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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

**Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions**

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

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SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency cooperative policy to establish a procedure when a species is listed as threatened or endangered to identify to the maximum extent those activities that would or would not constitute a violation of section 9 of the Species Act of 1973 (Act), as amended, and to increase public understanding and provide as much certainty as possible regarding the prohibitions that will apply under section 9. Identifying activities likely or not likely to result in violation of section 9 at the time a species is listed, the Services intend to increase public awareness of the effect of proposed and ongoing activities within a species' range.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358-2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act prohibits certain activities that directly or indirectly affect species. These prohibitions apply to all individuals, organizations, and agencies within the United States jurisdiction. Section 4(d) of the Act allows the promulgation of regulations that exempt all or all of the prohibitions of section 9 to threatened species. Under the Act and regulations, it is illegal for any person subject to the jurisdiction of the United States to take (including import, export, ship in interstate or foreign commerce in the course of commercial activity, sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species, or to attempt to import, export, ship in interstate or foreign commerce in the course of commercial activity, sell or offer for sale in interstate or foreign commerce, or to reduce to possession any such plant species from areas under Federal jurisdiction. It is also illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken illegally. With respect to plants, analogous prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale in interstate or foreign commerce, or to reduce to possession any such plant species from areas under Federal jurisdiction. I

endangered plants, the Act prohibits malicious damage or destruction of any such species in any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging of any such species on any other area in knowing violation of any State law or regulation. The course of any violation of a State criminal trespass law.

#### Policy

It is the policy of the Services to identify, to the extent known at the time a specific activity, activities that will not be considered likely to result in violation of section 9, to the extent possible, activities that will be considered likely to result in violation of section 9 as identified in as specific a manner as possible. For those activities whose likelihood is uncertain, a contact will be identified in the final listing document to assist in determining whether a particular activity would constitute a prohibited act under section 9.

#### Scope of Policy

This policy applies for all species of fish and wildlife and plants, as defined in the list of species listed after October 1, 1994.

#### Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

Dated: June 27, 1994.  
Mollie H. Beattie,  
Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.  
Rolland A. Schmitten,  
Assistant Administrator for Fisheries, National Marine Fisheries Service.

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