

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSIONS**

Native Endangered and Threatened Wildlife - Application Requirements for Enhancement of Survival Permits Associated With Safe Harbor Agreements - 50 CFR 17.22(c)(1) & (3) and 17.32(c)(1) & (3), and Candidate Conservation Agreements with Assurances - 17.22(d)(1) & (3) and 17.32(d)(1) & (3).

A. Justification - Form 3-200-54

The following information is provided as part of a request to renew the Office of Management and Budget's approval for information collection pursuant to regulations that implement General Permit Procedures. These information collection requirements are contained in applications for permits that are specifically provided for in 50 CFR 13 and 17. The application form for this activity was assigned number 3-200-54.

1. All of the Laws, Treaties and Regulations administered by the U.S. Fish and Wildlife Service which authorize activities for which a permit is required, authorize such permits in 50 CFR Part 13 (General Permit Requirements). The requirements in 50 CFR Part 13 are in addition to any other permit regulations that may apply to a specific circumstance and are outlined in other sections of regulation. The regulations in 50 CFR part 17 implement the prohibitions and exceptions provisions of the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543 (Act), except for those concerning the Convention on International Trade in Endangered Species of Wild Fauna and Flora, for which regulations are provided in part 23 of this subchapter. The Act provides for the protection of listed species through establishment of programs for their recovery and through prohibition of harmful activities. The Act also provides for the monitoring and conservation of species for which listing is warranted but precluded by other listing actions.

The Act provides a number of exceptions to its prohibitions against "take" of listed species through permitting programs. Regulations have been promulgated at 17.22(c) and (d) for endangered wildlife species, and 17.32(c) and (d) for threatened wildlife species, to guide implementation of these permitting programs for Enhancement of Survival permits associated with Safe Harbor Agreements and for Candidate Conservation Agreements with Assurances under section 10(a)(1)(A) of the Act. **Form 3-200-54** was developed to facilitate collection of information required by these regulations.

2. **Form 3-200-54** addresses application and reporting information requirements for Enhancement of Survival permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances under section 10(a)(1)(A) of the Act. These Enhancement of Survival permits are necessary to implement two policies developed by the U.S. Fish and Wildlife Service (Service) and the National Marine Fisheries Service under the Act.

(NMFS has developed separate regulatory changes to implement these policies.) The Safe Harbor policy and the Candidate Conservation Agreements with Assurances policy are intended to provide incentives for private and other non-Federal landowners to voluntarily restore, enhance, or maintain habitats for listed, proposed and candidate species and species likely to become candidates in the near future. Candidate species are those for which the Service has sufficient information to develop a proposed listing but doing so is precluded by other higher priority listing activities.

An Enhancement of Survival permit authorizes incidental take that may occur under the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances. Take authorized under this permit program would otherwise be prohibited under the Act. Under the Safe Harbor policy, non-Federal property owners who voluntarily enter into a Safe Harbor Agreement for implementation of conservation measures for listed species will receive assurances from the Service that additional regulatory restrictions will not be imposed beyond those existing at the time of the Agreement. Under the Candidate Conservation Agreements with Assurances policy, non-Federal property owners who voluntarily enter into such an Agreement for implementation of conservation measures for species proposed for listing, species that are candidates for listing, or species that are likely to become candidates in the near future will receive assurances from the Service that additional conservation measures will not be required and additional regulatory restrictions will not be imposed should the species become listed in the future. The permits issued for candidate species become effective when the species is listed.

We have significantly expanded the instructions in these permit application forms to make them easier to use and understand. We have also added information to clarify the permit application process in order to avoid common mistakes.

Safe Harbor Agreements - The following covers application requirements in 17.22(c)(1) & (3) and 17.32(c)(1) & (3) for Enhancement of Survival permits associated with Safe Harbor Agreements. These regulations consist of application requirements for endangered and threatened wildlife permits, and permit conditions for endangered and threatened wildlife permits. The information is used by the Service to evaluate applications and issue or deny permits based on the issuance criteria in 17.22(c)(2) and 17.32(c)(2). The issuance criteria are designed to ensure that the requirements of the Act are met, i.e., that conduct of the requested actions and issuance of the permit will enhance the survival of the species.

The purpose for each information request follows.

1. Identifies the area in which activities would be carried out. A description of the property land use activity for which the applicant requests incidental take authorization is necessary for the Service to know the type and level of take that the applicant expects to conduct so the impacts to the species can be assessed. At the time a Safe Harbor Agreement is developed, the Service and applicant will identify a "baseline" condition that the applicant/permittee voluntarily agrees to maintain. The application will request

identification of the baseline because the information is crucial to determining whether the permit will enhance the survival of the species. To clarify the baseline, we have added a request for acres covered by the Safe Harbor Agreement, acres to be impacted, and acres to be protected.

We have combined requirement #3 for a Safe Harbor Agreement and requirement #1 into a single request for information on the property and proposed activity. A copy of the final Safe Harbor Agreement is necessary for the Service to evaluate whether the actions the landowner proposes to take will produce the intended results for the species. It also enables the Service to determine whether the Agreement upon which the permit is to be based is consistent with applicable State laws and regulations and does not conflict with any ongoing conservation programs for species to be covered by the permit, and whether the applicant has shown capability and commitment to implementing all of the terms of the agreement. A description of how the activities included in the Agreement will provide a net conservation benefit to the species is necessary for the Service to assess whether the permit will meet the requirements of the Act, i.e., that issuance of the permit will enhance the survival of the species.

2. The common and scientific names are necessary to identify the wildlife to be covered by the permit and so the evaluation and permit can be tailored to the individual species' requirements. We divided the information requests into two categories: those for a new permit and those for an amended permit. To assist us in our evaluation, we added the following requests for information: species' status (threatened, endangered, etc.); quantification of effects to the species' habitat; and a brief description of the baseline population and habitat conditions. For an amended permit we added a request for information on changed activities to be covered and species to be deleted or added to the existing permit.

3. We added a new item 3 to identify all required Federal and State permits currently held or needed for the proposed activity, not just Federal Fish and Wildlife permits. This request corresponds to item C.1. and C.2. on page 1 for the same information for Federal Fish and Wildlife and State permits.

Certification Notice. We added a certification notice so that applicants can certify that they own the land indicated in this application or have sufficient authority or rights over these lands to implement the measures of the Safe Harbor Agreement and/or Candidate Conservation Agreement with Assurances.

This paragraph addresses the reporting requirements of 17.22(c)(3) and 17.32(c)(3): 1) The permittee will be required to notify the Service of any transfer of lands subject to the Safe Harbor Agreement so that any new landowners may be offered the opportunity to continue the actions the original landowner agreed to and he/she may be offered the same legal assurances. A major incentive for landowner participation in the Safe Harbor program is the long-term certainty

the program provides, including the certainty that the incidental take authorization will stay with the land when it changes hands. 2) The Service requires the permittee/landowner to notify the Service as far in advance as possible of when he or she expects to incidentally take any species covered under the permit to provide the Service with an opportunity to translocate affected individual specimens if possible and appropriate. 3) The Director may deem other requirements necessary or appropriate to carrying out the purposes of the permit and the Safe Harbor Agreement to ensure that the permittee is in compliance with the terms of the permit and Agreement. For instance, if a landowner agreed to fence an area to exclude grazing and monitor reestablishment of the species in the fenced area, the Service may require a report to monitor compliance and success of the conservation strategy. If landowner actions are not accomplishing their intended results, adaptive management actions agreed to by all parties may be appropriate.

Candidate Conservation Agreements with Assurances - The following covers application requirements in 17.22(d)(1) & (3) and 17.32(d)(1) & (3) for Enhancement of Survival permits associated with Candidate Conservation Agreements with Assurances. These regulations consist of application requirements for endangered and threatened wildlife permits, and permit conditions for endangered and threatened wildlife permits. The information is used by the Service to evaluate applications and issue or deny permits based on the Issuance Criteria in 17.22(d)(2) and 17.32(d)(2). Candidate species are treated as if they were listed species. The issuance criteria are designed to ensure that the requirements of the Act are met, i.e., that the conduct of the activity and issuance of the permit will enhance the survival of the species.

The purpose of each information request follows.

1. A description of the land use activity for which the applicant requests incidental take authorization is necessary for the Service to know the type and level of take that the applicant expects to conduct so the impacts to the species can be assessed. If the take would jeopardize the continued existence of the species, the permit would be denied. To clarify the scope of the Candidate Conservation Agreement with Assurances, we have added a request for acres covered by the Agreement, acres to be impacted, and acres to be protected.

We have combined requirement #3 for a Candidate Conservation Agreement with Assurances and requirement #1 into a single request for information on the property and proposed activity. A copy of the final Candidate Conservation Agreement with Assurances is necessary for the Service to evaluate whether the actions the landowner proposes to take will produce the intended results for the species. It also enables the Service to determine whether the Agreement upon which the permit is to be based is consistent with applicable State laws and regulations and does not conflict with any ongoing conservation programs for species covered by the permit, and whether the applicant has shown capability and commitment to implementing all of the terms of the Agreement. A description of how the conservation and enhancement activities included in the Agreement are expected to reduce or remove the threat(s) to the species is

necessary to enable the Service to determine whether the permit will meet the requirements of the Act, i.e., that issuance of the permit will enhance the survival of the species.

2. The common and scientific names are necessary to identify the wildlife to be covered by the permit and so the evaluation and permit can be tailored to the individual species' requirements. We divided the information requests into two categories: those for a new permit and those for an amended permit. To assist us in our evaluation, we added the following requests for information: species' status (threatened, endangered, etc.); quantification of the effects to the species' habitat; and a brief description of the baseline population and habitat conditions. For an amended permit we added a request for information on changed activities to be covered and species to be deleted or added to the existing permit.

3. We added a new item 3 to identify all required Federal and State permits currently held or needed for the proposed activity, not just Federal Fish and Wildlife permits. This request corresponds to item C.1. and C.2. on page 1 for Federal Fish and Wildlife permits and State permits required.

Certification Notice. We added a certification notice so that applicants can certify that they own the land indicated in this application or have sufficient authority or rights over these lands to implement the measures of the Safe Harbor Agreement and/or Candidate Conservation Agreement with Assurances.

This paragraph addresses the reporting requirements of 17.22(d)(3) and 17.32(d)(3): 1) The permittee will be required to notify the Service of any transfer of lands subject to the Candidate Conservation Agreement with Assurances so that any new landowners may be offered the opportunity to continue the actions the original landowner agreed to and he/she may be offered the same legal assurances. A major incentive for landowner participation in the Candidate Conservation Agreement with Assurances program is the long-term certainty the program provides, including the certainty that the incidental take authorization will stay with the land when it changes hands. 2) The Service requires the permittee/landowner to notify the Service as far in advance as possible of when he or she expects to incidentally take any species covered under the permit to provide the Service with an opportunity to translocate affected individual specimens if possible and appropriate. 3) The Director may deem other requirements necessary or appropriate to carrying out the purposes of the permit and the Candidate Conservation Agreement with Assurances. This may be necessary to ensure that the permittee is in compliance with the terms of the permit and Agreement. For instance, if a landowner agreed to fence an area to exclude grazing and monitor reestablishment of the species in the fenced area, the Service may require a report to monitor compliance and success of the conservation strategy. If landowner actions are not accomplishing their intended results, adaptive management actions agreed to by all parties may be appropriate.

3. The Service has developed an electronic permit issuance and tracking system called SPITS (Service Permit Issuance and Tracking System) that will greatly improve retrieval of file information, thereby reducing information collection requirements for renewal applications. To date, the electronic submission of the application is not possible. The Service must receive an originally signed application form. Facsimile and e-mailed signatures are not accepted. Currently, applicants may submit any supporting documentation or information missing from the application, other than an original signature, via facsimile transmission.

We expect that as technology advances, we will be able to accept electronic submissions of applications. Therefore, we changed the format of page 1 of the application form so that the information fields on the form correspond to the data fields in SPITS. The Service is also currently developing electronic forms that will be available for use over the Internet, thereby allowing electronic filing of applications. Once the form is approved, it will be posted on the Internet in a format that will allow the public to complete the form on-line and print the completed form for signature and submission.

4. Requested information is unique to the applicant and is not available from any other source. Application information is kept in office files to eliminate repeat or duplicate requests in the case of renewals, extensions or repeat applications. The Service has developed an electronic permit issuance and tracking system that will greatly improve retrieval of file information, therefore further reducing duplicate information requests for use in renewals, extensions and repeat applications. Since only the Service is authorized to issue this type of permit for species under Service jurisdiction, there is no duplication of other agencies' efforts. Ongoing development of the Service's new permit issuance and tracking system will ensure that no duplication arises among Service offices.

5. Small businesses or small entities must provide the same information required of individual applicants. The information requested is limited to the minimum necessary to establish eligibility.

6. The current frequency and extent of information collection is necessary in order to satisfy public requests for permits. Reduced information collection would result in the Service's inability to respond to permit requests. The consequence of not collecting the information contained in this application form is that the applicant would not be issued a permit since the collected information is either required on the permit itself or needed to make the necessary findings under applicable laws and regulations. Consequently, without a permit, the activity in question would be prohibited. Each application is unique as to species, area, management actions, and purposes of the applicant seeking the permit. There is no information already available that can be used in lieu of that supplied by the applicant.

7. Guidelines in 5 CFR 1320.6 are not exceeded.

8. Attached is a copy of the Federal Register notice of December 21, 2000 (65 FR 80449) documenting the Service's notice soliciting comments on the information collection prior to submission to OMB. The Service's Information Collection Clearance Officer indicates that no comments were received regarding this License/Permit Application form in response to this notice. Opportunities for informal public comment are available through extensive personal contact with the applicants. The Service, on its own initiative, continually evaluates the effectiveness of its regulations and permits. Necessary changes are made through the formal proposed rulemaking procedure at which time public comment is solicited and carefully responded to in a final rulemaking.

9. Not applicable, no payment or gift to respondents is made.

10. Not applicable, no confidential information is solicited. Information collected on permit applications is subject to the Privacy Act and Freedom of Information Act guidelines. All applicants are provided information explaining the requirements of both Acts.

11. Not applicable, no sensitive questions are asked.

12. This is a fairly new type of endangered/threatened species permit. It was a proposed permit when the Service last requested OMB approval in the Fall of 1997 for these forms, and the permit was finalized on June 17, 1999. Only a few permits have been issued since these policies were finalized. The Service expects an increasing number of applicants per year for this type of permit, up to 50 applicants per year.

The Service estimates it will take an applicant for this type of permit an average of two and a half hours to complete this application. Therefore, the annual burden to 50 applicants to complete the application totals 125 hours. Cost to applicants is estimated at \$45 each, or a total of \$450 based on an estimated cost of \$15 per hour for time spent compiling required information and completing the forms. These estimates are based on current experience with the application and current costs for time, printing, and assembly of information.

Monitoring report requirements for these permits vary widely depending on the complexity of permitted activities. Time requirements for this reporting will vary from a minimum of one half hour to a maximum of 15 hours per year for individual permittees, with an average of approximately 5 hours per permittee per year. Since these permits usually require annual reports for multiple years, the number of annual reports required in any one year will be greater than 50.

The Service expects that the number of permits for which reporting is required in any one year will level out at approximately 150. Therefore, the annual time burden for reporting will be approximately 750 hours per year. Cost estimates based on a rate of \$15 per hour yield an annual cost burden of \$11,250. These estimates are based on current experience with monitoring reports and current cost for time, printing, analysis of information and any follow-up correspondence.

The total burden hours for completing the permit application and reporting requirement is 875 hours.

13. There is an additional cost in the form of a \$25.00 processing fee per application. The annual non-hour dollar burden to the respondents for form 3-200-54 is approximately \$1,250 (50 applicants multiplied by the \$25.00 application fee).

14. The Service expects approximately 20 applicants per year the first couple of years with an increasing trend leveling off at approximately 50 per year. The total cost to the Federal government of processing and renewing this type of permit application is estimated at \$27,750 or approximately \$555 per application. These estimates are based on current experience with the application and current costs for time, printing, analysis of information and issuance or denial of a permit.

15. The previous submission for the OMB approval process stated: "This permit program was not active when time burdens for ESA permit applications were last calculated. Therefore, the number of burden hours has increased by 875 hours." Since this is a new permit and only a few have been issued, the Service is using estimates for the previous OMB submission for this OMB submission.

16. Summary information for endangered species permit applications will be published in the Federal Register as required by regulation.

17. Not applicable, the expiration date will be displayed.

18. Not applicable, no exception is requested.

Incorrect Form Numbers On Previous Approval

The Division of Endangered Species was originally assigned form numbers 3-200 52, 3-200-53,

and 3-200-54 for our permit application forms, but while we were preparing our OMB justification the Division of Management Authority added 2 forms during the preparation of their OMB justification, and took the form numbers 3-200-52 and 3-200-53. When we were informed of their changes, we removed the 3-200-52 and 3-200-53 numbers from our justification and substituted the numbers 3-200-55 and 3-200-56. On November 21, 1997, the Service submitted the following Division of Endangered Species permit application forms to OMB for approval: 3-200-54 (Safe Harbor Agreement and Candidate Conservation Agreement with Assurances), 3-200-55 (Recovery and Interstate Commerce), and 3-200-56 (Incidental Take). The Service was notified on February 6, 1998, that OMB approval was granted for the Division of Endangered Species permit application forms. However, the OMB notification had the old form numbers of 3-200-52, 3-200-53, and 3-200-54. OMB records are still using the old form numbers for the Division of Endangered Species permit application forms. The Service requests that the OMB records be updated as part of this request for renewal of our approval.

B. Collection of Information Employing Statistical Methods (Not applicable)