



FEDERAL REGISTER

The Daily Journal of the United States Government



Recent Changes to ESA Implementing Regulations

The Services recently made changes to the CFRs related to:

- Interagency Cooperation
- Procedure and Criteria for listing, reclassifying, and delisting species
- Enhancement of Survival and Incidental Take Permits

Interagency Cooperation

Section 7 Implementing Regulation Revisions

- 402.17 was removed entirely, this section related to “Activities that are reasonably certain to occur”
- 402.02
 - Revised to clarify that effects of the action includes activities that are caused by **but not part of the proposed action**
 - Also revised to clarify that: “**Impacts**” = items that belong in the environmental baseline, and “**Consequences**” = effects that are caused by the proposed action and are not included in the environmental baseline.
 - “Federal” was added in two places, to emphasize the *Federal agency’s discretion* over their own activities in determining what falls within the environmental baseline.
- 402.14
 - Language was added to clarify that Reasonable and Prudent Measures are not limited to reducing incidental take and that they may be used **outside** the action area
- 402.16
 - “Or the services” was removed to clarify that the Services do not have authority to request reinitiation of consultation, it is the Federal Action Agency’s to request it when warranted





PROCEDURE AND CRITERIA FOR
LISTING, RECLASSIFYING, AND
DELISTING SPECIES

SECTION 4 IMPLEMENTING REG
REVISIONS

402.11(b)

Language was added back clarifying the Services **will not** consider economic impacts of a listing or classification decision.

424.11(d)

Foreseeable future= as far into the future as the Services can make “reasonably reliable predictions about the threats to a species and the species response to those threats.”

424.12

2019 Language regarding threats that cannot be addressed though management was removed.

Revised when habitat should be designated as CH outside of the species occupied area, once Secretary determines those areas are essential for the conservation of the species



DELISTING DETERMINATIONS

4 FACTORS TO CONSIDER IN DELISTING:

“Species will be delisted if the Secretary determines, based on consideration of the factors and standards set forth in paragraph (c) of this section, that the best scientific and commercial data available substantiate that:

- (1) The species is extinct;
- (2) The species has recovered to the point at which it no longer meets the definition of an endangered or threatened species;
- (3) New information that has become available since the original listing decision shows the listed entity does not meet the **definition of an endangered or a threatened species**; or
- (4) New information that has become available since the original listing decision shows the **listed entity does not meet the definition of a species.**”

BLANKET 4 (D) AUTHORIZATION

The revisions to 50 CFR 17.31 and 17.71 reinstate the general application of the “blanket rule” for protecting newly listed threatened wildlife and plant species, respectively, pursuant to section 4(d) of the Act.

The revision retains the continued option to promulgate species-specific rules.

**ENHANCEMENT OF SURVIVAL AND
INCIDENTAL TAKE PERMITS
SECTION 10 IMPLEMENTING
REGULATIONS**

- Intended to clarify the appropriate use of enhancement of survival permits and incidental take permits;
- Clarifies the Services authority to issue these permits for non-listed species without also including a listed species;
- Simplify the requirements for enhancement of survival permits by *combining* safe harbor agreements and candidate conservation agreements with assurances into one agreement type– Conservation Benefit Agreement; and
- Incorporate portions of their five-point policies for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans into the regulations to reduce uncertainty.

