

February 10, 2008, Contractor I contributes \$700,000 in cash to satisfy the principal and interest payment for the ESOP loan for FY 2007. This contribution results in the bank releasing 10,000 shares of stock. On March 1, 2008, the ESOP allocates the 10,000 shares to individual employee accounts satisfying the 2007 obligation. The 10,000 shares of stock must be assigned to FY 2007 (these shares cannot be assigned to 2008).

■ 8. Section 9904.415–63 is revised to read as follows:

9904.415–63 Effective date.

(a) This Standard 9904.415 is effective as of June 2, 2008.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.415 in effect prior to June 2, 2008 until this Standard, effective June 2, 2008, becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

(d) For contractors and subcontractors that have established advance agreements prior to June 2, 2008 regarding the recognition of the costs of existing ESOPs, the awarding agency and contractor shall comply with the provisions of such advance agreement(s) for these existing ESOPs, regardless of whether the ESOP was previously subject to CAS 412 or 415. These advance agreements may be modified, by mutual agreement, to incorporate the requirements effective on June 2, 2008.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS—R2—ES—2008—0044; 40120—1113—0000—B3]

RIN 1018—AW12

Endangered and Threatened Wildlife and Plants; Listing the Potential Sonoran Desert Bald Eagle Distinct Population Segment as Threatened Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing a final rule to amend the regulations for the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11 by designating bald eagles (*Haliaeetus leucocephalus*) in the Sonoran Desert area of central Arizona as threatened under the authority of the Endangered Species Act of 1973, as amended (Act). We are also reinstating and clarifying the former special rule at 50 CFR 17.41 that applied to threatened members of this species. This action revises the CFR to reflect a March 6, 2008, court order.

DATES: This action is effective May 1, 2008. However, the court order had legal effect immediately upon being filed on March 6, 2008.

FOR FURTHER INFORMATION CONTACT:

Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021; telephone 602–242–0210; facsimile 602–242–2513; <http://www.fws.gov/southwest/es/arizona/>.

SUPPLEMENTARY INFORMATION:

Background

Information about the bald eagle's life history can be found in our July 9, 2007 (72 FR 37346), final delisting rule for bald eagles in the lower 48 States.

Previous Federal Action

Information about previous Federal actions was provided in our July 9, 2007 (72 FR 37346), final delisting rule for bald eagles in the lower 48 States.

On October 6, 2004, we received a petition, dated October 6, 2004, from the Center for Biological Diversity (CBD), the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the “Southwestern desert nesting bald eagle population” be classified as a distinct population segment (DPS), that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS under the Act.

On March 27, 2006, the CBD and the Maricopa Audubon Society filed a lawsuit against the U.S. Department of the Interior and the Service for failing to make a timely finding on the petition. The parties reached a settlement and the Service agreed to complete its petition finding by August 2006. We announced our 90-day finding, required under 16 U.S.C. 1533(b)(3)(A), on August 30, 2006 (71 FR 51549), that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On January 5, 2007, the CBD and the Maricopa Audubon Society filed a lawsuit challenging the Service's 90-day finding that the “Sonoran Desert population” of the bald eagle did not qualify as a DPS, and further challenging the Service's 90-day finding that the population should not be up-listed to endangered status.

On July 9, 2007 (72 FR 37346), we published the final delisting rule for bald eagles in the lower 48 States. In that final delisting rule, we stated that our findings on the status of the Sonoran Desert population of bald eagles superseded our 90-day petition finding because the final delisting rule constituted a final decision on whether the Sonoran Desert population of bald eagles qualified for listing as a DPS under the Act.

On August 17, 2007, the CBD and the Maricopa Audubon Society filed a motion for summary judgment, requesting the court to make a decision on their January 5, 2007, lawsuit. On March 5, 2008, the U.S. District Court for the District of Arizona ruled in favor of the CBD and the Maricopa Audubon Society. The court order (*Center for Biological Diversity v. Kempthorne*, CV 07–0038–PHX–MHM (D. Ariz.)), was filed on March 6, 2008.

The court ruled for the plaintiffs and found that the Service:

(1) Finding on the status of the Sonoran Desert population of bald eagles in our July 9, 2007 (72 FR 37346), final delisting rule did not moot the plaintiff's challenge to the August 30, 2006, negative 90-day petition finding;

(2) Applied an inappropriately strict evidentiary burden on the petition at the 90-day review stage and thus arbitrarily and capriciously concluded that the petition did not present substantial information that listing the “Desert bald eagle population” may be warranted; and

(3) Arbitrarily and capriciously conducted the 90-day review of the petition by soliciting information and opinions from a limited outside source.

The court provided the following remedies and ordered the Service to:

(1) Conduct a status review of the Desert bald eagle population pursuant to the Act to determine whether listing that population as a DPS is warranted, and if so, whether listing that DPS as threatened or endangered pursuant to the Act is warranted;

(2) Issue a 12-month finding, pursuant to 16 U.S.C. 1533(b)(3)(B), on whether listing the Desert bald eagle population as a DPS is warranted, and if so, whether listing that DPS as threatened or endangered is warranted; and

(3) Issue the 12-month finding within nine months of the court order, pursuant to 16 U.S.C. 1533(b)(3)(B), which translates to on or before December 5, 2008.

Further, the court enjoined the Service's application of the July 9, 2007 (72 FR 37346), final delisting rule to the Sonoran Desert population of bald eagles pending the outcome of our status review and 12-month petition finding. The "Desert bald eagle population" referenced in the court order consists of those bald eagles in the Sonoran Desert of the southwest that reside in central Arizona and northwestern Mexico. Because these Sonoran Desert bald eagles were only listed under the Act in Arizona (and not in Mexico) at the time of the petition, the court's order enjoining our final delisting decision applies only to those bald eagles found in the Sonoran Desert region of the American Southwest. In other words, the court's order temporarily reinstated the listing of the bald eagle as a threatened species, but only with respect to the eagles that reside in the Sonoran Desert of central Arizona. The court order was effective as of March 6, 2008, the date it was filed.

In order to determine the geographic area where the bald eagle would remain listed as threatened in Arizona, we examined the CBD's letter sent to us on March 5, 2005, clarifying their petitioned October 2004 Distinct Population Segment boundary. We used the information provided by the CBD because the court found that their October 2004 90-day petition "may be warranted" and, therefore, the petition represents the basis for determining the geographic extent of the area affected by this final rule.

The CBD cited two documents describing vegetation communities (Brown 1973, 1994) and an Arizona Game and Fish Department (AGFD) bald eagle nest search report (Canaca *et al.* 2004). The CBD notes in the petition that information is provided to support listing a "distinct population segment of Southwestern Desert Nesting Bald Eagle consistent with the geographical boundaries including the Sonoran Desert riparian areas of Central Arizona and northwestern Mexico." With regards to the Arizona portion, the petition notes that this area in central Arizona exists between 329 and 1719 meters (1080 and 5640 feet) in elevation, falling within the Upper and Lower Sonoran Life Zones and transition areas as described by Brown 1994. We used the above three references and the specific elevation text to define the geographic boundary of the petitioned DPS.

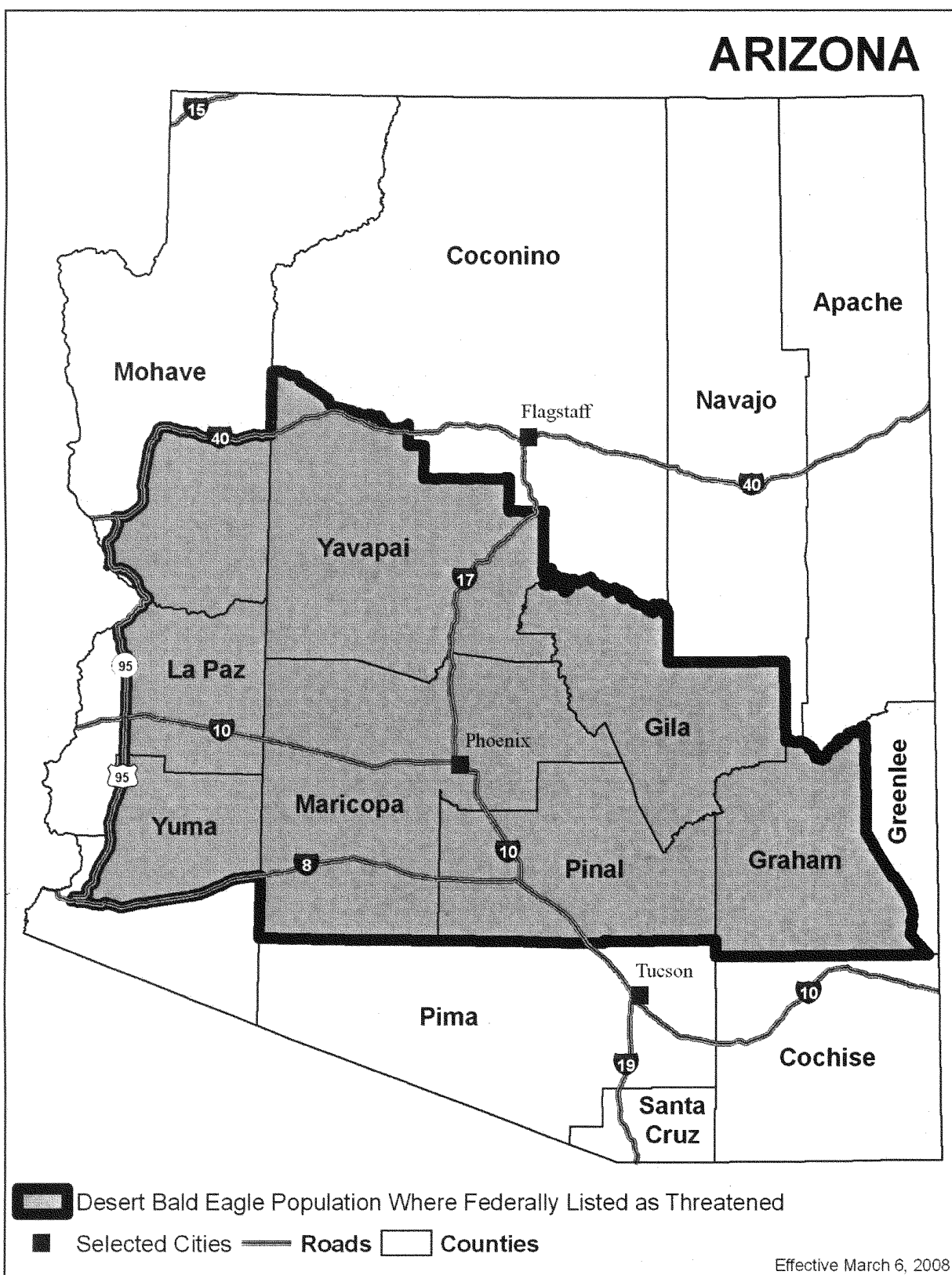
Therefore, while we had specific clarification with respect to elevational boundaries, bald eagle breeding areas, the Upper and Lower Sonoran Life Zones, and the State of Arizona, we also received ambiguous direction with respect to the boundaries of "central Arizona" and which transition areas outside of the Upper and Lower Sonoran Life Zones to include. Because of these ambiguities and lack of a specific map in the petition, we were left to interpret their clarification, primarily at the perimeters of the boundary.

We used all the factors provided by the CBD (i.e., bald eagle territories, elevation, life zones, and transition areas) and established a boundary that included all known bald eagle breeding areas within central Arizona. The boundary was difficult to interpret on

the ground due to irregular lines or gaps in elevation from layers of electronic geographical data. Therefore, we used more identifiable and easily understood boundaries of county lines and highways that were found at the outer edges of the erratic boundaries. It is important to note that known bald eagle breeding habitat of the Sonoran Desert, as described in the petition, is not contiguous between Arizona and northwestern Mexico. The somewhat disjointed nature of bald eagle breeding habitat and its well known distribution in Arizona is likely why the petitioners specified "central Arizona." Thus, the counties in the southern half of Arizona were not included in this final rule because they do not possess known bald eagle breeding areas, known suitable habitat for breeding eagles, and fall outside of the petitioner's geographic description.

We determined that the affected area covers the following eight Arizona counties: (1) Yavapai, Gila, Graham, Pinal, and Maricopa Counties in their entirety; and (2) southern Mohave County (that portion south and east of the centerline of Interstate Highway 40 and east of Arizona Highway 95), eastern LaPaz County (that portion east of the centerline of U.S. and Arizona Highways 95), and northern Yuma County (that portion east of the centerline of U.S. Highway 95 and north of the centerline of Interstate Highway 8). All bald eagles found within this area are protected as a threatened species under the Act, with a special rule under our regulations at 50 CFR 17.41. Please refer to the following map for details of the geographic area affected by this action.

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Administrative Procedure

This rulemaking is necessary to comply with a March 6, 2008, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), the agency has good cause to make this rule effective upon publication and require compliance retroactively to the date of the court order.

Effects of the Rule

Any and all bald eagles, including migrants, found within the boundaries of the Sonoran Desert area of central Arizona, as delineated by the map included as part of this rule, are hereby listed as a threatened species under the Act, with a special rule found at 50 CFR 17.41.

The provisions of the special rule at 50 CFR 17.41 that we are adding here under the Act are the same as those in the prior special rule that was removed per our July 9, 2007 (72 FR 37346), final delisting rule removing the threatened status for bald eagles in the lower 48 States. This special rule now applies only to bald eagles in the Sonoran Desert area of central Arizona, the only such population of bald eagles so listed under the Act. Under this special rule, bald eagle banding and marking permits issued under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) and its implementing regulations at 50 CFR 21.22, and also under the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668d) and its implementing regulations at 50 CFR part 22, will be deemed to also satisfy the requirements for a permit under the Act and its implementing regulations at 50 CFR 17.31 and 17.32. The BGEPA regulations at 50 CFR part 22 authorize permits for taking, possession, and transportation within the United States for scientific, educational, and depredation control purposes and for the religious purposes of American Indian tribes. This part also governs the transportation into or out of the United States of bald and golden eagle parts for scientific, educational, and Indian religious purposes. Under this special rule, it will not be necessary to obtain a separate permit under the Act for the same activities already authorized under the MBTA and BGEPA permits described above.

Although the petition also included Sonoran Desert bald eagles in northwestern Mexico, these bald eagles remain unlisted because bald eagles in

this area were not previously listed pursuant to the Act and thus their status was unaffected by the court order limiting the effects of our July 9, 2007 (72 FR 37346), final delisting rule.

Consistent with the court's March 6, 2008 order, this rule will be in effect "pending the outcome of the status review and 12-month finding." However, we will immediately remove the bald eagle in the Sonoran Desert area of central Arizona from the List of Endangered and Threatened Wildlife if the court's March 6, 2008, order is stayed or reversed in any subsequent judicial proceeding, or if, after completion of the status review, we publish a 12-month finding that listing the Sonoran Desert bald eagle is not warranted. No decision has been made as to whether the government will appeal that order.

We will publish a notice requesting public input for the status review required under the March 6, 2008, court order in the **Federal Register** in the near future. This status review will consider the population of bald eagles as described in the October 6, 2004, petition and any other relevant information received during the public comment period and will be based upon the best scientific and commercial data available, pursuant to the Act.

Under this final rule, the prohibitions and conservation measures provided by the Act, particularly sections 7, 9, and 10, apply to bald eagles in the Sonoran Desert area of central Arizona. Federal agencies are required under the court order and this final rule to consult with us under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect listed bald eagles.

In addition to the conservation measures provided by the Act, the *Conservation Assessment and Strategy for Bald Eagles in Arizona* (CAS) (Driscoll *et al.* 2006) contains guidance on measures to eliminate, reduce, or minimize effects to eagles in Arizona. On January 22, 2007, the Service signed a Memorandum of Understanding with the AGFD supporting the implementation of the AGFD's CAS. The Memorandum of Understanding was also signed by the following Federal agencies: Bureau of Reclamation, Bureau of Land Management, National Park Service, Forest Service, and the Department of Defense, including the U.S. Army Corps of Engineers. The CAS provides additional valuable guidance for protecting bald eagles in Arizona, and we support using it in conjunction with our Bald Eagle National Management Guidelines to protect bald eagles in Arizona.

All bald eagles, of course, will continue to be protected under the BGEPA and MBTA. We recommend that persons use our *Bald Eagle National Management Guidelines* (Guidelines), announced in the **Federal Register** on June 5, 2007 (72 FR 31156), as guidance for minimizing the risk of violating the protections afforded to all bald eagles under these various Acts and their respective implementing regulations. The Guidelines include suggestions for protecting bald eagles and their habitat while they are nesting, feeding, and roosting. While eagles originating in the Sonoran Desert area of central Arizona would not be protected by the Act if they traveled to other parts of the United States, they would still be afforded the protections under the BGEPA and MBTA.

This rule will not affect the bald eagle's status under State laws or suspend any other legal protections provided by State law. This rule will not affect the bald eagle's Appendix II status under the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).

Additionally, pursuant to section 6 of the Act, we are able to grant available funds to the State of Arizona for management actions promoting the protection of bald eagles in the Sonoran Desert area of central Arizona.

Required Determinations

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to consult with Federally recognized Tribes on a government-to-government basis. Accordingly, we will promptly consult with the affected Tribes regarding the effects of the court's March 6, 2008, order and this final rule.

We will also consult with the affected tribes as we conduct our new status review concerning the Sonoran Desert nesting bald eagle population.

References Cited

- Brown, D. 1973. The Natural Vegetative Communities of Arizona. Arizona Game and Fish Department, Phoenix, AZ.
- Brown, D. (editor). 1994. Biotic Communities of the Southwestern United States and Northwestern New Mexico. The University of Utah Press, Salt Lake City, UT.
- Canaca, J.S., K.V. Jacobson, and J.T. Driscoll. 2004. Arizona Bald Eagle 2003 Nest Survey, Nongame and Endangered Wildlife Program Technical Report 226.

Arizona Game and Fish Department, Phoenix, AZ.

Driscoll, J.T., K.V. Jacobson, G.L. Beatty, J.S. Canaca, and J.G. Koloszar. 2006. Conservation Assessment and strategy for the bald eagle in Arizona. Nongame and Endangered Wildlife Program Technical Report 173. Arizona Game and Fish Department, Phoenix, Arizona.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

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.

§ 17.11 [Amended]

■ 2. In § 17.11(h), an entry for “Eagle, Bald” is added under BIRDS to read as follows:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Eagle, bald	<i>Haliaeetus leucocephalus</i>	North Arizona: South to northern Mexico.	Arizona: (1) Yavapai, Gila, Graham, Pinal, and Maricopa, Counties; and (2) Southern Mohave County (that portion south and east of the center of Interstate Highway 40 and east of Arizona Highway 95), eastern LaPaz County (that portion east of the centerline of U.S. and Arizona Highways 95), and north of the centerline of Interstate Highway 8).			NA	17.41(a).

■ 3. Section 17.41 is amended by adding paragraph (a) to read as follows:

§ 17.41 Special rules—birds.

(a) Bald eagles (*Haliaeetus leucocephalus*) wherever listed as threatened under § 17.11(h). All provisions of §§ 17.31 and 17.32 apply to any threatened bald eagle, with the following exceptions:

(1) The Service will consider any permit that we issue for bald eagles under § 21.22 (banding and marking permits) or part 22 of this chapter (permits for certain activities with bald or golden eagles) to satisfy all requirements of § 17.31 and the permits we issue under § 17.32.

(2) The Service will not require a second permit under § 17.32 for any activity that is covered by a permit issued under § 21.22 or part 22 of this chapter.

(3) The Service will require a permit under § 17.32 for any activity that is not

covered by a permit issued under § 21.22 or part 22 of this chapter.

* * * * *

Dated: April 18, 2008.
H. Dale Hall,
 Director, Fish and Wildlife Service.
 [FR Doc. 08–1203 Filed 4–28–08; 4:00 pm]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080103017–8598–03]

RIN 0648–AS01

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notice of OMB approval of collection -of-information collection requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations