real property, with a fair market value of $100 and an adjusted tax basis of $10.

(ii) *AB* subsequently distributes Security *X* with a fair market value and adjusted tax basis of $40 to *A* in a current distribution and, as part of the same distribution, *AB* distributes Property *Z* to *A* with an adjusted tax basis and fair market value of $40. At the time of distribution, the basis in *A*'s interest in the partnership is $10. *A* recognizes $30 of gain under section 731(a) on the distribution (excess of $40 distribution of money over $10 adjusted tax basis in *A*'s partnership interest).

(iii) *A*'s adjusted tax basis in Security *X* is $35 ($5 adjusted basis determined under section 732(a)(2) plus $30 of gain recognized by *A* by reason of section 731(c)). *A*'s basis in Property *Z* is $5, as determined under section 732(a)(2). The basis in *A*'s interest in the partnership is $0 as determined under section 733 ($10 pre-distribution basis minus $10 basis allocated between Security *X* and Property *Z* under section 732).

(iv) *AB*'s adjusted tax basis in the remaining partnership assets is unchanged unless the partnership has a section 754 election in effect. If *AB* made such an election, the aggregate basis of *AB*'s assets would be increased by $70 (the difference between the $80 combined basis of Security *X* and Property *Z* in the hands of the partnership before the distribution and the $10 combined basis of the distributed property in the hands of *A* under section 732 after the distribution). Under section 731(c)(5), no adjustment is made to partnership property under section 734 as a result of any gain recognized by *A* by reason of section 731(c) or as a result of any step-up in basis in the distributed marketable securities in the hands of *A* by reason of section 731(c).

Example 7. Coordination with section 737. (i) *A* and *B* form partnership *AB*. *A* contributes Property *A*, nondepreciable real property with a fair market value of $200 and an adjusted basis of $100 in exchange for a 25 percent interest in partnership capital and profits. *AB* owns marketable Security *X*.

(ii) Within five years of the contribution of Property *A*, *AB* subsequently distributes Security *X*, with a fair market value of $120 and an adjusted tax basis of $100, to *A* in a current distribution that is subject to section 737. As part of the same distribution, *AB* distributes Property *Y* to *A* with a fair market value of $20 and an adjusted tax basis of $0. At the time of distribution, there has been no change in the fair market value of Property *A* or the adjusted tax basis in *A*'s interest in the partnership.

(iii) If *AB* had sold Security *X* for fair market value immediately before the distribution to *A*, the partnership would have recognized $20 of gain. *A*'s distributive share of this gain would have been $5 (25 percent of $20 gain). Because *AB* has no other marketable securities, *A*'s distributive share of gain in partnership securities after the distribution would have been $0. As a result, the distribution resulted in a decrease of $5 in *A*'s share of the net gain in *AB*'s securities ($5 net gain before distribution minus $0 net gain after distribution). Under paragraph (b)(2) of this section, the amount of the distribution of Security *X* that is treated as a distribution of money is reduced by $5. The distribution of Security *X* is therefore treated as a distribution of $115 of money to *A* ($120 fair market value of Security *X* minus $5 reduction). The portion of the distribution of the marketable security that is not treated as a distribution of money ($5) is treated as other property for purposes of section 737.

(iv) *A* recognizes total gain of $40 on the distribution. *A* recognizes $15 of gain under section 731(a)(1) on the distribution of the portion of Security *X* treated as money ($115 distribution of money less $100 adjusted tax basis in *A*'s partnership interest). *A* recognizes $25 of gain under section 737 on the distribution of Property *Y* and the portion of Security *X* that is not treated as money. *A*'s section 737 gain is equal to the lesser of (i) *A*'s precontribution gain ($100) or (ii) the excess of the fair market value of property received ($20 fair market value of Property *Y* plus $5 portion of Security *X* not treated as money) over the adjusted basis in *A*'s interest in the partnership immediately before the distribution ($100) reduced (but not below zero) by the amount of money received in the distribution ($115).

(v) *A*'s adjusted tax basis in Security *X* is $115 ($100 basis of Security *X* determined under section 732(a) plus $15 of gain recognized by reason of section 731(c)). *A*'s adjusted tax basis in Property *Y* is $0 under section 732(a). The basis in *A*'s interest in the partnership is $25 ($100 basis before distribution minus $100 basis allocated to Security *X* under section 732(a) plus $25 gain recognized under section 737).

(k) *Effective date.* This section applies to distributions of marketable securities made on or after December 29, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–31457 Filed 12–29–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

33 CFR Part 207

St. Marys Falls Canal and Locks, Michigan; Use, Administration, and Navigation

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish the operating schedule for Soo Locks at the St. Marys Falls Canal, Sault Ste. Marie, Michigan, to change the annual opening date from April 1 to March 25. The locks will not open earlier than March 25, except in case of emergency and are subject to closure at any time in a national emergency involving a vessel disaster or other extraordinary circumstances as currently provided in 33 CFR 207.440(u).

DATES: Written comments should be received February 1, 1996.

ADDRESSES: Submit written comments, in duplicate, to: Mr. William Willis, Acting Chief, Construction-Operations Division, Detroit District, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231–1027, Phone: (313) 226–6794, or deliver them to Mr. Willis at the Detroit District office at 477 Michigan Avenue, Detroit, Michigan, between the hours of 7:30 a.m. and 4:00 p.m. Monday through Friday. Comments received and other materials relevant to this proposed rulemaking can be inspected at Mr. Willis' office during the same hours. An appointment may be required for inspection, so please call ahead to confirm availability and to avoid any conflicts with inspections by other interested persons. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kidby at Corps of Engineers Headquarters in Washington, D.C., by telephone at (202) 761–8835.

SUPPLEMENTARY INFORMATION:

Legal Authority

The legal authority for the regulation governing the use, administration, and navigation of the St. Marys Falls Canal and Locks is Section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended, which is codified at 33 U.S.C. Section 1. This statute requires the Secretary of the Army to ''prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States'' as the Secretary determines may be required by public necessity.

Background

The regulation governing the operation of the St. Marys Falls Canal and Locks, in 33 CFR 207.440, was adopted on November 27, 1945 (10 FR 14451), and has been the subject of nine amendments. The legislation allows the period of operation to be adjusted to meet the reasonable demands of commerce. The provision setting out the current opening date for the locks was adopted on October 30, 1956 (21 FR 8285). It establishes an opening date of April 1, subject to annual modification by the Division Engineer if the public interest would be best served by the modification or in the event of emergency.

The opening date of the Soo Locks has been modified on a number of occasions and the length of the operating season has been the subject of a number of

studies. Between 1970 and 1979, as authorized by the River and Harbor Act of 1970, the locks at Sault St. Marie have remained open for as long as the entire year in a demonstration program on the practicability of winter navigation in the Great Lakes. Since the 1979 navigation season, the Soo Locks have opened on the following dates: March 25, 1980; March 23, 1981; April 1, 1982; March 29, 1983; March 26, 1984; April 1, 1985; April 1, 1986; March 22, 1987; March 22, 1988; March 15, 1989; March 21, 1990; March 21, 1991; March 22, 1992; March 21, 1993; March 25, 1994; and March 25, 1995. During periods of navigation in ice, numerous environmental studies have indicated no significant adverse environmental effects.

In 1977, a Final Environmental Impact Statement (FEIS) titled, ''Operation, Maintenance, and Minor Improvements to the Federal Facilities at Sault Ste. Marie, Michigan'' was prepared. Subsequent to this, a Detroit District staff report and supplemental environmental impact statement (Supplement I, EIS) completed in 1979 recommended operation of the locks each year to January 8 ± 1 week. Based on extensive environmental studies, a second supplemental EIS (Supplement II), dated September 1989, was completed by the Detroit District, concluding that no significant adverse environmental effects would result form annual operation of the locks as late as January 31 ± 2 weeks, and recommending that the closing date for the locks be extended to January 31 ± 2 weeks. A Notice of Proposed Rulemaking to change the closing date to January 15 was published on April 3, 1991 (56 FR 13604) and subsequently became effective March 24, 1992.

The proposal contained in this notice will establish a fixed opening date of March 25 for the Soo Locks. This fixed opening date, in conjunction with the January 15 closing date, will allow nearly 10 months access to and from Lake Superior so that industry may have an adequate basis for planning and management of their resources.

History of the Present Amendment

In March 1990, the Detroit District Engineer sent a letter to interested governmental, environmental, and business interests, proposing a comprehensive annual operating plan for the locks. It proposed a fixed closing date of January 15 and fixed opening date no earlier than March 15. Because the environmental studies of the supplemental EIS's in 1979 and 1989 focused specifically on the closing date, further environmental studies focusing on the effects of opening dates between March 15 and April 1 would be conducted in order to establish an opening date that would address the needs of both commerce and the environment.

In 1991 and 1992, another series of environmental studies concerning lock opening were completed. Employing these studies as well as the environmental data from the prior studies which examined possible impacts for Supplements I and II, potential impacts of commercial navigation before April 1 were assessed. The resulting February 1993 Draft EIS (DEIS) identified no significant impacts for opening the locks as early as March 15. Rather, the study found that even significant vessel traffic, with ice cover, would result in only insignificant adverse environmental effects. Given the favorable economic benefits, as set forth in the DEIS, a March 21 opening date was suggested in the DEIS. However, to alleviate Michigan Department of Natural Resources (MDNR) concerns raised in response to this document, the U.S. Coast Guard, the U.S. Fish and Wildlife Service, the MDNR, and the Detroit District signed a Memorandum of Agreement (MOA) in August of 1993 recommending a fixed lock opening date of March 25. In this MOA, the Federal and state agencies agreed to perform joint monitoring studies of the aquatic ecosystem and biota. This recommendation and MOA were included in the FEIS and distributed for public review.

Proposed Amendments to the Regulation

Based on consideration of the responses to the March 1990 letter, comments received on the Draft FEIS, further review of the pertinent background information in light of those responses, and the rationale set forth in the September 26, 1994 Record of Decision, the Corps of Engineers has determined that the overall public interest would be best served by implementing the March 25 fixed opening alternative. As was concluded by the District and Division Engineers, the recommended operation of the locks is engineeringly feasible and the overall adverse environmental effect of the March 25 opening date would not be significant. From an economic perspective, the establishment of a fixed opening date will create an atmosphere of stability and certainty within Great Lakes shipping interests and industries can plan and conduct their operations, and is economically justifiable.

At present, the regulation provides that at least one lock will be placed in operation on April 1 and additional locks will be opened as vessel traffic increases. As a result of the regulation proposed in this notice, the April 1 opening date under the current regulations will be modified from April 1 to March 25.

The Corps of Engineers proposes that the present authority of the Division Engineer to modify opening and closing dates in emergency conditions be retained. By their very nature, emergencies cannot be exhaustively defined. The example given in the current regulation is disaster to a vessel. Under the fixed closing date proposal, this type of emergency would remain a basis for modifying the operating dates of the locks. Similarly, national defense emergencies, extraordinary environmental circumstances, or extraordinary national or regional economic circumstances could also invoke the exercise of the Division Engineer's authority. As noted above, these examples are not intended to be exhaustive or exclusive.

Classification

1. The undersigned has reviewed this action and hereby certifies that it is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small businesses or other entities.

2. The Department of the Army has determined that this regulation will not affect the use or value of private property and, therefore, does not require a Takings Assessment under Executive Order 12630.

3. This proposed rule has been determined not to be a major rule under Executive Order 12866. A Regulatory Impact Analysis (RIA) Statement will not be prepared since the proposed changes will not result in significant adverse economic effects identified in the Executive Order as grounds for a finding of major action.

Environmental Documentation

This action was the subject of a FEIS, February 1994, which concluded that there would not be significant adverse environmental effects due to commencing the opening season of the locks on 21 March—earlier than the date now proposed. The FEIS is available for review upon request from the individual listed under **ADDRESSES**.

List of Subjects in 33 CFR Part 207

Navigation (Water), Water Transportation, Vessels.

For the reasons set out in the preamble, Title 33, Chapter II of the

Code of Federal Regulations is proposed to be amended as follows.

PART 207—[AMENDED]

1. The authority citation for part 207 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1).

2. Section 207.440 is amended by revising paragraph (u) as follows:

§ 207.440 St. Marys Falls Canal and Locks, Michigan; use, administration and navigation.

* * * * *

(u) The locks will be opened and closed to navigation each year as provided in paragraphs (u) (1) and (2) of this section except as may be authorized by the Division Engineer. Consideration will be given to change in these dates in an emergency involving disaster to a vessel or other extraordinary circumstances.

(1) *Opening date.* At least one lock will be placed in operation for the passage of vessels on March 25. Thereafter, additional locks will be placed in operation as traffic density demands.

(2) *Closing date.* The locks will be maintained in operation only for the passage of down bound vessels departing from a Lake Superior port before midnight (2400 hours) of January 14, and of upbound vessels passing Detour before midnight (2400 hours) of January 15. Vessel owners are requested to report in advance to the Engineer in charge at Sault Ste. Marie, the name of vessel and time of departure from a Lake Superior port on January 14 before midnight, and of vessels passing Detour on January 15 before midnight, which may necessitate the continued operation of a lock to permit passage of vessel.

* * * * *

Dated: December 21, 1995.

John H. Zirschky,

Acting Assistant Secretary of the Army (Civil Works).

[FR Doc. 95–31543 Filed 12–29–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD62

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service, in cooperation with the Arizona Game and Fish Department, and the U.S. Bureau of Land Management, proposes to reintroduce California condors (*Gymnogyps californianus*) into northern Arizona. This reintroduction will achieve a primary recovery goal for this endangered species, establishment of a second non-captive population, spatially disjunct from the non-captive population in southern California. This population is proposed to be designated a nonessential experimental population in accordance with Section 10(j) of the Endangered Species Act of 1973, as amended. Captive-reared condors will be released in early 1996 (target date) and additional releases will occur annually thereafter until a self-sustaining wild population is established. The reintroduction will use tested release techniques developed in previous releases in southern California and will be managed in accordance with the provisions of this special rule. The potential impacts associated with this proposed rule were assessed in an Environmental Assessment completed in November 1995. This California condor reintroduction does not conflict with existing or anticipated Federal or State agency actions or traditional land uses on public or private lands.

DATES: Comments from all interested parties must be received by February 1, 1996. Public hearings will be held at Flagstaff High School on Tuesday, January 23, 1996, from 6:00 to 8:00 pm and Kanab High School on Thursday, January 25, 1996, from 6:00 to 8:00 pm.

ADDRESSES: Comments and materials concerning this proposal should be sent to State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Arizona State Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearings will be held at the Main Auditorium, Flagstaff High School, 400 West Elm Street, Flagstaff, Arizona and Kanab High School Auditorium, 59 East Red Shadow Lane, Kanab, Utah.

FOR FURTHER INFORMATION CONTACT: Robert Mesta, U.S. Fish and Wildlife Service, Ecological Services, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California, 93003 (Telephone: 805/644–1766; Facsimile: 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

1. Legislative. Section 10(j) of the Endangered Species Act of 1973 (Act) enables the U.S. Fish and Wildlife Service (Service) to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are—(1) The population is geographically disjunct from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its historical range); and (2) the Service determines the release will further the conservation of the species. This designation can increase the Service's flexibility to manage a reintroduced population, because under section 10(j) an experimental population is treated as a threatened species regardless of its designation elsewhere in its range and, under section 4(d) of the Act, the Service has greater discretion in developing management programs for threatened species than it has for endangered species.

Section 10(j) of the Act requires that when an experimental population is designated, a determination be made by the Service whether that population is either ''essential'' or ''nonessential'' to the continued existence of the species, based on the best available information. Nonessential experimental populations located outside National Wildlife Refuge (NWR) or National Park Service (NPS) lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, only two provisions of section 7 would apply outside NWR and NPS lands—section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of