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amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

[39 FR 41375, Nov. 27, 1974]

§ 222.27 Procedures for suspension, revocation, or modification of permits.

Any violation of the applicable provisions of parts 217 through 222 of this chapter, or of the Act, or of a condition of the permit may subject the certificate holder to the following:

- (a) The penalties provided in the Act; and
- (b) Suspension, revocation, or modification of the permit, as provided in subpart D of 15 CFR part 904.

[49 FR 1043, Jan. 6, 1984, as amended at 55 FR 20607, May 18, 1990]

§ 222.28 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

- (1) The time of the authorized taking, importation, exportation, or other act;
- (2) The period of any transit of such person or agent which is incident to such taking, importation, exportation, or other act; and
- (3) Any other time while any animal under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

[39 FR 41375, Nov. 27, 1974]

Subpart D—Special Prohibitions

§ 222.31 Approaching humpback whales in Hawaii.

Except as provided in subpart C (Endangered Fish or Wildlife Permits) of this part it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts

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with respect to humpback whales (*Megaptera novaeangliae*):

- (a) Operate any aircraft within 1,000 ft (300 m) of any humpback whale; or
- (b) Approach by any means, within 100 yd (90 m) of any humpback whale; or
- (c) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or
- (d) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

[60 FR 3775, Jan. 19, 1995]

Subpart E—Incidental Capture of Endangered Sea Turtles

§ 222.41 Policy regarding incidental capture of sea turtles.

Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 227.72(e) of this subchapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

[52 FR 24251, June 29, 1987]

§ 222.42 Special prohibitions relating to leatherback sea turtles.

Special prohibitions relating to leatherback sea turtles are provided at § 227.72(e)(2)(iv) of this chapter.

[60 FR 25623, May 12, 1995]

PART 225—FEDERAL/STATE COOPERATION IN THE CONSERVATION OF ENDANGERED AND THREATENED SPECIES

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AUTHORITY: Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205.

SOURCE: 41 FR 24354, June 16, 1976, unless otherwise noted.

§ 225.1 Purpose of regulations.

The regulations in this part implement section 6 of the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205 which provides, under certain circumstances, for cooperative agreements with and financial assistance to the States.

§ 225.2 Scope of regulations.

This part applies to endangered and threatened species under the jurisdiction of the Department of Commerce (see 50 CFR 222.23(a)).

§ 225.3 Definitions.

In addition to the definitions contained in the Act, and unless the context otherwise requires, in this part 225:

(a) *Act* means the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205.

(b) *Agreements* mean signed documented statements of the actions to be taken by the State(s) and the Director in furthering certain purposes of the Act. They include:

(1) A Cooperative Agreement entered into pursuant to section 6(c) of the Act and, where appropriate, containing provisions found in section 6(d)(2) of the Act.

(2) A Grant-In-Aid Award which includes a statement of the actions to be taken in connection with the conservation of endangered or threatened species receiving Federal financial assistance, objectives and costs of such actions, and costs to be borne by the Federal Government and by the State(s).

(c) *Application for Federal Assistance* means a description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(d) *Director* means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized designee.

(e) *Program* means a State-developed plan for the conservation and management of all resident species which are deemed by the Secretary to be endangered or threatened and those which are deemed by the State to be endangered or threatened, which includes goals, priorities, strategies, actions, and funding necessary to accomplish the objectives on an individual species basis.

(f) *Project* means a substantial undertaking to conserve the various endangered or threatened species.

(g) *Project segment* means an essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(h) *Resident species* means, for purposes of these regulations, with respect to a State, a species which exists in the wild in that State during any part of its life.

(i) *Secretary* means the Secretary of Commerce or his authorized designee.

§ 225.4 Cooperation with the States.

The Director shall cooperate with any State which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Director must find and reconfirm, on an annual basis, that:

(a) Authority resides in a State agency to conserve resident species determined by the State agency or the Director to be endangered or threatened;

(b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident species in the State which are deemed by the Director to be endangered or threatened; and has furnished a copy of such

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program together with all pertinent details, information and data requested to the Director;

(c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species;

(d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and

(e) Provisions are made for public participation in designating resident species as endangered or threatened.

§ 225.5 Cooperative agreement.

Following receipt of an application by a State for a Cooperative Agreement and a determination by the Director that the State program for endangered and threatened species is adequate and active, the Director shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Grant-In-Aid Award can be approved for endangered or threatened species projects. The Cooperative Agreement must be reconfirmed annually to insure that it reflects new laws, species lists, rules or regulations, and programs, and to demonstrate that the program is still active and adequate. In order for a State to receive financial assistance, such Cooperative Agreement must also contain:

(a) The actions that are to be taken by the Director and the State;

(b) The benefits that are expected to be derived in connection with the conservation of endangered or threatened species; and

(c) The estimated cost of these actions.

§ 225.6 Allocation of funds.

The Director shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various States using the following as the basis for his determination:

(a) The international commitments of the United States to protect endangered or threatened species;

(b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;

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(c) The number of federally listed endangered and threatened species within a State;

(d) The potential for restoring endangered and threatened species within a State; and

(e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 225.7 Financial assistance.

(a) Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement. Subsequent to such agreement, the Director may further agree with a State(s) to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an Application for Federal Assistance and a Grant-In-Aid Award. The availability of Federal funds under a Grant-In-Aid Award shall be contingent upon the continued existence of the Cooperative Agreement.

(b) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other requirements of the Office of Management and Budget Circular No. A-95 (as revised and published in the FEDERAL REGISTER on January 13, 1976 (41 FR 2052)).

(c) The mutual obligations by the cooperating agencies will be set forth in a Grant-In-Aid Award executed between the State and the Director. The Grant-In-Aid Award shall cover the proposed financing and the work items described in the documents supporting it. The form and content for both the Application for Federal Assistance and the Grant-In-Aid Award are provided in the Federal Aid Handbook No. 22.

§ 225.8 Availability of funds.

Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal

year. For the purpose of this section, obligation of allocated funds occurs when a Grant-In-Aid Award is signed by the Director.

§ 225.9 Payments.

The payment of the Federal share of costs incurred in the conduct of activities included under a Grant-In-Aid Award shall be in accordance with the Treasury Circular 1075.

(a) Federal payments under the Act shall not exceed 75 percent of the program costs as stated in the agreement; except, the Federal share may be increased to 90 percent when two or more States having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such States, jointly enter into an agreement with the Director.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Director as provided in Federal Management Circular 74-7.

(c) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of the Act shall have first been submitted to and approved by the Director. Payments shall be made for expenditures reported and certified by the State agency. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds for the State.

(d) Vouchers and forms provided by the Director and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Director by the State agency.

[41 FR 24354, June 16, 1976, as amended at 49 FR 30074, July 26, 1984]

§ 225.10 Assurances.

A State shall certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance,

and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

§ 225.11 Submission of documents.

Documents required by section 6 of the Act or by these regulations shall be addressed to the Director, National Marine Fisheries Service, Washington, DC 20235.

§ 225.12 Project evaluation.

Any difference of opinion about a proposed project or appraised value of land to be acquired or any other related matter will be considered by qualified representatives of the Director and the State. Final determination in the event of continued disagreement rests with the Director.

§ 225.13 Contracts.

The State may use its own regulations in obtaining services provided they adhere to Federal laws and the requirements set forth in Federal Management Circular 74-7. The State is the responsible authority without recourse to the Director regarding settlement of contractual issues.

§ 225.14 Inspection.

Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.

PART 226—DESIGNATED CRITICAL HABITAT

Subpart A—Introduction

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Subpart C—Critical Habitat for Fish

226.21 Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).