are used between table entries and **must** be placed before all taxonomic group names except MAMMALS.]

[If there are multiple species in the table, the species **must** be alphabetized and each **must** be separated by seven asterisks. Separate tables **must** be prepared if both plants and animals are proposed. For

plants, when the species being added to the List of Endangered and Threatened Plants will become the first alphabetical entry under its Family, no asterisks should precede that species' name. Do not try to paste a copy of a reduced table onto this page (i.e., following the "(h) * * *") because tables are typeset by GPO, which requires a standard sized copy from which to work. WordPerfect templates for the plant and animal tables are available through cc-mail from the Washington Division of Endangered Species and can be printed on HP LaserJet printers.]

[TABLE FOR PLANT LISTINGS]

SPECIES		Common name	Historic range	Status	When listed
Critical Scientific name habitat	Special rules				

[DOUBLE SPACE ALL ENTRIES, EXCEPT COLUMN HEADINGS. The first word of each column is capitalized. The second and subsequent lines of all columns are indented two spaces. For multiple entries, continue to second page without headings. When revising an entry, use current entry in list as starting point.]

* * * * * [Do not include asterisks before first family in list, currently Acantheceae.]

Family name (Scientific - Common):

* * * * * [7 asterisks must precede and follow each entry; include family only for its FIRST species.]

Scientific name¹ Common name U. S. A. (States)², E [or T _____]³ NA [or NA [or

¹ Indent scientific name three spaces from family name. Include any synonyms in previous Federal Register lists, notices, or rules, and any names used in trade.

² Use two-letter postal codes for States and accepted abbreviations for Provinces.

³ Leave blank; if a reclassification, cite previous numbers and leave a blank: "49, 145, ___."

(=Synonyms)¹ (=Synonyms)¹ other countries or T(S/A) 17. 96(a)]
17. 73() ¹]
or E(S/A)]

* * * * *

¹ This number corresponds to regulations in 50 CFR.

[TABLE FOR ANIMAL LISTINGS]

SPECIES		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed
Critical Common habitat	Special rules					

[DOUBLE SPACE ALL ENTRIES EXCEPT COLUMN HEADINGS. The first word of each column is capitalized. The second and subsequent lines of all columns are indented two spaces. For multiple entries, continue to second page without headings. When revising an entry, use current entry in list as starting point.]

* * * * * [7 asterisks--EXCLUDE for MAMMALS listing.]

FISHES [use Group heading as found in CURRENT list.]

* * * * * [Insert 7 asterisks between each entry.]

Name, common¹ Scientific name U. S. A. (States)², Entire [or NA for E [or T,
 _____³ NA [or NA [or

¹ Begin flush with right-hand margin and invert common name if it is more than one word, e.g., "Chub, Owens tui." If more than one line is needed, indent subsequent lines two spaces. Include any synonyms in previous Federal Register lists, notices, or rules, and any names used in trade.

² Use two-letter postal codes for States and accepted abbreviations for Provinces.

³ Leave blank; if a reclassification, cite previous numbers and leave a blank: "49, 145, ____."

(=Synonyms) ¹	(= <u>Synonyms</u>) ¹	other countries	invertebrates,	E(S/A),
	17. 94 ¹]	17. _() ²]		

* * * * *

brief for pop.] T(S/A)]

Entry, second fish	<u>Scientific name</u>	U. S. A. (States)	Entire	E	_____	NA
	NA					

* * * * *

¹ Add in parentheses: (a) mammal, (b) birds, (c) reptiles, (d) amphibians, (e) fishes, (f) snails, (g) clams, (h) crustaceans, (i) insects, (j) others.

² This number corresponds to regulations in 50 CFR.

[FOR PROPOSALS WITH SPECIAL RULES]

3. Section 17. __ is amended by adding paragraph (__) to read as follows: [Insert the appropriate section number here and below, but the paragraph letter should be left blank in the proposed rule. The regulatory language for individual special rules varies greatly depending upon the circumstances and species needs. For a proposed revision of an existing special rule, it is generally best to revise a paragraph or subsection in its entirety rather than try to rearrange bits and pieces of text. Use language similar to that provided above under "For Proposals Revising an Existing Entry or Rule." Further guidance on the development of special rules can be found in Section III.H. of the Handbook.]

§ 17. __ Special rules-- (insert appropriate group, e. g., birds).

* * * * *

[Regulatory language for the special rule goes here.]

[FOR PROPOSALS WITH CRITICAL HABITAT]

[If there is no special rule, paragraph 3 will contain the critical habitat, if any is proposed.]

4. Section (insert "17.96(a)" for plants or "17.95()" for animals) is amended by adding critical habitat for (insert species' name), in the same alphabetical order as the species occurs in (insert "17.11(h)" for animals or "17.12(h)" for plants) to read as follows: [In the parentheses following 17.95, insert the letter that corresponds to the appropriate animal group (e.g., (a) for mammals; (b) for birds; (h) for crustaceans). Within those groups, critical habitats appear in 17.95 in the same order as the listings appear in §§ 17.11 and 17.12.]

§ 17.95 [or "17.96"] Critical habitat--fish and wildlife [or "plants"].

* * * * * [These asterisks are inserted only if a paragraph other than (a) follows. The asterisks denote existing text.]

(c) * * * [Insert the appropriate paragraph letter used in § 17.95 or 17.96. This letter (c) would be appropriate for reptiles.]

* * * * *

[For plants, insert family, followed by scientific name and then the common name in parentheses, as in the actual example below. For animals, begin with common name in capital letters, followed by the scientific name in parentheses, also in an actual example below.]

Family - Salicaceae.

Salix arizonica (Arizona willow).

[OR, FOR ANIMALS:]

DELTA SMELT (Hypomesus transpacificus)

[Follow with a legal description for the critical habitat area(s), which should include State, county(ies), name of area(s) (i

any), metes and bounds description, and constituent elements. Further guidance on developing the critical habitat regulatory language is contained in the "Critical Habitat" section of this handbook (Section III.C.).]

[The (first) critical habitat map must follow on the next page. The next legal description (if any) should begin on the subsequent page. Do NOT state "Insert critical habitat #1 map here," then follow on the same page with another legal description and put all the maps at the end of the document. Each map must immediately follow its legal description. Critical habitat areas should not be separated by asterisks unless they are amending existing critical habitat for the species. Insert a double page break following each legal description and replace the page with a photocopy of the appropriate map. Guidance for preparation of descriptions and maps is contained in the "Critical Habitat" section of this handbook (Section III.C.).]

[Remove this blank page and replace it with a copy of the map; insert page number at top.]

Dated: _____

Director, Fish and Wildlife Service

[OR]

Assistant Secretary for Fish and Wildlife and Parks

[The Director may sign notices and rules for listings, reclassifications, and delistings. The Assistant Secretary must sign all rules that include designation of critical habitat or special rules, including section 10(j) rules for experimental populations.]

[Insert the following:]

(Proposal: (Insert the name of the species--status proposed. If critical habitat or special rules are proposed, indicate such.))

[Place three copies of this page at the end of the rule and staple signature tags to the bottom of each. This page should be for signature only and should not contain text. Make sure all pages of

the manuscript are numbered correctly, including maps and tables, concluding with the signature page, as OFR must be assured that each copy they receive is a complete copy--no missing pages.]

B. Final Rule (Listings)

A final rule is similar in format and content to the proposed rule. Several sections of the final rule will not change from the proposal and consequently finals are often less time-consuming to prepare.

When preparing the final rule, it is important to start with the proposal as it was published, not as it was drafted or submitted to the Washington or Regional Office. Therefore, it is recommended that Regions start with the electronic version provided to the OFR. Electronic files may be sent to the Region by the Washington Division of Endangered Species via cc-mail (preferred method) or by diskette. Be careful to change all wording from proposal form to final form, as appropriate in sections that are carried over from the proposal (e.g., delete "proposed," and change verb moods and tenses).

Care should be taken to incorporate into the rule any new biological information (e.g., latest status data). The final rule must be a complete and thorough account of the background, biological status, and threats faced by the species, and it must provide a sound, reasoned, and objective justification for the listing decision. Serious consideration must be given to all substantive comments, and all comments must be acknowledged in the final rule. The Service response to comments that refute the basis for the listing should explain why we disagree. Failure to rebut substantial arguments of commenters gives the impression that we are ignoring legitimate information and appears arbitrary and capricious.

An example of a final rule follows. As with the proposed rule, make sure style, spacing, and punctuation follow the guidance contained in **Section II** of this handbook.

Billing Code 4310) 55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[DIRECTIONS: Run two original copies of the first page to go in the package--one with a surname stamp in the upper right-hand corner, followed by a clean copy. Staple a blue surname tag to the first copy. It should be surnamed by all individuals indicated in the "Action Required" column on the control sheet on the front cover, as well as other appropriate staff.]

RIN 1018)

[The complete regulation identifier number is assigned in Washington.]

Endangered and Threatened Wildlife and Plants; Type of Action and Name of Species [With the exception of changing the heading from a proposed action to a final action, the subject heading should duplicate the heading in the proposed rule. Capitalize the first letter of all major words. There should be no punctuation following the subject heading.]

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: [The same guidance as provided in the proposed rule example applies to the final rule except the final rule will state that the action implements the protection of the Act for the species. Number this page at bottom center.]

EFFECTIVE DATE: [Use brackets for the following: [insert date 30 days from Federal Register publication]. [Thirty days is standard. This allows time for notification of affected parties. However, other options exist. A final rule may be effective upon publication or upon filing at OFR, if necessary, but this must be justified within the document. Waiver of the 30-day effective date is standard for final delisting rules. See the "Delisting and Reclassification" section of the Handbook (Section III.J).]

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at (insert Regional Office, Field Office, or Washington Office and give appropriate address).

FOR FURTHER INFORMATION CONTACT: [Provide name, address (or refer to ADDRESSES section), and telephone number of the most appropriate staff person.]

SUPPLEMENTARY INFORMATION:

Background

[The "Background" section in the final rule will largely reiterate the proposed rule. In nontechnical terms, briefly discuss the date the species was discovered and described, physical description of species, species' distribution (including estimates of the number of individuals or populations, if known) and habitat type and land ownership of locations. Describe the history of the species' decline and its overall status, being very brief since this information should be developed in detail in the "Summary of Factors Affecting the Species" section. Be certain to include the most currently accepted information on population numbers and distribution since the proposal was published.]

Previous Federal Action

[Discuss all previous Service actions in the public record that involved this species, such as notices, notices of petition findings (e. g. , 12-month and subsequent annual findings), proposals, notices of comment period extensions or public hearings, withdrawals, etc. The appropriate Federal Register citation must follow each item. Generally discuss any information or comments received in relation to these earlier documents if they were not discussed in the proposal.]

Summary of Comments and Recommendations

["Comments" include any communication to the Service on the proposed action: letters, telegrams, oral testimony provided at public hearings, personal communications, information provided in meetings, etc. They are all to be treated equally (e. g. , oral comment at a hearing is given consideration equal to a letter). Staff should discourage the public from submitting comments by telephone in lieu of written comments, thereby minimizing misinterpretation. However, if unavoidable, phone conversations and other communications should be carefully documented and dated for the administrative record.]

[The only comments that must be specifically addressed in the final rule are those that question the action proposed, suggest possible alternative rules, question procedural issues, question the information upon which the Service based its conclusions, or question other matters relevant to the section 4 listing process. Suggestions on future management procedures, comments in support, and even those that simply oppose it without giving specific reasons, need only be tabulated and summarized generally in the early portions of this section. Comments providing information that further substantiates or updates the data presented in the proposal should be incorporated in the background section or under the discussion of the five listing factors, provided we accept the data; these comments should not be discussed in the comment section. Data the Service finds questionable should be addressed in the Summary of Comments and Recommendations. When both supporting and opposing comments are received on a particular issue, the receipt of the supporting comments can be mentioned in the discussion of the opposing point of view. If opposing comments are received on economic issues in response to a proposed rule that includes critical habitat, then include a brief summary of the economic analysis, with a focus on those comments.]

[It is imperative that all significant, pertinent issues are addressed. Failure to address pertinent issues or to address the issues in a responsive manner will result in returning of the rule to the Region for revision. The Service is obligated to respond to all significant comments in the most complete, professional, positive, and informative manner possible. Responses should be direct but respectful of dissenting views. Argumentative or defensive language is counterproductive and unprofessional; be careful to avoid it. The Service should never judge the views or motivations of commenters. Accusative or judgmental responses are inappropriate. The final rule is to simply set out in a straightforward manner the views of the commenters and the Service on a given issue; readers may reach their own conclusions.]

[If only a few comments are received and there is little overlap of concerns raised, they may be organized on a commenter-by-commenter basis and may require only a single summarizing paragraph. However, in more complex situations, comments are more clearly addressed using an issue approach. In an issue-oriented summary, comments are characterized by the number and affiliation of commenters making a particular issue a focus of their comment. The general issues of

concern to one or more commenters are identified and discussed, and the Service's response to each issue is stated. Both written and public hearing comments are characterized together.]

[Suggested language follows:]

In the (insert the date of publication) proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. [Note any comment period extensions, including Federal Register citations.] Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the (insert name of newspaper(s)) on (insert date(s)), which invited general public comment. [If there is a long list, itemize newspapers and list date ranges of publication. For example:] The Service published notices in (insert Newspaper A, B, C, etc.) on September 30, 1993, and in the (insert Newspaper X) on October 2, 1993. (Insert number) comments were received and are discussed below. [If a large number were received, break them down. For example:] "Forty-eight comments, including

those of 10 Federal agencies, 11 States, and 27 individuals or groups, were received; 30 supported, 10 opposed, and 8 were neutral on the proposed action. "

[If a public hearing was requested, note briefly who requested it. If a hearing was held, indicate the location, date, and the number of people in attendance for each hearing. Note the number of commenters and briefly describe the format of the hearing and issues raised.]

Written comments and oral statements presented at the public hearings and received during the comment periods are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues. [If numerous issues are raised, the comment section can be subdivided into groups of issues, such as administrative, biological, economic and social.] These issues and the Service's response to each are discussed below.

Issue 1:

Service Response:

Issue 2:

Service Response:

[The Service's response to each issue is provided immediately following the statement of the issue. Many commenters raise the same or very similar concerns, which can easily be addressed collectively. The originator(s) of the issue is not usually identified, but if this information (e.g., coal mining industry, Senator John Doe) adds substance to the discussion, it may be included. Do not embarrass commenters by identifying them when their comment shows an obvious ignorance of facts.]

[Development of a working matrix can be helpful in identifying the issues to be addressed. The primary purpose of developing such a matrix is to ensure that all concerns are addressed and to aid in the general grouping of concerns. This matrix (handwritten is adequate) can be inserted behind the comment tab of final rules to assist reviewers or it can simply be retained as part of the administrative record. A simple test to make sure the issues are grouped properly in the "Summary of Comments and Recommendations" section is to not

see repetition in the language of our response. An example of a matrix is included in Appendix IX.]

[Ex parte refers to communication (oral or written) made without the knowledge of and opportunity for other interested parties to comment or respond. All comments received regarding the proposed rule must be made part of the administrative record and be available to the public. If important new information is received near the end or after the close of the comment period, the public would be unable to comment on that information, and consideration should be given to extending or reopening the comment period. For elaboration of this topic, refer to the Section I.G. and the February 24, 1987, memorandum from the Office of the Solicitor in Appendix IV.]

Summary of Factors Affecting the Species

[Use the following standard language:] After a thorough review and consideration of all information available, the Service has determined that (insert species' name) should be classified as an (insert "endangered" or "threatened") species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing

provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to (insert scientific name with common name in parentheses--reverse for animals, cite the authority for plant names and include pertinent synonyms) are as follows:

[Cite and discuss each of the five factors as in the proposal. Supplement or modify the proposal's points based upon comments and other information acquired and accepted since the proposal. If the package deals with more than one species, the five factors must be discussed specifically, though not necessarily separately, for each species.]

[A very brief summary of all the factors and another paragraph discussing the other alternatives to this action (i.e., different status or no action) should follow the discussion of the five factors. Standard language follows:] The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation,

the preferred action is to list (insert species' name) as (insert either "endangered" or "threatened"). [Briefly explain why the status chosen is appropriate and the alternative status is inappropriate, referring to the definitions of endangered and threatened species in section 3 of the Act. Refer to the "Critical Habitat" section of the rule for discussion of why critical habitat was or was not designated.]

Critical Habitat

[The standard text provided below can generally be carried over from the proposed rule.]

[FOR FINALS WITH CRITICAL HABITAT]

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas

outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Critical habitat is being designated for (insert species' name). [Continue with a general description of the areas being designated, and provide an explanation of why designation of critical habitat is necessary for the conservation of the species. This discussion should include a description of the principal biological or physical features within the defined area that are essential to the conservation of the species and that may require special management considerations. (The primary constituent elements must be listed in the regulation section at the end of the final rule with the critical habitat description.) Consult 50 CFR 424.12(b)(e), the most current

critical habitat guidance (June 26, 1992, draft guidance), and Section III.C. of this handbook for further information.]

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. [Continue with a brief discussion of all the activities that may adversely modify critical habitat, such as oil and gas development, grazing, timber harvesting, road building, dredging for channel maintenance, water flow regulation, water quality degradation from point discharges, etc. Follow that with a brief discussion of the activities that may be affected by the designation, such as channel maintenance, permit regulation programs, and the regulation of water flows from reservoirs by the Corps of Engineers; relicensing of hydropower plants by the Federal Energy Regulatory Commission; grazing on Bureau of Land Management lands; Department of Defense training and weapons testing activities, etc. Be sure to address all activities identified in the proposed rule, as well as any additional activities that may have been discovered between the proposed and final rules.]

Economic Analysis

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. [This section should be included to discuss how the economic analysis was conducted and the results.]

Exclusion Process

[This section should summarize the exclusion provisions of section 4(b)(2) of the Act and discuss how it was applied to this species. A complete discussion must be made if this rule differs in any substantial way from the proposal (e.g., any change in any boundary, simplification of boundary descriptions).]

[FOR FINALS WITHOUT CRITICAL HABITAT]

[Follow the guidance and standard language for "not determinable" and "not prudent" critical habitat determinations in the proposal section of this handbook. The language in the proposed rule will generally carry over to the final rule. If a "not determinable"

finding is made, the Service must, within 2 years of the publication date for the original proposed rule, designate critical habitat, unless the designation is not prudent. The Service should explain what data is lacking, what we intend to do to acquire it, and offer an approximate time frame for a determination. The final rule should state that the threats to the species and benefits associated with listing justify taking that action now, rather than waiting until the Service is ready to make a determination regarding critical habitat.

Available Conservation Measures

[This section should address the conservation actions that result from the listing. The text used in the proposed rule should be reiterated here, with any necessary revisions. NOTE on Hardship Exemption: As explained in the proposed rule example, the hardship exemption should be mentioned only if the final rule will be effective within 1 year from the first public notice for the species.]

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

[Include this section only for final rules for special rules or critical habitat designations that do not include listings, and for proposed experimental populations. Assess whether the rule is significant under Executive Order 12866 and the Regulatory Flexibility Act. If the rule will not have a significant impact on the public, the paragraph below should be used. If it will have a significant impact, contact the Washington Division of Endangered Species for guidance. Additional guidance on required determination is contained in Section III.F. of this handbook.]

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Based on the information discussed in this rule concerning public projects and private activities within (insert "critical habitat," "the experimental population area," or, for special rules "the range of the species"), significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action, and the rule contains no recordkeeping requirements, as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

[If the rule finalizes critical habitat separate from a listing, add the following:] The Service has analyzed the potential takings implications of designating critical habitat for (insert species' name) in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Government Actions and

Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

References Cited

[Follow the same instructions for a proposed rule. Remember to include in the package a copy of all cited items (appropriate pages at least) behind the tab for "Supporting Information."]

Author(s)

The primary author(s) of this document is/are (insert name, address, and telephone number or refer to ADDRESSES section). [Note major contributors of data or editor(s), as appropriate. Only Service personnel may be acknowledged as "author." Non-Service individuals cannot be the author of a decision document such as this.]

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17-- [AMENDED] [This "[AMENDED]" is to appear in brackets.]

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

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

2. Section (insert "17.12(h)" for plants and "17.11(h)" for animals) is amended by adding the following, in alphabetical order under (insert the animal group or plant family), to the List of Endangered and Threatened (insert "Wildlife" or "Plants") to read as follows:

[For other examples of amendatory language, see the sample proposal section. If the proposed rule amendatory language indicates the entry of a new family to the list, make sure the family was not added since publication through another listing. If there is any change in the table information for common or scientific names, vertebrate population, or status from the proposed rule to the final rule (other than typographical error corrections), there must be a brief but full explanation in the text of this document. Be sure to include in the table all synonyms published in Service rules or notices, and synonyms used in trade.]

§ 17.11 [or "17.12"] Endangered and threatened wildlife [or "plants"].

* * * * *

(h) * * *

[A page break must be placed here because the table must appear on a separate page. The table usually will not change from the proposal to the final rule. See the proposed rule section for

guidance. Follow the instructions given for the sample proposed rule. The Washington Division of Endangered Species will insert the "when listed" number just prior to delivering the rule to the OFR.]

[TABLE FOR PLANT LISTINGS]

SPECIES		Common name	Historic range	Status	When listed
Critical Scientific name habitat	Special rules				

[DOUBLE SPACE ALL ENTRIES, EXCEPT COLUMN HEADINGS. The first word of each column is capitalized. The second and subsequent lines of all columns are indented two spaces. For multiple entries, continue to second page without headings. When revising an entry, use current entry in list as starting point.]

* * * * * [Do not include asterisks before first family in list, currently Acantheceae.]

Family name (Scientific - Common):

* * * * * [7 asterisks must precede and follow each entry; include family only for its FIRST species.]

Scientific name¹ Common name U. S. A. (States)², E [or T _____]³ NA [or NA [or

¹ Indent scientific name three spaces from family name. Include any synonyms in previous Federal Register lists, notices, or rules, and any names used in trade.

² Use two-letter postal codes for States and accepted abbreviations for Provinces.

³ Leave blank; if a reclassification, cite previous numbers and leave a blank: "49, 145, ___."

(=Synonyms)¹ (=Synonyms)¹ other countries or T(S/A) 17. 96(a)]
17. 73() ¹]
or E(S/A)]

* * * * *

¹ This number corresponds to regulations in 50 CFR.

[TABLE FOR ANIMAL LISTINGS]

SPECIES		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed
Critical habitat	Special rules					

[DOUBLE SPACE ALL ENTRIES EXCEPT COLUMN HEADINGS. The first word of each column is capitalized. The second and subsequent lines of all columns are indented two spaces. For multiple entries, continue to second page without headings. When revising an entry, use current entry in list as starting point.]

* * * * * [7 asterisks--EXCLUDE for MAMMALS listing.]

FISHES [use Group heading as found in CURRENT list.]

* * * * * [Insert 7 asterisks between each taxon.]

Name, common ¹	<u>Scientific name</u>	U. S. A. (States) ² ,	Entire [or NA for E [or T,
_____ ³	NA [or	NA [or	

¹ Begin flush with right-hand margin and invert common name if it is more than one word, e.g., "Chub, Owens tui." If more than one line is needed, indent subsequent lines two spaces. Include any synonyms in previous Federal Register lists, notices, or rules, and any names used in trade.

² Use two-letter postal codes for States and accepted abbreviations for Provinces.

³ Leave blank; if a reclassification, cite previous numbers and leave a blank: "49, 145, ____."

(=Synonyms)¹

(=Synonyms)¹

other countries

invertebrates, E(S/A),

17. 94¹]

17. _() ²]

brief for pop.]

T(S/A)]

* * * * *

Entry, second fish Scientific name U. S. A. (States)

Entire

E

NA

NA

* * * * *

¹ Add in parentheses: (a) mammal, (b) birds, (c) reptiles, (d) amphibians, (e) fishes, (f) snails, (g) clams, (h) crustaceans, (i) insects, (j) others.

² This number corresponds to regulations in 50 CFR.

[FOR FINALS WITH SPECIAL RULES]

3. Section 17. __ is amended by adding paragraph (__) to read as follows: [Carry over the appropriate section number from the proposed rule, but the paragraph letter may be left blank. The Washington Division of Endangered Species will insert the next available paragraph letter prior to delivery to the OFR.]

§ 17. __ Special rules-- (insert appropriate group, e. g., birds).

* * * * *

[The regulatory language for the final special rule must be carried over here. If the text of the final special rule differs substantially from the proposed rule or if there was no special rule proposed, that must be specifically explained in the Summary of Comments and Recommendations or other appropriate section of the rule document.]

[FOR FINALS WITH CRITICAL HABITAT]

[If there is no special rule, paragraph 3 will contain the critical habitat, if any.]

4. Section (insert "17.96(a)" for plants or "17.95()" for animals) is amended by adding critical habitat of (insert species' name) in the same alphabetical order as the species occurs in (insert "17.11(h)" for animals or "17.12(h)" for plants) to read as follows. [In the parentheses following 17.95, insert the letter that corresponds to the appropriate animal group (e.g., (a) for mammals, (b) for birds, (h) for crustaceans). Within those groups, critical habitats appear in 17.95 in the same order as the listings appear in §§ 17.11 and 17.12.]

§ 17.95 [or "17.96"] Critical habitat--fish and wildlife [or "plants"].

* * * * * [These asterisks are inserted only if a paragraph other than (a) follows. The asterisks denote existing text.]
 (c) * * * [Insert the appropriate paragraph letter used in § 17.95 or 17.96. This letter (c) would be appropriate for reptiles.]

* * * * *

[For plants, insert the family, followed by the scientific name and then the common name in parentheses, as in the actual example below. For animals, begin with common name in capital letters, followed by the scientific name in parentheses, also in an actual example below.

Family - Salicaceae.

Salix arizonica (Arizona willow).

[OR, FOR ANIMALS:]

DELTA SMELT (Hypomesus transpacificus)

[Follow with the legal description for the critical habitat area(s). This should carry over from the proposed rule. Further guidance on developing the critical habitat regulatory language is contained in the "Critical Habitat" section of this handbook (Section III.C.).]

[The (first) critical habitat map must follow on the next page, and then the next legal description (if any) should begin on the subsequent page. Do NOT state "Insert critical habitat #1 map here," then follow on the same page with another legal description and put all the maps at the end of the document. Each map must immediately follow its legal description. Critical habitat areas need not be separated by asterisks unless they are amending existing critical habitat. Insert two page breaks after each legal description and replace the page with a copy of the appropriate map. It is important that the map for the final rule be as legible, accurate and useful as possible because this is the map that will be reproduced in the annual publication of the CFR. Guidance for preparation of descriptions and maps is contained in the "Critical Habitat" section of this handbook (Section III.C.).]

[Remove this blank page and replace with copy of map; insert page number at top.]

Dated: _____

Director, Fish and Wildlife Service

[OR]

Assistant Secretary for Fish and Wildlife and Parks

[The Director may sign notices and rules for listings, reclassifications, and delistings. The Assistant Secretary must sign all rules that include designation of critical habitat or special rules, including section 10(j) rules for experimental populations.]

[Insert the following:]

(Final: (Insert the name of species--status proposed. If critical habitat or special rules are proposed, indicate such.))

[Place three copies of this page at the end of the rule and staple signature tags to the bottom of each. This page should be for signature only and should not contain text. Make sure all pages of

the manuscript are numbered correctly, including maps and tables, concluding with the signature page, as OFR must be assured that each copy they receive is a complete copy--no missing pages.]

C. Critical Habitat

Critical habitat was a concept originally developed and used by the Division of Endangered Species to identify for other Federal agencies certain areas important to a species' survival. Its designation has since become a formalized regulatory process that is legislatively controlled by the Endangered Species Act. The Act now requires that the Service designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be endangered or threatened.

A proposed rule to list a species that does not include proposed designation of critical habitat must find that designation is either not prudent or not determinable. A proposed rule will not include designation of critical habitat if designation is not prudent or if critical habitat is not determinable, in which case prudence is assessed once critical habitat is determined. A final rule must designate critical habitat unless designation is not prudent, or not determinable. If critical habitat is not determinable, the Service has two years from the date of the proposed listing to propose and finalize critical habitat, or to determine designation of critical habitat not prudent.

Once a decision has been made that designating critical habitat is prudent and determinable, critical habitat designation can proceed. The following guidance is intended to assist in preparing critical habitat descriptions and maps.

What Areas Should or Should Not Be Designated as Critical Habitat?

The staff biologist should refer often to 50 CFR part 424, which provides criteria for designating critical habitat. The biological information available on the species should form the basis for determining appropriate boundaries, sizes, etc.

Section 424.12(b) of the section 4 regulations (50 CFR part 424) provides the following guidance on what areas should be included:

In determining what areas are critical habitat, the Secretary shall consider those physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to:

- (1) Space for individual and population growth, and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the species' conservation. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements that may be identified include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland,

water quality or quantity, host animal or plant, pollinators, geological formation, vegetation type, tide, and specific soil types.

In addition to the section 4 regulations, the following points provide general guidance. Consult the Washington Division of Endangered Species if further questions arise.

1. Carefully evaluate the biology, status, and needs of the species, then determine what areas will best serve the species as critical habitat. These areas can include the entire known range, portions thereof, and/or additional suitable habitat or areas in need of restoration.
2. Critical habitat boundaries and size should be determined using great care and attention to detail. Keep them as simple as possible, yet accurate.
3. Carefully consider population or range variations over time. Be sure all included areas are thoroughly justified by one or more of the criteria in 424.12(b). Few species have static distributions. Allow for species dynamics in the critical habitat. If the species requires ephemeral habitats, consider where the future habitats might be relative to the present ones.
4. Areas that are not suitable for use by the species and that are not essential to the conservation of the species should not be included, especially if easily identifiable boundaries can be drawn to exclude them.
5. Any revision of critical habitat between the proposal and final must be fully explained in the final rule. Any change that would result in a significant increase in size or a new area would require a new proposed rule.
6. For aquatic species, water areas and adjacent riparian zones alone have generally been designated as critical habitat. This does not diminish the importance of the watershed to the survival of the species and activities affecting the watershed can still be addressed through section 7.
7. When several suitable habitats, each satisfying the requirements for a critical habitat designation, are located close to one another, an inclusive area may be designated as critical habitat. For example, when several ponds, lakes, and springs occur in a local area, the entire area may be designated critical habitat if it is determined that the upland areas are essential to the conservation of an aquatic species found in the ponds and lakes (see 50 CFR 424.12(d) and critical habitats for species such as Ash Meadows (var. spp.), Plymouth red-bellied turtle, Platte River for the whooping crane).

§ 17.94 reads as follows:

- (a) The areas listed in § 17.95 (fish and wildlife) and § 17.96 (plants) and referred to in the lists at §§ 17.11 and 17.12 have been determined by the Director to be Critical Habitat. All Federal agencies must ensure that any action authorized, funded, or carried out by them is not likely to result in the destruction or adverse modification of the constituent elements essential to the conservation of the listed species within these defined Critical Habitats. (See [50 CFR] part 402 for rules concerning this prohibition; see also [50 CFR] part 424 for rules concerning the determination of Critical Habitat).
- (b) The map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Such maps are provided for reference purposes to guide Federal agencies and other interested

parties in locating the general boundaries of the Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.

(c) Critical Habitat management focuses only on the biological or physical constituent elements within the defined area of Critical Habitat that are essential to the conservation of the species. Those major constituent elements that are known to require special management considerations or protection will be listed with the description of the Critical Habitat.

(d) The sequence of species within each list of Critical Habitats in §§ 17.95 and 17.96 will follow the sequences in the lists of Endangered and Threatened Wildlife (§ 17.11) and Plants (§17.12). Multiple entries for each species will be alphabetic by State.

Developing the Critical Habitat Description

Once the area to be designated as critical habitat has been determined, the staff biologist must develop a verbal description and a matching map. The verbal description forms the legal boundaries. The map merely serves as a general illustration. The description must be exact using clear and precise terminology. Terms such as "near," "about," "approximately," etc. are unacceptable in describing legal boundaries.

Points of Guidance:

1. Boundaries may follow contour lines, range and section lines, lines between any two defined points, roads and perhaps some major public trails (be sure these are clearly marked on the reference maps and on the ground and no other definable boundary is available--if a trail is used, give map name and edition "as found on..."), waterways, political boundaries, latitudes, longitudes, circumference of all or part of a circle of defined radius and origin, etc., and any combination of the above.

2. Boundaries also may be defined by end points for each leg of a polygon. Examples: (a) Starting at the intersection of Rt. 32 and Brock Bridge Road, proceed in a northwesterly direction to a point 1/4 mile east of Jessup High School on Rt. 175, thence westerly along Rt. 175 ..., (b) Starting at a point 200 feet east of BM 15 (which is about 1/2 mile east of Mainstream, FL) at the Mean High Water (MHW) line, proceed in a general northeasterly direction along the MHW line to a point 1,200 feet north and 250 feet east of BM 15; thence west for 650 feet; and thence southerly to starting point 200 feet east of BM 15. Areas in the 'east' will have to rely upon odd reference points such as these.

3. There is nothing wrong with using a combination of straight lines defined by points; parts of a circle (i.e., an arc) defined by a point, radius, and start/end points/directions; and then saying something like "...all areas within this zone that are above [or below] an elevation of"

4. For islands or mountain tops, an option is identifying an area as beginning above a certain contour (e.g., MHW, etc.).

5. Identify the base map(s) by name, series, and year from which the description was based (e.g., Mt. High, 1968, U.S.G.S. 7.5' quad.). Cite the Principal Meridian for any descriptions involving land survey designations (e.g., San Bernardino Meridian).
6. Do not use ephemeral terms like "shoreline" where such can vary day to day and month to month.
7. Make sure the start and end points of the critical habitat boundaries connect.
8. Be sure the map matches the description precisely.
9. Arrange multiple zones in alphabetical order by name within each State. If the constituent elements are the same for all entries (usually the case), make a single statement after the last map identifying those elements. If they differ, include it after each description.

Preparing Critical Habitat Maps

1. The purpose of the map is only to inform a reader of the general location and shape of the area. Keep it simple. It is not expected to be used as a field map. Too much detail can be confusing after reduction.
2. Maps will be published as either single column maps or three column (up to a full page) maps in proposed and final rules. GPO will not print two column maps. Most maps should be designed for publication in a single column (2.25 inches wide). The camera ready original should be printed with lettering large enough to accommodate reduction by GPO. Numerals, names of political units, physical features, and all lines must be sharp and clear. Do not submit a map without first reducing it to 2.25 inches to make sure the wording is legible. Make sure stippling identifying the critical habitat area is dark enough to remain visible after reduction. Generally, maps for critical habitat areas wider than about 20 miles (East to West) should be designed for three columns.
3. Maps in the regulation section of final rules will be reprinted annually for the CFR. It is extremely important that the map for the final rule is legible and accurate. The CFR is printed in two columns (4.67 inches wide). Maps printed as full page maps in a final rule will be reduced to two column maps in the CFR. Therefore, it is imperative that maps intended for three columns in a final rule are designed to be legible when reduced to two columns.
4. For best reductions, the artwork should not be more than 2 to 3 times the final published size. Maps do not have to be square. Most published maps are about 3 inches high in the single-column format. As a rule, it is the width of the artwork that determines the degree of reduction necessary to fit the map into one column. The height of the map is not a limiting factor. Therefore, depending upon the shape of the critical habitat area, it may help to bring areas identified as critical habitat out as close to the side border as possible when designing the map. Place scale bars, inset maps, etc. at the top or bottom.
5. The critical habitat area should not fill the entire map. Generally, the best maps have used a critical habitat width of about 1/4 to 1/3 the width of the illustrated area (for 2-column maps, this would be 2/3 to 3/4 of the illustrated area). Ensure that all features identified in the description (e.g., water courses, roads, towns, counties) are labeled clearly.
6. Provide a scale bar and a directional guide (North should be to the top of each map), unless section or township lines indicate both scale (1 or 6 miles) and direction (adjacent units numbered).

7. If several widely spaced critical habitats are being designated, a general index map may also be submitted along with specific maps of each area, to show their relative locations if this would be beneficial. State index map insets also may be useful. However, cost factors should be considered.

8. Critical habitat areas in close proximity should be combined on the same map as long as clarity can be maintained.

9. Long, linear critical habitats (e.g., rivers) might be best illustrated in tall, rectangular maps.

10. The face of the camera ready copy should contain only the map within a border. Page numbers, titles and notations should not be included in the map design. Multiple maps should be numbered in order in blue pencil on the back of each camera ready map. Any necessary instructions to the printer should be printed on adhesive notepaper and affixed to the front of the map.

11. Submit one camera ready copy of each map in a protective envelope separate from the rule. It must fit on standard sized paper to reduce the chances of bending or folding prior to GPO use. The maps normally should be submitted with the rule package. However, if questions or concerns exist, a draft map with draft rule language may be submitted with the rule package (or ahead of the rule package) with a request for Washington Division of Endangered Species review prior to preparing the camera ready copy. In some cases, the Washington Division of Endangered Species may consult with GPO. The camera ready map will be submitted to the OFR with the signed rule. Insert a photocopy of this map (stamped "COPY" and not reduced) in the appropriate place in the rule. For proposals, the Washington Division of Endangered Species will request return of the maps from GPO, which can then be forwarded to the Region. Maps submitted to the OFR with final rules will be retained by the CFR unit of the OFR.

12. Many maps generated with computer graphics programs are generally of poor quality and unacceptable to the OFR and GPO because lines and legends are not sharp. Submit only maps that will allow crisp resolution and clearly visible stippling of critical habitat areas upon publication.

13. Keep maps simple. Refer to 50 CFR 17.95/96 for examples (good and bad). Some "good, readable" maps are June sucker, both springfish, Leon Springs pupfish, whooping crane index map, Inyo brown towhee, and many others. Some "not so good" would be whooping crane individual maps (no scales), beach mice (variety of scales, most too large), Mona ground lizard and boa (illegible), Giant anole (no scale or text), smoky madtom (too large), and many others (most lack scale or are too detailed).

D. Economic Analysis

Economic factors may not be considered when determining whether a species should be listed as endangered or threatened. However, the Act requires that economic factors be considered when the Service designates critical habitat. Only the economic impacts above and beyond any economic impacts resulting from listing may be considered. Critical habitat is designated on the basis of scientific data but areas may be excluded on the basis of economic impact or any other relevant impact if the Director determines that the benefits of exclusion outweigh the benefits of specifying such area as critical habitat. He may not exclude areas if such exclusion will result in the extinction of the species.

If a species will be proposed with critical habitat, the economic analysis may not be conducted until after the proposed rule is published. The public generally does not have the opportunity to comment on the economic analysis unless the Service decides to make a draft available. If critical

habitat is proposed at any time after the listing proposal is published, a draft economic analysis must be prepared prior to the critical habitat proposal.

Economic analyses will be increasingly required as critical habitat is designated for more species. The economic analysis may be done by Service staff with the assistance of Service economists or it may be contracted out. The Washington Division of Endangered Species prepared an Economic Handbook for Critical Habitat Designations (revised May 20, 1987) and distributed Draft Interim Guidance on the Development of Economic Analyses for Critical Habitat Designations," transmitted under a memorandum from the Director to the Regional Directors on June 9, 1992. These two documents are useful when developing economic analyses, though their utility may diminish as the complexity and scope of the critical habitat designation increases. Contact the Washington Division of Endangered Species if additional guidance is needed.

E. National Environmental Policy Act (NEPA) Compliance

NEPA documents (Environmental Assessments, Environmental Impact Statements, Findings of No Significant Impacts) are not included in rule packages for listings, delistings, reclassifications, or critical habitat designations, or with special rules that accompany listings of threatened species. The following standard language is included in these types of proposed and final rules.

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

In cases of special rules that do not accompany listings, including experimental populations, Regional Offices should seek guidance from the Regional Environmental Coordinator on whether to prepare an Environmental Assessment.

The language in the Endangered Species Act closely parallels the requirements of section 102(2)(C) of NEPA and the regulations for implementing NEPA (40 CFR 1500.2). When it is deemed necessary to provide a more detailed description and analysis of alternatives and potential

impacts, additional environmental documentation should be prepared. Further, the Service may prepare an Environmental Assessment on any action (other than an action under section 4) at any time in order to assist agency planning and decisionmaking (40 CFR 1501.3(b)). This approach is consistent the Department's and Service's NEPA guidances.

F. Required Determinations

There are several statutes and Executive Orders to which most regulations are subject. Because section 4(b)(1)(A) of the Act specifically prohibits consideration of other than scientific and commercial information, the Service is prohibited from applying these authorities to proposed and final listing rules. When designating critical habitat, the Act requires the Service to consider economic and other relevant impacts. This analysis essentially satisfies the requirements of some of these other authorities. However, for some rulemaking actions, these authorities must be specifically addressed in the rule and supporting documentation.

In the past, the Service prepared a Determination of Effects (DOE), as required by Executive Order 12291, and submitted it to Washington ahead of all regulation packages not associated with a listing action. The DOE addressed the required determinations and contained certifications signed by the Director and the Assistant Secretary for Fish and Wildlife and Parks, as appropriate. However, DOE's were discontinued on September 30, 1993, with the issuance of Executive Order 12866. Replacement guidance from the Department has not been issued. Once issued, it will be forwarded to the Regions. Any required determinations should be inserted behind the "Required Determinations" tab in the listing package.

The statutes and Executive Orders applicable to some endangered species regulations are identified below:

- Regulatory Flexibility Act (5 U.S.C. 601): This statute requires that agencies assess whether the action will have a significant economic effect on a substantial number of small entities, including small businesses, small organizations, and small governmental jurisdictions. In accordance with the 1982 amendments to the Endangered Species Act, the Regulatory Flexibility Act does not apply to listing actions. However, the preamble of critical habitat rules and special rules that do not include a listing and experimental population rules must contain a statement of the effects, if any.
- Paperwork Reduction Act (44 U.S.C. 3501): This statute requires that all regulations that impose information collection requirements on the public receive information collection clearance from OMB. This does not apply to listing and critical habitat actions, but could apply to some special rules and experimental populations. If information collection requirements exist, see Part 381 of the Departmental Manual for options.
- Government Actions and Interference with Constitutionally Protected Property Rights--Executive Order 12630: This Executive Order requires that Federal actions that may affect the value or use of private property be accompanied by a Takings Implication Assessment (TIA). Regions should prepare a TIA for the Director's signature for final rules that contain critical habitat separate from a listing and insert it behind the "Required Determinations" tab. An example of a TIA is included in **Appendix X**.
- Regulatory Planning and Review--Executive Order 12866: On September 30, 1993, the President signed Executive Order 12866 which requires, among other things, that agencies determine whether a regulatory action is significant. A copy of Executive Order 12866 is

contained in **Appendix XI**. The Department of the Interior has not yet provided the bureaus with guidance for complying with the new Executive Order. However, Regions should review the Executive Order and be prepared to respond to the 12 "principles of regulation" in section 1(b). When guidance is provided, it will be forwarded to the Regions.

- Federalism--Executive Order 12612: This Executive Order requires agencies to evaluate the extent to which a regulation will intrude on State policy or administration, change the roles or responsibilities of Federal or State governments, or will affect fiscal capacity. Federalism effects do not apply to listings, but do apply to critical habitat, special rules and experimental populations.

Rules that are considered significant as defined in Executive Order 12866 or the Regulatory Flexibility Act require OMB review. OMB has 90 days to review proposed rules and 45 days to review final rules that are not significantly changed from the proposal.

G. Emergency Rules

Species should be considered for emergency listing when the immediacy of the threat is so great to a significant proportion of the total population that the routine listing process is not sufficient to prevent large losses that may result in extinction. Expected losses during the normal listing process that would risk the continued existence of the entire listed species are grounds for an emergency rule. The purpose of the emergency rule provision of the Act is to prevent species from becoming extinct by affording them immediate protection while the normal rulemaking procedures are being followed.

Regions are responsible for the initiation and writing of such rules and, if necessary, for sending in personnel to hand-carry the rule through the surname process and to make changes as needed. The immediacy of the threat, such as project deadlines (e.g., start of construction, draining, impoundment, harvest season), should be identified and should determine how quickly the emergency rule must be published. Emergency rules can be considered before or after a species is proposed, as circumstances dictate. It would normally be inconsistent to emergency list a species as threatened, since that definition only covers species that are in danger of becoming endangered, not extinct.

The format and content of an emergency rule is basically that of a final rule. Cite the emergency provision (section 4(b)(7) of the Act and 50 CFR 424.20) and make the rule effective upon publication for a period of 240 days as required by the Act. The section summarizing comments is omitted and comments are requested but only briefly in the summary section. The emergency rule must state the conditions that make such a measure necessary. Add a "Reasons for Emergency Determination" section following the "Summary of Factors Affecting the Species" and explain the necessity of the measure. Facts showing the presence of an emergency situation posing significant risk to the species as a whole must be stated. The package should contain only the rule itself, the supporting status information, documentation of the threat, and applicable petitions. Economic analyses are not prepared or discussed. Refer to recent Federal Register documents as examples or call the Washington Division of Endangered Species if you need further guidance in modifying the formats for these actions. Notifications are to be provided to appropriate parties. Prior consultation with the State is desirable, and after publication the Service should distribute copies by overnight delivery to the States and agencies affected.

Emergency rules and the corresponding proposed rule should be published simultaneously whenever possible. When these documents are published together (same issue of Federal Register; two documents), the proposal can be very abbreviated. The proposal would not repeat much of the information but simply refer to sections already included in the emergency rule, such as

SUPPLEMENTARY INFORMATION: "Background," "Summary of Factors Affecting the Species," "Critical Habitat," "Available Conservation Measures," and "References." Sections such as "Public Comments Solicited" and "National Environmental Policy Act" are not included in the emergency rule but would appear in the proposal. The "Proposed Regulation Promulgation" section would be eliminated (except for the Authority citation) from the proposal except for a statement as follows: "This document proposes to establish the provisions of the emergency rule (citation to Federal Register) as a final rule."

This combined approach will not only save page costs but will help to ensure prompt (i.e., simultaneous) publication and distribution of a proposal following an emergency rule. If this approach is taken, both the emergency rule and the proposal should be submitted to Washington in the same package. However, if preparing the abbreviated proposal will slow publication of the emergency rule, then the alternative approach of following the emergency with a proposal should be used. The 240-day clock starts ticking with the publication of the emergency rule, so it is imperative that the proposed rule is published with a week or two. Generally, it is more efficient and effective to send both through the surname process together, rather than ask each office to revisit the issue a week or more later. If you are not going to propose the rule, then you must rethink the need for an emergency rule that will no longer be in effect after 8 months. Emergency rules may be withdrawn prior to the 240-day limit (see 50 CFR 424.20(b)).

H. Similarity of Appearance Rules

As specifically provided in section 4(e) of the Act, the Service may treat any species as an endangered or threatened species under any regulations of commerce or taking. The Service must make a finding in any similarity of appearance (S/A) rule that:

- (A) Such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to this section [4] that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;
- (B) The effect of this substantial difficulty is an additional threat to an endangered or threatened species; and
- (C) Such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

Thus, species that are not biologically endangered or threatened and not, therefore, on the list may be regulated in order to assist in the conservation of listed species. The regulations for such species are found in 50 CFR 17.50. The following are several examples of the usage of these provisions.

Felis concolor in Florida--the Florida panther (F. concolor coryi) is listed as endangered. Unlisted subspecies of cougars periodically occur in Florida either as escapees from captivity or are deliberate releases. Therefore, the Service determined that all other free-living cougars to be T S/A wherever they occur in Florida.

American alligator--this species was delisted as an endangered and threatened species in June 1987. It remains "on the list" only as an entry under the S/A listing. The main reason for this present protection is to afford some control over its commercial products in order to ensure that other listed crocodylians are not being taken and labeled as "American alligator" to circumvent the restrictions of the Act.

Peregrine falcon--all peregrines flying free in the lower 48 States were provided protection under a similarity of appearance (S/A) listing in 1984. This means that a threatened Arctic peregrine or a released peregrine falcon of any genetic stock would be afforded the same protection from take in the lower 48 States as the endangered American peregrine falcon. Although this does offer the released eastern birds protection from take, the real purpose was to protect those few American peregrines that still migrate through the east, as well as the western anatum (breeders and migrants).

Note several points regarding this type of rule: (1) no section 7 protection is afforded such species (only section 9), and (2) such species are not counted as "listed" for the purposes of the Act (e.g., reports to Congress). Therefore, there is no need or use for discussing impacts to other Federal agencies under section 7 in the "Available Conservation Measures" section of the proposal and final by a S/A entry to the list. There must be a new section "Similarity of Appearance" added to the Federal Register document that makes the above finding after citing section 4(e) of the Act (50 CFR 17.50(b)). A brief discussion of the identification and taking problems for the listed species and this S/A species must be included at this point.

These rules are an important tool in the protection of listed species and should be considered in cases where trade or take are seriously affecting a listed species. Special rules may be crafted to assist in these efforts, if the entry is for "T(S/A)."

I. Special Rules

Special rules are authorized under the Act to adjust or clarify the general protective measures available for threatened species and experimental populations. The preparation of proposed and final special rules follows the same general pattern and format as those for listings and critical habitat designations. If proposed separately from a listing action, the comment period can be reduced to 30 days, as appropriate. Public hearings are not required for the promulgation of special rules in isolation of listing proposals though they are recommended if requested.

The "Background Section" of the Federal Register document must describe the present protection (e.g., existing special rules in need of revision, no special measures), the need for different protection, and a cogent discussion of the benefits and problems that the new regulations would provide. When revising existing special rules, provide a paragraph-by-paragraph analysis showing the existing rule, the problem(s) it creates, the results and measures needed, and the change in the language of the rule that is being put forward. Additionally, the Service must document its finding that the special rule, as revised, is "necessary and advisable to provide for the conservation of such species."

The regulatory language must simply state the new regulation and not provide an argument for its existence. It should not include excessive detail unless this is critical to the protection needed. Too much detail in a rule may require frequent revisions via future proposed and final rules. In drafting a special rule, refer to a range of regulatory provisions in the Code of Federal Regulations and in that portion on "Amendment to a Section" of the Federal Register Document Drafting Handbook. The numbering of special rules must be coordinated by the Washington Division of Endangered Species, since most are to be codified in chronological order within the appropriate section of part 17.

J. Experimental Population Rules

Section 10(j) of the Act authorizes the Service to designate experimental populations of listed species. Experimental populations may not be provided full protection of the Act, thus local opposition to reintroduction is lessened.

Rules to designate experimental populations are unusual in that--

- o Most can be expected to be highly individualized and all are closely dependent on an introduction or reintroduction strategy adopted by the recovery plan for the species involved.
- o Experimental populations are the only populations of plants and invertebrates that can be accorded individual status under the Act. The Act's standards for delineating an experimental population also are not necessarily comparable to those that would be used to recognize a distinct population segment of a vertebrate species.

About 10 experimental populations have been designated to date, so that less of an established body of experience has been developed in dealing with them than has for other kinds of status determinations the Service carries out. As a result, one is more likely to encounter a situation for which there is no established precedent to serve as a guide when designating an experimental population than in developing other kinds of rules.

Nevertheless, some general guidance on the organization of experimental population rules follows. Biologists dealing with designation of an experimental population should carefully review section 10(j) of the Act and 50 CFR 17.80-86 (subpart H), both of which contain specific requirements for rules. Additional information may be found in the Conference Report for the 1982 amendments of the Act (pp. 33-35) and in the preamble of the August 27, 1984, final rule codifying the experimental population provision (49 FR 33885). The Conference Report and final rule are contained in **Appendices XII and XIII**, respectively.

Recent proposed and final rules for experimental populations should be reviewed to observe standard text and substantive content. Examples include the red wolf, whooping crane, and the black-footed ferret. Early coordination should also be established with the Washington Division of Endangered Species.

The format for experimental population rules is similar to listing rules. However, the content of some sections is different.

The SUPPLEMENTARY INFORMATION section should contain the following:

Background

1. Legislative: A thorough explanation of the authorities contained in section 10(j) of the Act.
2. Biological: A discussion of the overall status of the species and the need for introduction or reintroduction. This need not be in the form of an examination of the five section 4 listing factors, since no status determination is being made for the species.
3. Recovery efforts: An explanation of how the experimental population fits into an overall recovery strategy for the species as expressed in the recovery plan.

4. Reintroduction sites: Complete descriptions and discussion of any site for release or planting, the means by which it was chosen, and the reasoning behind the choice. Alternative sites considered should also be identified with the reasons they were excluded.
5. Reintroduction protocol: Discussion of the methods to be used for releasing or planting founder individuals and of why these methods were chosen. This should also include a statement of the impact of removal of individuals from the source population.

Status of Reintroduced Population

Provide an explanation of standards by which experimental populations are judged essential or nonessential and the reasons for which the particular population is considered essential or nonessential. Section 10(j)(2) requires that the Secretary make two affirmative findings through the regulation: (1) a finding that the population is essential or nonessential, and (2) a finding that the release will further the conservation of the species. Section 4(d) of the Act also requires that the protective measures proposed are necessary and advisable for the conservation of the species.

Location of Reintroduced Population

Provide an explanation of the geographical limits of the area into which the experimental population is to be introduced and the means to be employed to distinguish members of the experimental population from other individuals of the species. Experimental populations may not overlay currently occupied range of the wild population of the species.

Management

Provide a discussion of the management regime to be applied to the population, including any monitoring system, disease control, genetic considerations, or other pertinent features. This section should also describe the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population. An explanation of the special rule that will apply to the population must be included.

Public Comments Solicited

This section applies to the proposed rule and will be replaced by a Summary of Comments and Recommendations in the final rule. Because experimental populations are not section 4

rules, the Service is not required to hold a public hearing if requested. However, for most proposed rules for experimental populations, the Service has scheduled public hearings and included the schedule within the proposal.

National Environmental Policy Act

This section includes a description of the Service's compliance with NEPA.

Required Determinations

This section should include a summary of the conclusions of various required determinations. Refer to Handbook **Section III.F**. Also refer to draft language contained in the Required Determinations section of the example proposed and final rules in **Sections III.A. and III.B.** of this handbook.

The References Cited, Authors, and List of Subjects sections and the regulatory language should conform to other rules.

The material for codification in the table in § 17.11 or § 17.12 will usually resemble that for the listing of a threatened species with a special rule. "Status" is either "XE" (experimental, essential) or "XN" (experimental, nonessential). For animals, the entry in the column headed "Vertebrate population where endangered or threatened" will describe the geographic boundaries of the population. If an experimental population of a listed plant is ever proposed, it will be necessary to devise a footnote or annotation system.

The experimental population will be identified by a special rule in §§ 17.84 - 17.86 (vertebrates, invertebrates, and plants). Experimental population special rules contain very specific information that identifies the population boundaries, including a statement of how the experimental population will be differentiated from natural populations, and specifies all prohibitions and exceptions, and identifies a periodic review and evaluation process. A map may be inserted if necessary to clarify the experimental population area.

Once the final rule assigns a lettered paragraph in the regulations (e.g., § 17.84(c)), future experimental populations for that species should, to the extent practicable, amend that paragraph rather than create a new paragraph for the species under the next available letter. For example, the experimental population of red wolves established in eastern North Carolina was assigned paragraph § 17.84(c). The subsequent experimental population established in the Great Smoky Mountains of western North Carolina and eastern Tennessee amended § 17.84(c) to cover both populations. To the extent possible, the same protective measures should apply to all separate experimental populations of the same species.

Packages should be assembled in a manner similar to other rules. The package containing the proposed rule should include a summary sheet on the inside of the front cover; the proposed rule; a final or draft section 7 consultation on this rulemaking (a copy is adequate); a draft Environmental Assessment and draft Finding of No Significant Impact or a draft Environmental Impact Statement, as appropriate; and supporting information.

The package containing the final rule should include a summary sheet on the inside of the front cover; the final rule; final section 7 consultation (a copy is adequate); a final Environmental Assessment and final but unsigned Finding of No Significant Impact, or final

Environmental Impact Statement, as appropriate; supporting information; comments; prior public records (i.e., the proposed rule). Once published in the Federal Register, a final rule is not effective for 30 days unless an immediate effective date is specified and justified in the rule.

The Regional Environmental Coordinator should be consulted regarding the advisability of announcing the availability of the Finding of No Significant Impact in the final rule, or, if an immediate effective date for the rule is necessary, whether the rule may announce that the Finding of No Significant Impact also will be effective immediately. The Finding of No Significant Impact may be signed by the Regional Director once the experimental population final rule is signed by the Assistant Secretary.

Approximately 4 months should be anticipated for processing experimental population proposed rules in Washington, and slightly less for final rules. This will allow sufficient time for review, pertinent regulatory certifications by the Department and clearance by OMB prior to submission to the OFR. Thus, advanced planning is needed to ensure that final rules are published and effective before the target release date.

K. Delistings and Reclassifications

The basic format, content, and organization of proposed and final rules to delist or reclassify a species from endangered to threatened or threatened to endangered, is much the same as for other proposed and final rules. The primary task is to tailor the package to the action being taken and to the specific species. The section 4 regulations (50 CFR 424.11(c-f)) provide guidance regarding the applicable criteria for delisting and reclassifying species. A species is delisted when it does not meet the definition of endangered or threatened because (1) it is extinct, (2) it has recovered, or (3) the data upon which the listing was originally based were in error. A species is reclassified when available information indicates that the status at which it is listed is inappropriate. For a species native to the U.S., delisting due to recovery or reclassification from endangered to threatened should reflect the attainment of goals set for these actions in an approved recovery plan.

The primary modifications in the preamble for delisting and reclassification rules are in the "Summary of Factors Affecting the Species" section. In addition, the "Available Conservation Measures" section is replaced with an "Effects of the Rule" section. In the "Summary of Factors Affecting the Species" section, the five factors must be discussed to clearly explain why the factors no longer apply (in the case of a delisting rule), or apply to a lesser degree or greater degree, as appropriate, for reclassification, and that the species no longer warrants endangered or threatened status. Discussion is also necessary following the summary to address the three criteria mentioned above for delisting (extinction, recovery, or error) and explaining which applies to this species. The "Effects of Rule" section is used to discuss the expected effects of the action. For example, what protection will still be afforded at State and Federal levels, and what future monitoring and management will be conducted if the species is delisted.

If critical habitat had been designated or a special rule promulgated for a species that is being delisted, the rule to delist must also delete the critical habitat and special rule from the CFR (special rules are "removed" and that section is "reserved" to preserve numbering). The following example should be followed:

PART 17- - [AMENDED]

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

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

2. Section 17.12(h) is amended by removing the entry for "Hedeoma apiculatum" under "Lamiaceae--Mint family:" from the List of Endangered and Threatened Plants.

3. Section 17.96(a) is amended by removing the critical habitat entry for "Hedeoma apiculatum" under "Family Lamiaceae".

A rule to carry out a reclassification is organized in the same way as a listing rule. In the case of reclassifications to threatened because of partial recovery as described in a recovery plan, there should be a discussion of the relationship of the action to goals in the recovery plan. If a rule delists or reclassifies a threatened species or population that has a special rule, examine the need to extend the special rule to an additional threatened population, remove the special rule if it no longer applies, or revise it as appropriate.

In all cases (reclassification or delisting), the documents must analyze all previously identified threats (including those discovered subsequent to first listing or later reclassification) and changes in those threats that allow a change in the species' status. The administrative record for the original proposal, final rule, and any subsequent review or reclassification must be briefly summarized to carry out this analysis.

Final delisting rules should be effective upon publication in the Federal Register. In the EFFECTIVE DATE: section of the final rule, insert "(date of Federal Register publication)." Any regulatory action that does not allow 30 days prior to its effectiveness must include a justification.

The following language should be inserted at the end of the "Summary of Factors Affecting the Species" section:

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect (insert species' name).

Refer to recent Federal Register documents as examples or call the Washington Division of Endangered Species if you need further guidance in modifying the formats for these actions.

IV. FORMAT AND CONTENT OF RULEMAKING NOTICES

A. General Information

Federal Register documents are used to announce petition findings, public hearings, extension or reopening of comment periods, availability of certain documents related to a rulemaking; to withdraw proposed rules; and for other information-sharing purposes. Although the Service routinely refers to these types of documents as "notices," they appear in the proposed rule section of the daily Federal Register. Notices of petition findings represent the early stages of a rulemaking. Notices announcing public hearings, and similar announcements, pertain to proposed regulations, and therefore also appear in the proposed rules section. Notices of availability of recovery plans, which are not addressed in the Listing Handbook, do not pertain to rulemakings and are placed in the notices section of the daily Federal Register.

In addition to the types of notices mentioned above, the Service also publishes two comprehensive notices of review--one for plant candidates and one for animal candidates. The comprehensive notices of review generally are published in alternate years, with the plant notice published one year and the animal notice published the next. These are major notices prepared by the Washington Division of Endangered Species and signed by the Director. They replace the species-specific notices of review that were widely used in the past (and are still possible for certain situations).

Regional Directors have signature authority for notices of public hearings, document availability, and comment period reopenings/extensions that do not extend the comment period beyond 6 months after publication of the original proposal. All other notices (e.g., extension of 1-year deadline, withdrawal of proposed rule, petition findings, extension of comment periods that extend beyond 6 months after publication of the proposed rule) must be signed by the Director. Notices withdrawing rules proposing designation of critical habitat must be signed by the Assistant Secretary.

All Federal Register notices must be reviewed by the Regional or Field Solicitor prior to submission to the Washington Office.

B. Petition Findings

Section 4(b)(3) of the Act and implementing regulations at 50 CFR part 424.14 require that, to the extent practicable, the Service make a finding of substantiality on any petition within 90 days of its receipt, and "promptly publish" a notice of its finding in the Federal Register. If a substantial 90-day finding is made, the Service is required, to the extent practicable, within 12 months of receipt of the petition to make a finding as to whether the action requested in the petition is (a) not warranted, (b) warranted, or (c) warranted but precluded by other listing actions with higher priority, and "promptly publish" a notice of its finding in the Federal Register.

In the case of a 90-day finding, a not warranted 12-month finding, and a warranted but precluded 12-month finding, the Service's administrative finding is prepared as a memorandum from the Regional Director of the lead Region to the Director. The memorandum includes an "approval/disapproval" line at the end for the Director's signature. The Service's administrative finding on the petition is not final until the Director approves the Regional Director's recommendation.

Federal Register notices signed by the Director announce the Service finding to the public. In addition, the petitioner(s) is informed directly with a letter from the Regional Director that transmits a copy of the approved administrative finding. The administrative finding should contain the substance of the finding; the Federal Register notice should simply announce the finding and summarize the background and basis for the determination. (In the past, Federal Register notices often have been as detailed as the administrative finding. However, this should no longer be done.) The administrative finding and the draft Federal Register notice should be submitted to the Washington Office together in a single blue binder, along with the supporting documentation.

Ninety-day petition finding packages are due in the Washington Office at least 2 weeks prior to the 90-day deadline. Packages for not warranted or warranted but precluded 12-month petition findings also are due in the Washington Office at least 2 weeks prior to the 12-month deadline.

Warranted 12-month petition findings should be prepared in the form of proposed rules, following the guidance contained in Handbook **Section III.A**. The proposed rule must state that it constitutes the Service's 12-month finding on the petition. A separate memorandum describing the administrative finding is unnecessary. The package is due in the Washington Office at least 60 days prior to the 12-month petition finding deadline.

Refer to the Service's Petition Management Guidance for information on processing petitions and preparing administrative findings.

The format for a petition notice is similar to that of a rule except certain headings and sections are excluded. For instance, notices of petition findings (and other notices that do not specifically pertain to a proposed rule) do not include a RIN (regulation identifier number) at the very beginning of the notice, nor do they require the "List of Subjects in 50 CFR Part 17" at the end of the document. The following example of a notice announcing a finding on a petition to list a species should be used for basic format and content.

Billing Code 4310) 55¹

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[DIRECTIONS: Run two original copies of the first page to go in the package--one with a surname stamp in the upper right-hand corner, followed by a clean copy. Staple to upper right side a blue surname tag to the first copy. It should be surnamed by all individuals indicated in the "Action Required" column on the control sheet on the front cover, as well as other appropriate staff.]

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding [or 12 Month Finding] for a Petition to List the (insert species' name or identify multi-species as a group (e.g., Four Virginia Coastal Plants)) as (insert "endangered" or "threatened") (if the petition includes designation of critical habitat, so indicate) [Capitalize the first letter of all major words. There should be no punctuation at the end of the subject heading.]

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day [or 12-month] petition finding. [If the species was not previously a candidate, the action line for a

¹ As with all other Federal Register documents, this first page is numbered at bottom center and the remaining pages at top center.

substantial 90-day finding would state:] Notice of 90-day petition finding and initiation of status review.

SUMMARY: [Provide a very brief paragraph stating the Service's decision. If more than four or five species are being addressed, do not provide the scientific or common names; instead refer to them as a group. Do not give citations (e.g., Federal Register, U.S.C., literature). Do not request public comments. Language similar to the following examples is recommended:] The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the (insert scientific name, then common name for plants; reverse for animals) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that listing this species may be warranted. [or, conversely:] The Service finds that the petition presents substantial information indicating that listing this species may be warranted. [If the species was not previously a candidate, include the following statement:] A status review is initiated.

[OR]

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the (insert scientific name, then common name; reverse for animals) under the Endangered Species Act, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. [or, conversely:] After review of all available scientific and commercial information, the Service finds that listing this species is not warranted.

DATES: The finding announced in this document [do not say "notice" here] was made on (leave a space here; the Division of Endangered Species will insert the date the Director approves the administrative finding). [For a substantial 90-day finding, the following language is recommended:] To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by (insert number of days from Federal Register publication [60 to 90 days is recommended]).

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to (insert Regional or Field Office and give appropriate address). The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: [Provide name, address (or refer to ADDRESSES section), and telephone number of the most appropriate staff person.]

SUPPLEMENTARY INFORMATION:

Background

[This section should typically consist of two to four paragraphs, slightly more at 12 months than 90 days. It should provide a history of any previous petitions pertaining to the species, including the Smithsonian petition, and any Service actions. Do not overlook the petition findings for 990 candidate species that had received warranted but precluded findings but were reclassified in the December 9, 1993 Federal Register (58 FR 64828). A notice for a 12-

month finding should convey the results of the status review, if conducted, and provide a relatively brief summary of the reasoning that led to the conclusions in the finding. Remember that the administrative finding contains the primary background and justification for the Service's decision; the notice need only summarize the administrative finding. The following language is recommended:]

[FOR 90-DAY FINDINGS]

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the Federal Register. If the finding is that substantial information was presented, the Service also is required to promptly commence a review

of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a 90-day finding on a petition to list (insert scientific name, then common name of plant; reverse for animals). The petition, dated (insert date of petition), was submitted by (identify petitioner and general address), and was received by the Service on (insert earliest date received by any Service office). [Continue with a description of the action the petition requests the Service to take and a very brief discussion of the biological information and threats identified by the petitioner. This should not take more than a single paragraph for most petitions.]

The Service has reviewed the petition, [insert any of the following that apply:] the literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition (insert "presents" or "does not present") substantial information that listing this species may be warranted. [Continue with a very brief explanation of the

Service's basis for the finding. This should not take more than one or, at most, two paragraphs for most petitions. Findings that address multiple species may require additional paragraphs, but keep the notice as brief as possible.]

[FOR 12-MONTH FINDINGS]

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the Federal Register.

On (insert date), the Service received a petition dated (insert date) from (identify petitioner and general address) to list (insert scientific name, then common name for plants; reverse for animals) as (insert "endangered" or "threatened" and indicate whether designation of critical habitat was requested). A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the Federal Register on (insert date) (insert Federal Register citation, e.g., 57 FR 54547). [Indicate whether a status review was initiated (applies only to species that were not previously candidates) or continued (applies only to species that have been the subject of a published notice of review and have not been assigned to category 3 in such a notice).]

The Service has reviewed the petition, [insert any of the following that apply:] the literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with (insert species' name). On the basis of the best scientific and commercial information available, the Service finds the petition is (insert "not warranted" or "warranted but precluded by work on other species having higher priority for

listing"). [Continue with a very brief explanation of the Service's basis for the finding. For warranted but precluded findings, briefly discuss the applicability of the five listing factors. For not warranted findings, discuss why the five factors do not apply. This should not take more than one, or at most two, paragraphs for most petitions. Findings that address multiple species may require additional paragraphs, but keep the notice as brief as possible.]

[For warranted but precluded findings, include the following paragraph:] Section 4(b) of the Act states that the Service may make warranted but precluded findings only if it can demonstrate that (1) an immediate proposed rule is precluded by other pending proposals, and that (2) expeditious progress is being made on other listing actions. On September 21, 1983 (48 FR 43098), the Service published in the Federal Register its priority system for listing species under the Act. The system considers magnitude of threat, immediacy of threat, and taxonomic distinctiveness in assigning species numerical listing priorities on a scale of 1 to 12. The (insert species' name) is assigned a listing priority of (insert listing priority number) because (provide a brief explanation). The Service believes that expeditious progress is being made on other listing actions.

If additional data become available in the future, the Service may reassess the listing priority for this species or the need for listing.

Author(s)

The primary author(s) of this document [do not say "notice"] is/are (insert name and office, e.g., Pacific Islands Office) (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq.). [Do not list all the authorities cited in proposed and final rules for 50 CFR part 17 as they are not applicable.]

Dated: _____

Director, Fish and Wildlife Service

[Insert the following:]

(Notice: 90-day [or 12-month] finding on petition to list (insert each species' name))

[Place three copies of this page at the end of the notice and staple signature tabs to the bottom of each. This page should be for signature only and should not contain text.]

C. Public Hearings and Comment Period Extensions

Federal Register documents announcing public hearings and availability of documents associated with a proposed listing are signed by the Regional Director. Notices extending or reopening comment periods that do not extend the comment period beyond 6 months after publication of the original proposed rule also are signed by the Regional Director. Notices extending or reopening a comment period that will extend a comment period beyond 6 months after the proposed rule was published must be signed by the Director. This apprises the Director of the likelihood that the final rule may not meet the 1-year statutory deadline. Notices for the Director's signature should be submitted in a blue binder. The package should include one copy of the notice with three signature pages. A summary sheet should be stapled inside the front binder cover. Three to 5 weeks should be allowed for approval.

Public hearings should be held within 40 days of the end of the first comment period. The comment period must be "extended" (if the notice is published before the end of the comment period) or "reopened" (if the notice is published after the end of the comment period). The Service is required to publish a notice of a public hearing at least 15 days before the hearing is held (50 CFR 424.16(c)(3)). Therefore, notices announcing public hearings must be received at the OFR at least 3 weeks before the date of the first hearing.

Documents signed by the Regional Director should be forwarded by the Region directly to the OFR. Mail three individually signed copies of the notice (copies of the signature page will not be accepted) to the following address:

Mailing address:

Office of the Federal Register
National Archives and Records Administration
Washington, D.C. 20408

For overnight or courier deliveries only:

Office of the Federal Register
800 North Capitol Street, N.W.
Suite 700
Washington, D.C. 20002
(Phone: 202/523-3187 or 202/523-5215)

Include a brief transmittal note that provides the name and telephone number of the Regional staff person to contact if OFR has any questions or problems. Only very minor handwritten changes may be made to a document submitted to the OFR. Make sure that any such changes, are initialed and dated in the right-hand margin. If the signed documents are accompanied by a Wordperfect file, provide a letter certifying that the file on the diskette is a true and accurate copy of the attached document. Only one document may be contained on a diskette. If multiple documents are submitted to the OFR, a separate diskette and certification letter must accompany each document.

The Division of Policy and Directives Management (PDM) (FAX number 703/358-2269) must receive a copy of draft notices that will be signed by Regional Directors as early as possible in order to include the information in the Department's regulatory calendar for rules and notices. A copy of the signed document must arrive in the Washington Division of Endangered Species and PDM (attention: P. Cook) on or before the date the document arrives at the OFR. Include a copy of the letter requesting the hearing with the Washington Division of Endangered Species copy.

Legal notices announcing the time(s), date(s), and location(s) of the public hearings must be published in local newspapers. The Region should use its judgment as to whether notification of the hearing should be mailed to the parties who received copies of the proposed rule or who submitted substantial comments on the proposed rule.

Following is a sample Federal Register notice announcing a public hearing and reopening the public comment period. Notices should be typed according to the standards provided in **Section II** of this handbook. Guidance is provided in brackets in the sample notice that follows. Also refer to the Federal Register Document Drafting Handbook for additional guidance. Refer to Handbook **Section V** for information on conducting public hearings.

Billing Code 4310)55¹

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018) [Insert the RIN assigned for the proposed rule.]

Endangered and Threatened Wildlife and Plants; Reopening² of Comment Period and Notice of Public Hearing on Proposed (insert "Endangered" or "Threatened") Status (and Critical Habitat) for (insert species' name)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

¹ As with all other Federal Register documents, this first page is numbered at bottom center and the remaining pages at top center.

² Throughout document, use "reopen" for comment period that has already closed or "extension" when the comment period is still open when this notice is actually published.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a public hearing will be held on the proposed determination of (insert "endangered" or "threatened") status and critical habitat [if applicable] for the (insert scientific name, then common name for plants; reverse for animals) and that the comment period on the proposal is reopened. This (insert type of species, if not obvious, e.g., fish or shrub) is found (provide general area and habitat). All interested parties are invited to submit comments on this proposal.

DATES: The public hearing will be held from (provide hours, day of week, date, town, and State; if there are to be multiple hearings, provide only dates and places). The comment period, which originally closed on (insert date), now closes (insert date) [Make this date at least 10 days after the date of the final hearing. If this would fall on a Saturday, Sunday, or Holiday, then make it the next business day.]. [Do not include a period for requesting a public hearing.]

ADDRESSES: The public hearing will be held at (insert the address, including room location, no zip code). Written comments and

materials should be sent to (insert "Field Supervisor" or other personnel and appropriate mailing address and fax number.). Comment and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: (Provide name, address (or refer to ADDRESSES section), and telephone and facsimile numbers of the most appropriate staff person--e.g., John Smith, Field Supervisor, at the above Salt Lake City Field Office address (telephone xxx/xxx)xxxx.).

SUPPLEMENTARY INFORMATION:

Background

[Provide a very brief paragraph describing where the species occurs and the threats. If critical habitat is proposed, indicate the general areas.]

On (insert date), the Service published a proposed rule to list the (insert species' name) as (insert "endangered" or "threatened") under the Endangered Species Act of 1973, as amended. Section

4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the Federal Register. Public hearing requests were received within the allotted time period from (insert name, title, and city of requestor(s), not full address), representing (indicate group, if any).

The Service has scheduled this hearing (repeat date, times, and places here; include time zone, if potential exists for confusion). Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to be presented to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service. [If desirable, the notice may identify particular types of information the Service is seeking.] Legal notices announcing the dates, time, and location of the hearing(s) are being published in newspapers concurrently with this Federal Register notice.

The comment period on the proposal originally closed on (insert date). In order to accommodate the hearing, the Service also reopened the public comment period. Written comments may now be submitted until (insert date), to the Service office in the ADDRESSES section.

Author

The primary author of this notice is (insert name, address (or refer to ADDRESSES section), and phone number).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U. S. C. 1531 et seq.). [Do not include all the citations used for rules.]

Dated: _____

Regional Director, (insert name of Regional Office), Fish and
Wildlife Service
OR
Director, Fish and Wildlife Service

[Insert the following:]

(Notice for (insert species) - Public Hearing and Reopening of
Comment Period)

[After signature, stamp, type, or print the name of the individual for the GPO and OFR to correctly typeset the name. Stamp, type, or print "Acting" in front of the title if someone other than the Regional Director or Director signs. Deputy or Assistant Regional Directors do not have authority to sign Federal Register documents. Draw a line through the subject line. Initial and date all of these changes in the right-hand margin before submitting to the OFR.]

D. Withdrawals

Section 4(b)(5) of the Act and the implementing regulations at 50 CFR 424.17 provide that the Service must, within 1 year of a proposed rule to list, delist, or reclassify species, or to designate or revise critical habitat, withdraw the proposal if the available evidence does not justify the proposed action. The notice withdrawing the rule must set forth the basis upon which the proposed rule has been found not to be supported by available evidence. Once withdrawn, the action may not be repropounded unless sufficient new information is available.

Proposals generally are withdrawn for one of two reasons--the information upon which the action was proposed was in error, or an event took place subsequent to the proposal that rendered the listing action unwarranted or critical habitat designation or revision not prudent. In either case, it is important that the Service thoroughly justify the withdrawal.

Proposed rule withdrawals are published in the proposed rule section of the Federal Register. They contain a level of detail comparable to a final rule. The format and content of a withdrawal notice is similar to a final rule, with the following exceptions:

- The subject line will read: Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List (insert species' name) as (insert "Endangered" or Threatened")
- [OR]
- Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to Designate (or "Revise") Critical Habitat for (insert species' name)
- The ACTION line will read: Proposed rule; withdrawal.
- There will be no DATES section.
- The SUPPLEMENTARY INFORMATION section will include the background and address any comments received. The number of relevant issues raised during the comment period should determine whether the comments should be organized into a Summary of Comments and Recommendations section. A notice withdrawing a listing, delisting or reclassification rule should include a Summary of Factors Affecting the Species. This section should discuss why each of the five factors in section 4(a)(1) no longer applies to the species, in the case of a listing withdrawal, and to what extent or how the factors still apply in the case of a reclassification or delisting rule withdrawal. A Finding and Withdrawal section should be included at the end of the Background section. This section should summarize the basis for withdrawing the proposal, and, in the case of a proposed listing, should indicate whether the species will be placed in category 2 or 3 of the Service's candidate list. A withdrawal of a proposal to designate or revise critical habitat must, rather than address the five listing factors, justify why the designation or revision is no longer deemed prudent in accordance 50 CFR 424.12. This should be contained in the Finding and Withdrawal section.
- The Authority section will read: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)
- There will be no List of Subjects in 50 CFR Part 17 section.

- Notices withdrawing a proposed listing, delisting or reclassification actions are signed by the Director. Notices withdrawing proposed critical habitat designation or revision are signed by the Assistant Secretary for Fish and Wildlife and Parks.

If a species proposed for listing in a multi-species listing proposal is subsequently found to not warrant listing, a notice withdrawing the proposal for the species should be submitted to Washington with the final rule listing the remaining species. The withdrawal may be very brief and refer to the final rule published concurrently with the withdrawal for detailed information.

E. Extension of Proposed Rule

In accordance with section 4(b)(6) of the Act and the implementing regulations at 50 CFR 424.17, within 1 year of the publication of a proposed listing action (listing, delisting, reclassification, special rule, or critical habitat designation or revision) the Service generally must publish a final determination or a notice withdrawing the proposed action upon a finding that the available evidence does not justify the action. When there is "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned," the Act and regulations allow for a 6-month extension of a proposed listing action. An extension cannot be invoked simply to obtain more information or to provide more time before making a decision. Only if there is a legitimate disagreement among scientific experts and a definitive resolution is expected that will clarify the subject of the disagreement may this provision be implemented. By the end of the 6-month period, the Service must either publish a final determination or withdraw the proposal.

The Act and listing regulations specifically state that the Service is to rely solely upon the best available scientific and commercial information in making its various determinations. If the best available data are sufficiently clear to support a decision, a 6-month extension is not justified. However, at times legitimate questions or issues are raised by a competent authority on such issues as the taxonomy, population status (past or present), distribution, or assessment of risk to a species. If a taxonomic question is raised, the disagreement must involve a question as to whether the entity meets the definition of species in section 3 of the Act. For plants and invertebrates, this requires that it be an acceptable taxon (species, subspecies, or variety, in the case of plants). For vertebrates, the entity must be at least a distinct population segment. Disagreements over whether a taxon is a full species or subspecies or variety are largely academic and do not affect the outcome of a final determination. A disagreement used as the basis for an extension must concern an issue that would alter the outcome of the determination.

The Region must prepare a notice of extension for the Director's signature and submit the package to Washington at least 90 days prior to the end of the 12-month deadline. If a special report is expected to resolve the disagreement, a 30- to 45-day comment period is normally provided to allow public review of the report and submission of comments. Although the Service is not required to hold a public hearing upon request, hearings may be held at the Service's discretion. A final decision document is due in Washington at least 90 days prior to the end of the extension period. The Washington Division of Endangered Species may be consulted for further guidance on reports, comment periods, hearings and related actions.

F. Correction of Published Documents

It is incumbent upon the originating Regional or Washington Office to immediately and carefully review the published Federal Register document to ensure its printed accuracy. Although most documents of any length are now submitted with a diskette file from which GPO prepares the typeset document, errors can still occur in any publication. Tables and illustrations are the most prone to problems and must be carefully checked for accuracy and legibility, respectively.

Simple typographical or grammatical errors that do not mislead the general reader regarding the intent and content of the document rarely require correction. Errors involving dates, addresses, locations of hearings, or specific regulatory language that can seriously misinform the reader may require correction. Check with the Washington Division of Endangered Species whenever a potentially serious problem is encountered.

Before the OFR is contacted, the manuscript and diskette file, if any, that were submitted must be checked. If either the OFR or GPO was responsible for the error, the Washington Division of Endangered Species will notify the OFR. The OFR will verify that the Service submitted correct and legible material and prepare and pay for the needed correction notice. The Service will be advised when the correction notice will be published. If incorrect material was submitted to the OFR by the Service and a correction is deemed necessary, the Service must prepare a correction notice. The notice must be signed by the same office that approved the original document (i.e., Assistant Secretary, Director, or Regional Director).

The format to be used in a Service correction depends on whether the error has been incorporated into the annual printing of the CFR. If the Service is correcting a proposed rule or a final rule that is not yet reflected in the most recent revision of the CFR, the correction notice corrects the published rule. The headings of the document through SUPPLEMENTARY INFORMATION should duplicate the published document, with the following exceptions: The end of the subject heading should include a semicolon and the word "correction." The ACTION heading should state "Proposed rule; correction" or "Final rule, correction", as appropriate. The SUMMARY should cite the Federal Register document being corrected and briefly indicate the nature of the error. A correction to a proposed rule has no DATES section; the EFFECTIVE DATE of a correction to a final rule is generally the effective of the original final rule. The SUPPLEMENTARY INFORMATION section should contain a very brief Background section that describes and cites the document being corrected, a brief Need for Correction section that explains why the correction is necessary, and a Correction of Publication section containing the correction language. The correction language must identify the Federal Register page number, column, CFR section, paragraph and line or sentence, and provide specific correction language. This section should be followed by the date and signature lines. The correction notice will be published in the same section of the Federal Register as the document it corrects.

If the error occurred in a final rule that has subsequently been incorporated into the CFR, the Service must amend the CFR. The standard headings of a rulemaking document must be included in the correction document, including the List of Subjects in 50 CFR Part 17 and the Regulation Promulgation section amending the regulatory language. The ACTION line should state "Final rule, technical amendment". The EFFECTIVE DATE should be the date the correction is published in the Federal Register. Standard amendatory language terms should be used in the regulatory section (e.g., "added," "revised," or "removed").

The Federal Register Document Drafting Handbook contains useful guidance on drafting correction documents.

V. NOTIFICATIONS AND PUBLIC HEARINGS

A. Public Notification

The Endangered Species Act requires notification of various parties at certain stages in the rulemaking process. As a matter of policy, the Service attempts to notify all interested parties of all notices and rules and to solicit data and comments where appropriate. Notification is provided and comments are solicited through correspondence, public hearings (if requested), newspaper notices, press releases, and, of course, Federal Register notices.

The responsibility for preparing and distributing these notifications lies primarily with the Regional Offices for native species and with the Washington Office (Office of Scientific Authority) for foreign species. The Regional Directors may delegate these functions down to the Field Offices as they see fit. A checklist of the necessary notifications, correspondence models and examples, and public hearing guidance, as well as general guidance, is provided below.

Comment Period

Listing regulations require a minimum of 60 days for public comment on listing proposals. If there is anticipated difficulty in reaching some interested parties (e.g., foreign governments or individuals), then additional time should be allowed for the comment period. If the Service is positive that it will be having public hearings or similar meetings, it can announce these in the proposal and make the comment period 75 to 90 days. If the dates and locations are not known, a subsequent Federal Register notice is necessary. (A comment period must be open to accept comments at a public hearing.) Tailor the comment period to the needs of the situation. A comment period of 120 days is not unusual for some foreign or even controversial listings.

Correspondence for Domestic Species

The letters should be prepared in draft form by the responsible office when the rule or notice package is started on the surname route. Notification letters do not have to be included in packages submitted to Washington. Once the proposed rule or notice has been signed, the correspondence should be prepared in final form and mailed within 15 days of the publication of the notice or rule. This expeditious distribution is important to provide the recipients ample time to request a hearing or to provide comment before the comment period closes.

Correspondence models follow the checklist of necessary notifications below. Correspondence can be sent by registered mail if the Regional Office wishes to maintain a record of its distribution to special parties, particularly in cases where court action might be expected. Section 4(b)(5)(A)(ii) of the Act requires the Secretary to provide actual notice to the State agency of each State in which the species is believed to occur and to each county or equivalent jurisdiction in which the species is believed to occur, and to invite comment regarding proposed listings or critical habitat designations or revisions. Therefore, correspondence sent by registered mail to the State agency and county would document fulfillment of that requirement. Receipts for such mailings are part of the administrative record for the proposed rule.

State agencies also should be provided copies of final rules. If the final rule differs in substance from the State's recommendation, a written explanation must be provided in accordance with section 4(i) of the Act.

Correspondence for Foreign Species

Section 4(b)(5)(B) of the Act also requires consultation with foreign countries when a species proposed for listing occurs partially or totally outside the United States or when a country's citizens harvest the species on the high seas.

Regions are encouraged to communicate with government staff and others in foreign countries to the extent possible to obtain information. However, the official correspondence to the foreign government should be made through the Washington Division of Endangered Species and usually the Department of State. For native species that range into Canada, Mexico, or other countries, Regions 1 through 7 should submit draft letters prepared for the Director's signature with the proposed rule package (including an electronic version through cc-mail or on diskette). Regions should contact the Office of Management Authority, Branch of Operations (703/358-2095), to obtain current addresses for the most appropriate wildlife or plant regulatory agency. Upon publication of the proposed rule, the Washington Division of Endangered Species will finalize the letter and submit it for the Director's signature. Upon signature, the letter and a copy of the proposed rule will be mailed to the foreign government, and a copy of the signed letter will be forwarded to the Regional Office and Office of International Affairs. It is also recommended that the same foreign government that was contacted about the proposal be notified once a final action is taken.

For foreign species, the Office of Scientific Authority should prepare correspondence to be transmitted to the foreign government through the Department of State. Correspondence may be prepared for the Director's signature for species occurring in Canada and Mexico.

Newspaper Notices

Section 4(b)(5)(D) of the Act requires that a summary of any proposed regulation (native species only) be published in a newspaper of general circulation in each major geographic area in or near where the species is thought to occur. (Sound judgment must be used in each case to assure adequate notice has been given.) This should be brief (similar to the SUMMARY in the Federal Register document) and does not require the inclusion of a map. A single day's notice in each newspaper may suffice. The summary should indicate where further details can be obtained and where questions and comments can be directed. Preparation of the newspaper notice should be done at the time the package is started on the surname route and then must be finalized and published within 20 days of publication of the proposed rule. This allows for publication of the newspaper notice before the 45-day time limit for requesting public hearings has expired and provides ample time for readers to provide comment.

Newspaper notices are required for all proposals and notices of public hearings, but are not required for final rules. Do not confuse the newspaper notice with press releases, which are optional. Copies of all correspondence sent by the Service and comments received, and especially the legally required letters to State agencies and county governments, must be kept in an administrative record in the Regional or Field Office. Failure to publish the required newspaper notices or make other statutory notifications within 20 days could nullify the listing action if challenged in court.

In cases where a species is wide-ranging and occurs in more than one Region, each Region is responsible for arranging for publication of newspaper notices in its own Region. Regions should use their judgment regarding how many newspapers are necessary to adequately fulfill the Act's requirement. Certainly major papers with wide distribution are the most likely candidates and any smaller papers in areas of particular interest. Non-lead Region should coordinate with the lead Region prior to publishing the newspaper notice provided by the lead Region.

Public Hearings

A public hearing may be requested under the Act, and must be made in writing within 45 days of Federal Register publication of the proposal. Further guidance appears in the last part of this section.

Press Releases

National press releases are not required, but the Department frequently chooses to issue them. Press releases are not essential to most rulemakings, considering the number of other notifications we provide, but should be prepared for at least local release. They should also be prepared when species are delisted or reclassified due to recovery, critical habitat is designated, the species is of regional or national public interest, public awareness or assistance will benefit the species, or listing actions have been controversial. Press releases can be for national or regional release.

Notifications Necessary for Rules and Notices

Type of Notification	Required for ¹		
	N	P	F
<u>Letters to:</u>			
Appropriate State Agencies (optional letter to governor following Regional Office protocol)	x	x ²	x
Appropriate County Governments ²		x ³	x
Affected Federal Agencies ⁴	x	x	x
Affected Foreign Nations ⁵			
Appropriate Scientific Societies	x	x ²	x
Other Affected Land Managers ⁶	x	x	x
Interested Parties (see list with model for examples)	x	x	x
Newspaper Notice in Local Paper		x ²	
Optional Press Release--Regional or National	x	x	x
Public Hearing (if requested)			
Public Notice of Hearing in <u>Federal Register</u> and Local Paper		x ²	
Conduct Hearing		x ²	

¹ N=Notice, P=Proposed Rule, F=Final Rule.

² Legislative requirements; others reflect Service policy.

³ For actions involving many counties, mailing labels may be purchased from the National Association of Counties (202/393-6226).

⁴ The Forest Service has requested that we send the letter to their appropriate Regional Office with a "cc" to the Chief, Forest Service. The Department of Defense has requested that we notify by direct mail the Defense Department facility with lands potentially affected by a listing. The address of the Washington Department of Defense offices that also should be notified are listed on the next page. This procedure can be adopted for other affected agencies, as appropriate.

⁵ Draft letter should be submitted with the proposed rule to Washington.

⁶This includes tribal governments and the appropriate Bureau of Indian Affairs office.

Department of Defense Contacts

The following Department of Defense Offices should be notified of proposed and final listings on their lands:

Army (Military):

Conservation Division (P.Pierce)
Headquarters of the Army
Environmental Programs Directorate
(Attn: DIAM-ED-N 600)
Army Pentagon
Washington D.C. 20310-0600

Army (Civil Works):

Endangered Species Coordinator (CW) (J.Bushman)
U.S. Army Corps of Engineers
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000

Navy:

Director, Natural Resources Division (T.Egeland)
Navy Facilities Engineering Command
Code 143
200 Stovall Street
Alexandria, VA 22332-2300

Marine Corps:

Natural Resources Program Manager (J.Omans)
HQ, Marine Corps
2 Navy Annex
Washington, D.C. 20380-1775

Air Force:

Deputy Assistant Secretary of the Air Force
for Environment, Safety and Occupational Health
1660 Air Force Pentagon Room 5C866
Washington, D.C. 20330-1660

Model Letter for Proposed Rule Notification to State/Federal Agencies

In Reply Refer To:
(FWS/___)

Mr. Joe Smith
Director, Department of Wildlife
4444 Main Avenue
Capital City, Wisconsin 22046

Dear Mr. Smith:

Enclosed is a copy of a recent Federal Register publication that proposes to list the _____ as an endangered species pursuant to the U.S. Endangered Species Act of 1973, as amended. [Briefly describe the action being taken, noting the species, geographic area, and circumstances involved. Be brief. The letters simply transmit the Federal Register material, which itself has all the details.]

[Each letter should be drafted to specifically address the manner in which each of the above parties is involved. For example, the letter to the State agency should address section 6 of the Act while letters to Federal agencies should address section 7 requirements. Counties may be interested in sections 6, 7, 9, and 10.]

[Each letter should request comments (noting the end of comment period) and should provide a name, address, and telephone number to which questions and comments can be directed. If critical habitat is being designated, request specific and detailed economic information (see Economic Handbook for guidance on what to request) and data concerning any involvement of Federal funds or permits for activities that may affect or be affected by the critical habitat designation. If they have provided data before, ask if they have any recent information on the status or threats to the species.]

Sincerely,

(5 lines)

Regional Director or Field Supervisor

Enclosure

Model Letter for Proposed Rule Notification to Interested Parties

In Reply Refer To:
(FWS/___)

Ms. Wendy Smith
Curator, Los Angeles County Museum
4444 Main Avenue
Los Angeles, California 22332

Dear Ms. Smith:

Enclosed is a copy of a recent Federal Register publication that proposes to list the _____ as an endangered species pursuant to the U.S. Endangered Species Act of 1973, as amended. [Briefly describe the action being taken, noting the species, geographic area, and circumstances involved. Be brief. The letters simply transmit the Federal Register material, which itself has all the details.]

[Each letter should specifically request the type of comments desired (indicate end of comment period and public hearing dates). Be brief, since details are provided in the enclosed proposed rule. If critical habitat is being designated, request specific and detailed economic information and data concerning any involvement of Federal funds or permits for activities that may affect or be affected by the critical habitat designation. If they have provided data before, ask if they have any recent information on the status or threats to the species. Provide a name, address, and telephone number to which comments or questions can be directed and/or to explain the purpose of our notifying the subject parties.]

Sincerely,

(5 lines)

Regional Director or Field Supervisor

Enclosure

Sample Letter for Proposed Rule Notification to Foreign Government

In Reply Refer To:
FWS/AES/TE

Mr. Denis Moffat
Manager of Conservation Services
Ministry of Environment, Lands and Parks
800 Johnson Street, Second Floor
Victoria, British Columbia
V8V 1X4
Canada

Dear Mr. Moffat:

Enclosed is a copy of a recent Federal Register publication proposing that the Kootenai River population of the white sturgeon (Acipenser transmontanus) be added as an endangered species to the United States List of Endangered and Threatened Wildlife and Plants. This action is being taken pursuant to the requirements of the Endangered Species Act of 1973, as amended (Act). The Act requires the Secretary of the Interior to monitor the status of certain wild populations of plants and animals and to identify those species that are either in danger of extinction (endangered species) or likely to become endangered in the foreseeable future (threatened species). The Secretary has delegated this responsibility to the U.S. Fish and Wildlife Service (Service).

The information currently available to the Service indicates that the Kootenai River population of the white sturgeon qualifies for protection under the Act and should be listed as an endangered species. The enclosed Federal Register publication discusses this proposal in detail. The proposed action, if made final, would implement full protection for this fish under the Endangered Species Act. The Kootenai River population of the white sturgeon is restricted to approximately 168 miles (270 kilometers) of the Kootenai River in Idaho, Montana, and British Columbia, Canada, primarily upstream from Cora Linn Dam at the outflow from Kootenay Lake in British Columbia.

I would appreciate your forwarding this proposal to any and all parties who might have additional information on this species. As noted in the enclosed Federal Register publication, please request all information to be forwarded directly to the Field Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705, U.S.A., no later than (60 days from Federal Register publication), to be assured of full consideration.

Sincerely,

DIRECTOR

Enclosure

bcc: FWS, Region 1, Portland, Oregon
FWS, Region 1, Boise Field Office
FWS, Region 6, Denver, Colorado

Sample Letter for Final Rule Notification to Foreign Government

In Reply Refer To:
FWS/AES/TE

Dr. Exequiel Ezcurra
Director General
Direccion General de Conservacion
Ecologica de los Recursos Naturales
SEDUE
Rio Elba #20, 10o Piso
Cuauhtemoc 06500
Mexico, D.F.

Dear Director General:

On March 5, 1993, the U.S. Fish and Wildlife Service (Service) listed the coastal population of the western snowy plover (Charadrius alexandrinus nivosus) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). The information your agency provided on snowy plover breeding sites in Baja California, Mexico, in a letter dated July 21, 1992, was very useful and was included in a March 5, 1993, Federal Register publication announcing the listing of the species (copy enclosed).

The effects of listing the coastal population of the western snowy plover on recreational uses of United States west coast beaches are not fully known at this time. A recovery plan, which will be prepared by the Service, will fully address this issue. This plan will identify specific measures to protect nesting and wintering areas and to restore the coastal population to levels no longer requiring protection under the Act.

Please feel free to contact me if you have any questions regarding the listing.

Sincerely,

DIRECTOR

Enclosure

bcc: FWS, Region 1, Portland, Oregon
FWS, Region 1, Sacramento Field Office
FWS, Region 1, Olympia Field Office
FWS, Region 1, Portland Field Office

List of Interested Parties

The following are suggested as recipients for the general notification:

1. Scientific societies

Send to general and specific societies as appropriate.

2. Conservation, industry, or other groups

See Conservation Directory (National Wildlife Federation).

3. Landowners

Landowners should be contacted directly and early in the process, prior to proposal, so the process can be fully explained and any fears allayed--see Handbook **Section I.D.**

4. State agency personnel, other than the official contact person and/or agency

5. Petitioners and commenters

All petitioners and all commenters on previous notices or proposals regarding this species (significant comments only--not "postcards" supporting/opposing issue)

6. Others (some of these have requested routine copies)

Species Survival Commission (plants and animals)
IUCN Headquarters
Rue de Mauverney, 28
CH-1196 Gland
Switzerland
(Insert a note asking that the information be forwarded to the appropriate Specialist Group Chair)

BirdLife International (birds only)
Wellbrook Court
Girton Road
Cambridge CB3 0NA
ENGLAND, U.K.

World Conservation Monitoring Center (plants and animals)
219C Huntingdon Road
Cambridge CB3 0DL
England, U. K.

The Nature Conservancy (Arlington, Virginia)
State Natural Heritage Programs

Garden Club of America

American Association of Botanical Gardens and Arboreta, Inc.

Natural Resources Defense Council

New England Wildflower Society

American Society for Plant Taxonomists

Missouri Botanic Gardens, Center for Plant Conservation

7. Members of Congress

Contacting local offices of the Congressional delegation is left to the discretion of the Regions. Many appreciate or have requested notification. The Office of Legislative Services advises the affected members of the pending action when the proposal, notice, or final is in Washington, D.C. This notification usually takes place one or two days before the action is published in the Federal Register.

B. Public Hearing Guidance

A public hearing is to be held in the general area where the species occurs if a written request was received within 45 days of the date of publication of the proposal or the Service decides to hold a hearing and announces it in the proposal, in the general area where the species occurs. The Act does not allow for any extension of this 45-day period, although the Service may always hold a hearing on its own option. Immediately following a request for a hearing, a location and time (most hearings are scheduled for evening) must be arranged and an announcement published in the Federal Register and local newspaper. The requester and any other parties having expressed an interest in such a hearing or in the species should be notified by letter.

Announcements and notifications should appear as quickly as possible to allow adequate advance notice. A minimum of 15 days should be allowed between the Federal Register announcement and the hearing. The public hearing must be held during an open comment period. If the initial comment period closes by the time of the hearing(s), the public hearing notices (Federal Register and newspapers) must announce the reopening (or extension) of the comment period for a period covering the hearing(s). It is incumbent upon the Region to schedule and hold the hearing(s) expeditiously.

Public comment periods should be reopened for no more than 30 days, and there should be a minimum of 10 days between the hearing date(s) and the end of the reopened comment period. Comment periods should not be extended beyond the sixth month following publication of the proposal. This is necessary due to the overall 1-year deadline to finalize proposals. The Act requires the Service to make the decision based upon the best available information, not what might be available next year after another study or report is expected to be completed. If a comment period must be extended beyond the sixth month, the Director must sign the Federal Register notice.

Regions prepare and sign notices to announce public hearings and reopen comment periods up to 6 months following the date of the proposed rule and send them directly to the OFR (after Regional Solicitor's Office review, if needed) with a copy to the Washington Division of Endangered Species and the Division of Policy and Directives Management (PDM). Signed notices should be submitted to the OFR to arrive there at least 3 weeks before a hearing is scheduled.

It is important that the Washington Division of Endangered Species' copy arrives at the same time (or before) the originals arrive at the OFR. The copy for the Washington Office must, therefore,

be shipped at the same time and via the same carrier as the OFR copies or transferred via fax or cc-mail. The purpose for this requirement is to coordinate any changes requested by the OFR, Regional Office, Washington Office, or other offices prior to publication. Communication between the OFR and Washington Office is greatly facilitated if Washington is in possession of the subject document.

Participation in the hearing should include as many Service employees as necessary to make presentations and to serve as door attendants, parliamentarians, legal advisors, etc. A Regional Office or Washington Office Solicitor should be in attendance, and possibly serve as hearing officer, particularly if controversy is expected. If more than one hearing on this issue is to take place, identical formats (e.g., Service presentation) must be used. Hiring a court reporter to prepare a record of the hearing is recommended.

A suggested agenda for hearings follows:

Introduction. Discussion of the hearing purpose, introduction of participants, and explanation of agenda and rules by the hearing officer for the record. To facilitate the uninhibited exchange of concerns, the Service may consider banning cameras and videotape recorders.

Service Presentation. A presentation of biological and impact information upon which the action is based and an explanation of action in common terms by a Service employee should be conducted for the record. The use of slides, large maps, handouts, or other visual aid materials should be considered. In particular, maps of any critical habitats showing the audience precisely where the lines were drawn can help ensure a better understanding by those present. If possible, these should be put in the hearing record in paper form. Do not overwhelm the audience with graphics on 'egg laying rates' or other technical information. Past and present distribution and population numbers are some of the most important information, along with a discussion of known threats and limiting factors. Non-Service employees can also be asked to make presentations. Again, avoid technical data and jargon, as well as information not germane to the issue of listing the species or determining critical habitat.

Floor Statements. Allow attendees to make statements for the record. If there is a large attendance and statement time will be limited, state this at the beginning. Statements are usually taken in the following order: Federal elected officials; State and local elected officials; Federal, State and local agency personnel; and then others in alphabetical or first come order. Copies of all statements given at the hearing should be requested in advance of the presentation of the statements and such statements should be retained in the record. The public notice for the hearing should clearly state that a copy of the statement should be available at the start of the hearing, particularly if a large number of participants are expected where oral presentations might have to be limited in time. (Written statements are not required for someone to be allowed to give an oral statement, but they are encouraged.) It must be explained that written statements are given equal consideration as oral ones, and that additional written comment may be submitted for a certain period following the hearing (give date and addresses in the handouts).

Question and Answer Period. This portion is optional and will depend on the time available and the preference of the hearing officer. Allow questions from the floor and provide answers from Service employees. This portion of the hearing can be conducted on or off the record. The hearing officer should make it clear whether it is on or off the record. The Service prefers this to be on the record unless there is some compelling reason for it not to be. If attendees wish their questions to be part of the record, then they should be. A good, impartial hearing officer is essential for this portion of the hearing.

The organization and format of hearings can be as simple or as complex as the situation calls for. However, being totally prepared and well organized is critical. A good hearing officer is necessary, especially where controversy is expected. Requesting attendees to fill out cards (name-- "printed please," address, affiliation, and wishes to make a presentation - "yes/no," whether oral or written or both) at the door or to sign-in serves as a record of total attendance and is recommended.

Hearing Record. Attendees may submit written comments at the hearing, and these should be collected by the hearing officer or other designated Service employee. The introduction, Service presentations, and floor statements portions of the hearing should be part of the record. The question and answer portion may or may not be on the record. A court reporter can be employed to prepare a record of the meeting. If a reporter is employed, an agreement should be obtained for timely delivery (e.g., 2 weeks) of the record following the meeting. This is preferable if the hearing is expected to be controversial and will usually provide the quickest and most accurate record preparation. As an alternative, a Service employee can tape the hearing for later transcription into a typed verbatim record, but this usually is quite time-consuming. If this method is chosen, use a "fool-proof" tape recording system, consisting of primary and back-up microphones and tape recorders. Microphones, visual aids, and other materials should be arranged as necessary and should accommodate room size, audience interest, etc.

Approach hearings in a positive manner and be as cooperative, informative, and courteous to attendees as possible. Commitments (e.g., "absolutely no effect on your project") should never be made at hearings. The purpose of the hearing is to gather public suggestions and information for consideration by decisionmakers and to provide information back to the public. Remember that no final decision may be made or promised on any proposed action while the public comment period is open.

VI. LISTING PROCESS AND ASSIGNED RESPONSIBILITIES

A. Washington and Regional Roles

The evaluation of candidate species, initiation of status survey proposals, collection and review of information for proposals, and the preparation of notices, proposals, and final rules are the responsibility of the Regional and Field Offices. Operational and on-the-ground tasks are normally the responsibility of the Regional Offices, which may delegate these down to Field Offices. Regions are responsible for providing scientifically accurate, biologically and legally sound rulemaking recommendations that adhere to Service policy. Regions are also responsible for ensuring that the administrative record clearly supports the rulemaking decision and that the rule or notice is coherently written and grammatically correct. In short, the Regions are responsible for ensuring the integrity of the decision and the quality of the administrative record.

The primary functions of the Washington Division of Endangered Species are formulation of policy and procedural guidance, oversight of the listing program, and coordination of candidate and 5-year reviews. As staff to the Director, the Washington Division of Endangered Species staff reviews listing documents for national consistency, adherence to policy and procedural guidance, and compliance with the Act, including the Act's requirement that certain decisions be based on the best available scientific information, and includes review of tone and clarity of expression.

A breakdown of the listing procedures and the responsible office(s) appears in section C below.

B. Lead and Non-Lead Region Responsibilities

Determining Lead Region

Generally, the Region with most of the range of the species (historic or current) is assumed to be the "lead Region." However, the lead may be assumed by another Region when practical (e.g., it contains greater threats or conflicts or greater expertise) upon mutual consent.

Responsibilities of Lead Region

The lead Region must keep the other affected Regions informed throughout the listing process. The lead Region may:

- (1) Request information from and coordinate with other Regions and other Service programs, such as fisheries and migratory birds;
- (2) Request other Regions to coordinate status surveys within their Region;
- (3) Provide overall coordination of contacts with States and other Federal agencies; and
- (4) Act on behalf of the Service in all general matters regarding the listing action.

Further, the lead Region must:

- (1) Send copies of all draft findings and rules (proposals, finals, notices) to the other affected Region(s) for review before submitting the document to Washington;
- (2) Respond to other Regions' concerns and comments and make every effort to obtain consensus on the information base and listing recommendation before transmitting a rule or notice to Washington;
- (3) Notify the other Regions in advance of any significant changes in the draft documents; and
- (4) Coordinate all public hearings and meetings with the other affected Region(s).

Responsibilities of Non-Lead Region(s)

To expedite the listing process, packages will not be routed through the non-lead Regions for surnaming. Instead, these Regions must review the draft rules and notices as they are provided by the lead Region and provide a memorandum from the non-lead Regional Director to the lead Regional Director within 30 days. This memorandum may be a simple statement of concurrence or it can raise concerns and recommendations. The non-lead concurrence/ nonconcurrence memorandum should be submitted to Washington with the listing package or notice. The Washington Division of Endangered Species will coordinate resolution of any disagreement among Regions, but the Director expects these instances to be extremely rare.

C. Listing Process: Step-by-Step

The following table shows the steps in the listing process, from initial consideration of a species as a candidate through its final listing or exclusion from further consideration, and the responsible office for each action. Regions may delegate some of these tasks to Field Offices.

<u>LISTING PROCESS</u>	<u>RESPONSIBLE OFFICE</u>
1. Gather existing data on species and evaluate completely:	Regional Office
a) If data are inadequate, pursue further status surveys; or	
b) If species does not qualify for listing, move to category 3 and advise the Washington Division of Endangered Species (Division); or	
c) If species qualifies for listing, assign listing priority. If all higher priority species have been proposed, proceed with steps below.	

2. Begin listing process and proposal package preparation: Regional Office
- a) Determine appropriateness of critical habitat;
 - b) Prepare proposed rule package;
 - c) Prepare any needed critical habitat maps; draft maps may be submitted to the Division for review prior to final preparation if problems or concerns exist; and
 - d) Contact other Service offices that may be affected (e.g., refuges, migratory birds, fisheries), as appropriate.
3. Begin approval process for package:
- a) Begin package on surname route; Regional Office
 - b) Regional Office or Field Office biologist, Endangered Species Coordinator, Regional Solicitor, Assistant Regional Director(s), and Regional Director initial package control sheet and surname first page of rule; Regional Office
 - c) Send complete package to the Division; include transmittal memorandum, background information, copies of previous comments, summary inside front cover, draft press release (as appropriate), etc. Also send electronic copy (diskette or cc-mail) of summary sheet and rule. (See Handbook **Section II**); Regional Office
 - d) The Division logs the package and reviews it for policy adherence, basis for listing, and tone. The Division is not responsible for correcting inaccuracies in factual biological data as presented. The Regional Liaison and Chief, Branch of Listing and Candidate Assessment, surname the document and place it on the surname route within 10 business days following receipt in the Division; Washington Office
 - e) If the package pertains to a rule for a foreign species or contains a special rule or experimental population, the package will be forwarded to the Washington Solicitor (SOL-CW); Washington Office
 - f) If the package pertains to a migratory bird or native fish, and the document has not been surnamed by the program office in the Region, the Division will forward the package to the appropriate program office in Washington for surname; Washington Office
 - g) Copies of the Federal Register document and summary sheet for rules pertaining to species listed under CITES will be

- provided electronically by the Division to the Office of Scientific Authority, Law Enforcement, and/or the Office of Management Authority for their informal review. Federal Register documents and summaries pertaining to migratory birds and native fishes will be provided electronically to the Office of Migratory Bird Management and Fisheries, respectively, for their informal review. Documents pertaining to species under the Western Hemisphere or Cartagena Conventions will be provided electronically to International Affairs;
- h) The Division will review any notes, comments, or revisions from these offices. If problems are identified either on the surname route or in the Division's review and the package requires substantive revisions, the Division will coordinate revisions with the originating Region and correct the document. If major problems are identified with the package, such as the recommended action is not adequately justified by the supporting information or public comments are not adequately addressed, the Division will prepare a memorandum for the Director's signature returning the package to the originating Region for resolution. Once the rule is returned from the Region, or is otherwise ready to go forward, the Division prepares a "note to reviewers" if needed to provide a recommendation to the signing official or if any special information or issues need to be brought to the attention of the remaining reviewers. The Division Chief surnames the rule;
- i) Forward the package to the Division of Policy and Directives Management (PDM);
- j) PDM reviews and surnames the package and enters the rule or notice into the Departmental regulatory calendar, if not already entered. PDM forwards the package to the Assistant Director - Ecological Services;
- k) Assistant Director - Ecological Services reviews and surnames the package and provides the package to the Director with its recommendation;
- l) If necessary, the Division sets up briefings for the Director/Deputy Director or Assistant Secretaries as requested, including presentations.
- m) The Director reviews and signs the document or, for critical habitat, special rules and experimental populations, surnames the document prior to elevating it to the Assistant Secretary for Fish and Wildlife and Parks;
4. Following signature, the package is returned to the Division. The originating Region and the Washington Office of Public Affairs are

Washington Office

Washington Office

Washington Office

Washington Office

Washington Office

Washington Office/
Regional Office

Washington Office

notified. A copy of the signed rule is forwarded to the Office of Regulatory Affairs (ORA) for Departmental clearance.

Washington Office

5. One electronic copy or paper copy of the summary and signed rule are distributed to:

Washington Office

- ORA
- Regional Office
- Field Office (if involved in preparing document)
- Current Information (Public Affairs)
- Endangered Species Technical Bulletin editor
- Office of Scientific Authority
- Office of Legislative Services
- Division of Law Enforcement
- Office of Management Authority
- Office of Migratory Bird Management (for migratory birds)
- Fisheries (for fishes)
- International Affairs (foreign species)
- Other affected Regional Offices (multiple Region species)
- PDM
- Division of Refuges
- Reinsertion into binder for administrative record

6. If OMB review is required, the Division forwards three copies of the rule and a request for review under Executive Order 12866 to OMB following clearance by ORA.

Washington Office

7. Following OMB or ORA clearance, as appropriate, forward 3 copies of rule with 3 original signature pages, WordPerfect file and certification letter to the Office of Federal Register (OFR).

Washington Office

- Upon notification of publication date by OFR, immediately notify by telephone the Regional Endangered Species Coordinator, and, if appropriate Legislative Services and Public Affairs.

8. Begin final preparation of notifications and newspaper notices and send on surname route in Regional Office.

Regional Office

9. After publication of proposed rule in Federal Register:

- a) Obtain copy of published rule or hearing notice. If necessary, request Division to arrange for courier purchase of the daily issue from the GPO Bookstore and overnight delivery to the Region.

Regional Office/
Washington Office

- proofread published document for any significant text or typographical errors. If any, contact Washington

immediately to get a correction notice in the Federal Register as soon as possible;

- b) Distribute correspondence for proposals with copy of Federal Register publication within 15 days of publication date; for hearings, within 5 days; Regional Office
- c) Prepare and transmit Air Mail letter and attachments to affected foreign governments (with a copy to Office of International Affairs) or transmit through proper State Department channels within 15 days of publication date (foreign species should have a longer comment period); Washington Office
- d) Ensure publication of the newspaper notice within 20 days of document publication date (only for U.S. species); Regional Office
- e) Conduct public hearing(s), if requested: Regional Office
- arrange for location(s) and time(s)
 - publish notice in the Federal Register and extend/reopen comment period, if necessary (send advance copy to Washington Office)
 - publish notice in appropriate newspapers
 - allow 15 days between notifications and hearing
 - conduct hearing
 - be attentive to the 1-year deadline and schedule hearings expeditiously after request; and
- f) Check required time periods carefully Regional Office
- 90 days must elapse between the proposal/required notifications to States and counties and the effective date of any final rules; all proposals are under a 1-year deadline for being published as a final rule (they can be extended for up to 6 months if there is a substantial disagreement among experts regarding the accuracy or sufficiency of the available data concerning the proposed listing or critical habitat designation).
10. Begin preparation for final decision document:
- a) Reevaluate all data; evaluate all comments and data received since the proposal was published: Regional Office
- if the species now appears to not warrant listing, the proposal must be withdrawn and biological reasons provided (proposals cannot be withdrawn for political, administrative, or economic reasons)
 - if there is a substantial disagreement among experts regarding the accuracy or sufficiency of the available data

concerning the proposed listing or critical habitat,
prepare a notice to extend proposal for 6 months

--if listing is warranted, proceed with steps b and c below;

b) Summarize all comments (include hearing transcripts, if any);
and

c) Prepare final rule package.

11. Begin final decision document on approval process:

--Repeat steps 3 through 6

Regional Office/
Washington Office

--Submit draft decision document to Washington no later
than 60 days prior to expiration of the 1-year deadline

--Under 3c, add copy of comments and other information
(include hearing transcripts) received since the proposal
was published.

12. Following OMB or ORA clearance, as appropriate, add "when
listed" number to table entry, forward 3 copies of rule with 3 original
signature pages, WordPerfect file and certification letter to the OFR.

Washington Office

--Upon notification of publication date by OFR, immediately
notify by telephone the Regional Endangered Species Coordinator,
and, if appropriate Legislative Services and Public Affairs.

13. After publishing final rule in Federal Register:

a) Review published document in Federal Register for any
significant text or typographical errors

--if any, notify the Division regarding publication of a
correction as soon as possible;

Regional Office

b) Distribute correspondence within 30 days of publication date;

c) Prepare and transmit Air Mail letter to affected foreign
governments through proper channels; and

Regional Office

d) If final differs from State recommendations, provide written
explanation to the State per section 4(h) of the Act within 15
days of publication of final.

Regional Office/
Washington Office

15. Add species to Lists (i.e., review and update CFR each year).

Regional Office

Washington Office

D. Tracking Mechanisms

Listing actions are tracked through two systems in Washington--(1) the Director's priority objectives, and (2) the monthly surname logs.

The Director's priority objectives system targets the number of species for which proposed and final rules will be published each fiscal year to list, delist, or reclassify species. These targets can be amended to reflect necessary additions or changes. Upon request from the Director, Regional Directors should be prepared annually to supply information on which species they intend to list, delist and reclassify to meet the Director's priority objectives.

The surname log is prepared monthly and tracks all rules that have been received in Washington, as well as final rules that are within 3 months of the 1-year deadline. The Washington Office prepares these reports using surnames on the package control sheets.

Both documents and updates are distributed to the Regional Offices. The monthly logs serve as the only formal (written) receipt notice to the Region that a package has arrived in the Washington Office. A package review system has been developed for expediting packages in the Washington Office.

APPENDICES

Appendix I. Handbook Updates and Addenda

<u>Page Numbers</u>	<u>Date</u>
Draft 1	July 31, 1983
First Edition	February 1984
Revision 1 (5, 5A, 46, 47, 80, 81, 81A(new), 88, 89, 90, 101, 102)	March 9, 1984
Revision 2 (2A, 4, 5, 5A, 8, 12, 17, 20, 21, 26, 29, 30, 34, 39, 43, 44, 47, 48, 54, 55, 57, 59, 60, 92)	May 22, 1984
Revision 3 (4, 12, 17, 19, 21, 22, 28, 39, 43, 44, 47, 48, 49, 50, 75, 81A, 103)	August 13, 1984
Interim Guidance	September 14, 1984 January 4, 1985 May 13, 1985 June 24, 1985
<hr/>	
Second Edition	October 1985
Interim Guidance	July 5, 1988
<hr/>	
Third Edition (Final)	January 1989
<hr/>	
Fourth Edition (Final)	March 1994

Appendix II. Director's Order #64

Appendix III. Suggested Pre-proposal Measures

Objective: Create a favorable climate for the listing action.

- o Arrange for fair and balanced local publicity for the proposed action. Explain how it will be beneficial and possible impacts of the proposed action. DO NOT ATTEMPT to predict this action's impact on a particular project or individual.
- o Hold one or more meetings with invited opponents and proponents. Explain the extent and limits of the proposed listing action. Explain the Service goal of protecting the subject species while also accommodating development.
- o Begin immediately to obtain citizen/landowner involvement in on-the-ground management actions, both near- and long-term.
- o Arrange to discuss the proposal with interested congressional staff through the Office of Legislative Services. (Note - contact with the district offices of members often is not relayed to the member or his or her Washington office staff; it is the Member or Washington office legislative staff who will become involved in any controversy. Therefore, it is important that the member of staff is involved in actions that may involve controversy.)
- o Start the recovery process even before a proposal is published by at least identifying specific actions (e.g., through biologists involved in status surveys) that would be beneficial to the subject species, discussing them with the landowner(s) and initiating immediately such actions as circumstances permit.
- o Ensure that affected landowners (in cases where there are sufficiently small numbers to make this action reasonable) are aware of the contemplated proposal, of the general extent and limits of its potential effect on their individual interests, and that their participation in management and recovery of the species will be sought, if the species is listed. Key landowners should be contacted.
- o Clarify diplomatically that landowner concurrence with the listing (and protection measures and recovery actions as well) is desired though not a requisite for the Service to proceed with the action.
- o Hold periodic discussions with key Federal agencies and State and local governments to explain what is coming and why, and affirm that their concurrence with the listing is desired, though not a requisite to the action. Become involved as early as possible in the planning phase of projects.
- o Briefly describe each of the above efforts in the summary sheet that accompany the proposed and final rule packages.

Appendix IV. Solicitor's Memorandum on Ex Parte

Appendix V. Control Sheet

ENDANGERED SPECIES RULE/NOTICE - ACTION CONTROL

SHEET

necessary action, form is a part (AES) for record.

Please review those portions of interest to you, take the and immediately move the package to the next office. This of the permanent, administrative record. Phone 208-4646 messenger pickup. This sheet does NOT constitute the surname

ACTION:

RO BIOLOGIST: _____ | **TELEPHONE No:** _____

TE BIOLOGIST: _____ | **TELEPHONE No:** _____

DATE due FR (if any): _____ | **DATE PROPOSAL PUBLISHED:** _____

	OUT	Date	Date	Location	Action Office	Action Required	Initial	IN
				RO	RO/FO Biologist	Surname doc.		
CUT				RO	E&T Sp. Coordinator	Surname doc.		
OFF				RO	Regional Solicitor	Surname doc.		
THIS				RO	Asst. Reg. Director	Surname doc.		
PORTION				RO	Regional Director	Surname doc.		
				452		Log in		
(attach				ARLSQ	TE Biologist	Review		
to cover				3024				
and leave				Interior	AES	Log - 1		

1½ 2" at	6560	(see below **)			
top of	Interior	Solicitor (A/SOL-FW)	Surname doc.		
cover for	3024				
label)	Interior	AES	Log - 2		
	452				
	ARLSQ	TE	Surname doc.		
	224				
	ARLSQ	PDM	Surname doc.		
	3024				
	Interior	DAES	Review doc.		
	3024		Surname and		
	Interior	AES	Advise Dir.		
	3256		Sign or		
	Interior	Director	Elevate		
	452				
	ARLSQ	TE	Distribute		

Rev. 3/94

rules,
others when

**A/SOL-FW will surname: (1) international species listing
(2) experimental population rules, (3) special rules, and (4)
requested.

SPECIAL NOTES ON ROUTING:

Date signed: _____ Date published FR: _____

Appendix VI. Summary Sheets

[The format for Summary Sheets for proposed and final rules follows:

SUMMARY

(Species' Name: scientific and common)

ACTION: (Insert "PROPOSED" or "FINAL") RULE to list as (insert "ENDANGERED" or "THREATENED") (insert "with" or "without") critical habitat.

SPECIES DESCRIPTION: [Be brief.]

LOCATION: [General--e.g., 3 counties in southwestern Utah. Briefly indicate landownership--e.g., primarily located on State and private land, with one population on Federal land (BLM). Attach a general range map. If possible, the map should depict current range compared to historic range.]

STATUS: [Abundance and threats--e.g., 250 breeding pairs distributed over 17 sites and threatened with habitat loss from overgrazing and off-road vehicles. Indicate the species' listing priority number. If the listing priority assigned is inconsistent with the status proposed, explain why.]

FOREIGN GOVERNMENT POSITION: [Include only for species occurring outside the U.S.]

STATE POSITION: [For U.S. species, describe coordination with affected States and indicate their position. Indicate whether the species is included on a State list.]

FEDERAL INVOLVEMENT: [Identify (a) any existing Federal authorities that affect the species' conservation--e.g., the Forest Management Plan Act mandates that National Forests shall implement management plans that provide for the conservation of the natural ecosystem), and (b) Federal authorities that will apply if the species is listed under the Act. Also, identify any Federal agencies or projects that might be impacted by the action. Indicate whether a Federal agency opposes or may oppose the action and what efforts have been made to resolve issues.]

PRE- PROPOSAL ACTIVITIES: [Indicate the extent to which landowners, local governments, other agencies, and interest groups have been contacted. If landowners were not contacted, provide the reason. Briefly describe any agreements established or conservation actions implemented.]

RECOVERY ACTIVITIES: [Briefly -- what is expected to be needed in the future to recover the species or reclassify it to threatened, and what has been done so far. If discrete recovery units have been identified in the rule as essential to the species' recovery, they should be described here.]

EXPRESSIONS OF INTEREST OR CONCERN: [Indicate any interest or sensitivity by Governors, congressional representatives, other public officials, or prominent groups or individuals. Indicate the congressional districts in which the species occurs or may occur, including any districts outside the range that may be affected by the action, such as a district upstream from an aquatic species--e.g., congressional districts: CA--3, 4, and 7; 8 and 9 may be affected; OR--4). For final rules, indicate the number and nature of comments. Any litigation or notices of intent to sue should be noted here, including pertinent dates.]

POTENTIALLY CONTROVERSIAL ISSUES: [Identify and adequately discuss any controversial elements and how they are being handled.]

MEDIA INTEREST/PRESS RELEASE: [Indicate whether there is or may be media interest in the action and whether a press release is needed. If a press release is needed, a copy cleared by the Regional Public Affairs Office must be submitted to the Washington Office in the package. A copy also must be sent to the Washington Public Affairs Office. Any rules to reclassify or delist a species due to recovery must include a press release.]

PUBLICATION DUE DATE: [For final rules, indicate the statutory due date.]

Prepared by:	Biologist and office preparing the rule
Telephone:	xxx/xxx-xxxx
Date:	Approximate date leaving Regional office
Washington Office Contact:	Name of Regional liaison

Telephone:

703/358-2105

[The format for Summary Sheets for petition finding notices follows:

SUMMARY

(Species' Name: scientific and common)

ACTION: NOTICE of finding on petition to list [or delist, reclassify, or revise critical habitat] as (insert "ENDANGERED" or "THREATENED").

SPECIES DESCRIPTION: [Be brief.]

LOCATION: [General--e.g., 3 counties in southwestern Utah. Briefly indicate landownership if known--e.g., primarily located on State or private land, with one population on Federal land (BLM). Attach a general range map, if available. If possible, the map should depict current range compared to historic range.]

STATUS: [Abundance and threats as known or as presented by the petitioner--e.g., 250 breeding pairs distributed over 17 sites and threatened with habitat loss from overgrazing and off-road vehicles. For warranted but precluded 12-month findings, indicate the species' listing priority number.]

EXPRESSIONS OF INTEREST OR CONCERN: [Indicate any interest or sensitivity by Governors, congressional representatives, other public officials, or prominent groups or individuals. Indicate the congressional districts in which the species occurs or may occur, including any districts outside the range that may be affected by the requested action, such as a district upstream from an aquatic species--e.g., congressional districts: CA--3, 4, and 7; 8 and 9 may be affected; OR--4). Any litigation or notices of intent to sue should be noted here, including pertinent dates.]

POTENTIALLY CONTROVERSIAL ISSUES: [Identify and adequately discuss any controversial elements and how they are being handled.]

MEDIA INTEREST/PRESS RELEASE: [Indicate whether there is or may be media interest in the action and whether a press release is needed. If a press release is needed, a copy cleared by the Regional Public Affairs Office must be submitted to the Washington Office in the

package. A copy also must be sent to the Washington Public Affairs Office.]

PUBLICATION DUE DATE: [Indicate the finding due date.]

Prepared by:	Biologist and office preparing the notice
Telephone:	xxx/xxx-xxxx
Date:	Approximate date leaving Regional office
Washington Office Contact:	Name of Regional liaison
Telephone:	703/358-2105

Appendix VII. Package Table of Contents

TABLE OF CONTENTS

[Include all appropriate sections in the following order;
delete inappropriate sections and renumber.]

TYPE OF DOCUMENT

[e. g. , Proposed Rule or Notice of Petition Finding]

Scientific name (common name)

[Reverse for animals]

- TAB 1. ADMINISTRATIVE PETITION FINDING** [Only for notices of petition findings.]
- TAB 2. PROPOSED RULE [or] FINAL RULE [or] NOTICE**
- TAB 3. PRESS RELEASE** [If media interest is expected or the document is a proposed or final rule to reclassify or delist a species due to recovery, a draft press release must be included. The press release must be cleared by the Regional Public Affairs Office and a copy must be sent to the Washington Public Affairs Office.]
- TAB 4. REGIONAL CONCURRENCE** [Only applies for multi-Regional species. Regions should insert the concurrence/nonconcurrence memorandum from any non-lead Regional Director--these serve as "surnames" from those RDs.]
- TAB 5. REFERENCES CITED** [This section is necessary only when references are too numerous to include in the Federal Register document. The list should be included behind this tab.]
- TAB 6. REQUIRED DETERMINATIONS** [This section will contain documentation and certifications required under various statutes and Executive Orders applicable to certain rulemakings. See Section III.F of the Listing Handbook.
- TAB 7. ECONOMIC DOCUMENTS** [For final rules with critical habitat or proposed or final rules for critical habitat when not accompanying a listing.]

- TAB 8. SUPPORTING INFORMATION** [For notices of petition findings and proposed and final rules. Include status reports, panel reports, scientific articles, other status information. Label the citation in the upper right-hand corner. If the materials are extensive, a separate binder may be needed. This should be indicated in the table of contents.]
- TAB 9. PETITION** [For notices of petition findings, and as appropriate for proposed and final rules. It is not necessary to include the 1975 Smithsonian and 1978 Ayensu/DeFilipps plant petitions, which, due to their length, should be referenced only.]
- TAB 10. COMMENTS** [For a proposed rule, include pre-proposal comments. For a final rule, include copies of comments received and public hearing transcripts. If comments are voluminous, include all major, substantive, and/or official comments and only examples of non-substantive comments. If the volume exceeds the limits of the binder, place them in a separate binder and reference it in the table of contents. Comments should be arranged in the following order: Federal (include Congress), State, private. If extremely numerous, each subset should have its own tab and be sorted alphabetically by letterhead or private individual. How they are organized should be explained on the first page behind this tab.]
- TAB 11. PRIOR PUBLIC RECORDS** [Include a copy of all prior Federal Register documents (other than candidate lists) in chronological order--e.g., notice of petition finding, species-specific notice of review, proposed rule, comment period extensions, etc.]

[A photograph or drawing of the species may be attached to the bottom of this page to help reviewers visualize the species. Although optional, this is highly recommended for all proposed and final rules. A simple, separate map showing both historical and current range can also be very helpful; a simple U.S. base map can be used.]

Appendix VIII. CITES Fact Sheets, Lists and Party Nations

fs.1

blank

parties

blank

cites list

blank

Appendix IX. Matrix for Public Comments

matrix

Appendix X. Takings Implication Assessment Example

1

Appendix XI. Executive Order 12866

title pg 1

Appendix XII. Experimental Populations - 1982 Conference Report Excerpt

-

Appendix XIII. 1984 Regulation Promulgating Experimental Populations

1

Appendix XIV. Examples of Published Federal Register Documents

This appendix contains a variety of Federal Register documents that may be useful to Field Office staff during document preparation. These examples were published prior to the distribution of the 1994 Endangered Species Listing Handbook and do not necessarily conform to its guidance. Where the examples and the Handbook guidance diverge, defer to the Handbook guidance.