

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the proposed rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes to use the 3–A Sanitary Standards, “Storage Tanks for Milk and Milk Products”, 3A 01–08, November 2001, developed by 3–A Sanitary Standards, Inc. A copy of these standards may be obtained from the 3–A Sanitary Standards online store at <http://www.techstreet.com/3Agate.html>; by contacting the organization at 6888 Elm Street, Suite 2D, McLean, Virginia 22101; by phone at (703) 790–0295; or by facsimile at (703) 761–6284. EPA is proposing an exemption to the SPCC rule based on the 3–A Sanitary Standards, because an owner and

operator of a facility that is subject to SPCC, that has milk storage containers and associated piping and appurtenances constructed in accordance with 3–A Sanitary Standards, and that is effectively implementing PMO sanitation requirements, may already be providing measures to prevent, control and provide countermeasures for discharges of oil in quantities that are harmful.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The overall effect of the action is to decrease the regulatory burden on facility owners or operators subject to its provisions.

List of Subjects in 40 CFR Part 112

Environmental protection, Animal fats and vegetable oils, Farms, Milk, Oil pollution, Tanks, Water pollution control, Water resources.

Dated: January 9, 2009.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

2. Amend § 112.1 by adding paragraphs (d)(2)(ii)(G) and (d)(13) to read as follows:

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) The capacity of any milk container and associated piping and appurtenances that are constructed according to current applicable 3–A Sanitary Standards, and that are subject to current applicable Grade “A” Pasteurized Milk Ordinance or a State dairy regulatory requirement equivalent to the current applicable Grade “A” Pasteurized Milk Ordinance.

* * * * *

(13) Any milk container and associated piping and appurtenances that are constructed according to current applicable 3–A Sanitary Standards, and that are subject to current applicable Grade “A” Pasteurized Milk Ordinance or a State dairy regulatory requirement equivalent to the current applicable Grade “A” Pasteurized Milk Ordinance.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0059; MO 9221050083–B2]

Endangered and Threatened Wildlife and Plants; Status Review of the Bald Eagle (*Haliaeetus leucocephalus*) in the Sonoran Desert Area of Central Arizona and Northwestern Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of continuing information collection for a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the continuation of information collection on a status review for the bald eagle (*Haliaeetus leucocephalus*) in the Sonoran Desert area of central Arizona and northwestern Mexico, hereafter referred to as the “Sonoran Desert area bald eagle.” Through this action, we

encourage all interested parties to provide us with information regarding the status of, and any potential threats to, the Sonoran Desert area bald eagle. Information previously submitted for this status assessment does not need to be resubmitted, and will be incorporated into the public record and fully considered in our status review.

DATES: To allow us adequate time to consider and incorporate submitted information into our review which is due by October 12, 2009, we request that we receive the information on or before July 10, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for comments or submissions.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R2-ES-2008-0059; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT:

Steve Spangle, Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951; telephone 602-242-0210; facsimile 602-242-2513. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are continuing to collect information concerning the status of the Sonoran Desert area bald eagle (*Haliaeetus leucocephalus*). We will use information gained during this process to evaluate whether the Sonoran Desert area bald eagle is a Distinct Population Segment (DPS) as described in our policy on determining a DPS (61 FR 4722, February 7, 1996; DPS Policy), and if listing as threatened or endangered is warranted under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). If we determine that listing the Sonoran Desert area bald eagle is warranted, we would propose critical habitat to the

maximum extent prudent and determinable at the time we prepare a proposed listing rule.

To allow us adequate time to incorporate submitted information into our review, we request that we receive the information on or before July 10, 2009. Because this status review will not result in establishing a rule, this date is an advisory. However, please note that the court has established a deadline of October 12, 2009, for completion of this status review. As a result, the Service must be able to compile, evaluate, and incorporate substantial information into this status review. Therefore, receiving substantial information on or before July 10, 2009, maximizes our ability to incorporate that information into our review.

At this time, we request any additional information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the Sonoran Desert area bald eagle, including:

(1) Information regarding Sonoran Desert area bald eagles' historical and current population status, distribution, and trends; biology and ecology; and habitat selection. We also solicit information of this type on adjacent populations and geographic areas for use in evaluating discreteness and significance of the Sonoran Desert area bald eagle under the Service's DPS Policy.

(2) Information that supports or refutes the appropriateness of considering the Sonoran Desert area bald eagle to be discrete, as defined in the DPS Policy including, but not limited to:

(a) Information indicating whether Sonoran Desert area bald eagles are markedly separated from other populations of bald eagles due to physical, physiological, ecological, or behavioral factors. This may include information regarding bald eagles that hatched in the Sonoran Desert area and that breed with bald eagles that hatched in other locations outside this area, and information regarding the Sonoran Desert area bald eagles' isolation from other breeding populations of eagles.

(b) Information indicating whether or not the Sonoran Desert area bald eagle is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.

(3) Information that supports or refutes the appropriateness of considering the Sonoran Desert area

bald eagle to be significant, as defined in the DPS Policy including, but not limited to:

(a) Information indicating whether the ecological setting, including such factors as temperature, moisture, weather patterns, and plant communities, in which the Sonoran Desert area bald eagle persists is unusual or unique when compared to that of bald eagles found elsewhere in North America. This may also include information indicating that the Sonoran Desert area bald eagle has or has not developed adaptations to that unique environment, such as breeding behavior, morphological characteristics, egg development and characteristics, or nest types.

(b) Information indicating whether loss of the Sonoran Desert area bald eagle would or would not result in a significant gap in the range of the taxon.

(c) Information indicating whether the Sonoran Desert area bald eagle differs markedly from other populations of bald eagles in its genetic characteristics.

(4) Information regarding the availability of suitable, but unoccupied, breeding habitat that might allow for expansion of the Sonoran Desert area bald eagle populations. This may include information on areas outside of the boundaries delineated for the Sonoran Desert area bald eagle in our May 1, 2008, final listing rule (73 FR 23966).

(5) Information on the effects of potential threat factors to the Sonoran Desert area bald eagle populations that are the basis for a listing determination under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the Sonoran Desert area bald eagle's breeding habitat or range, including but not limited to the effects on habitat from: water management (river diversions, dams, dam operations, surface and groundwater withdrawals); human population growth and accompanying increases in water demands; human recreation; reduced riparian health and regrowth of streamside trees for nesting, foraging, and roosting; urban development; and climate change;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation, including but not limited to the effects of avian pox or West Nile virus, Mexican chicken bugs, or ticks;

(d) The inadequacy of existing regulatory mechanisms, including but not limited to adequacy or inadequacy of funding for ongoing management; and the adequacy or inadequacy of

protections under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act; and

(e) Other natural or manmade factors affecting its continued existence, including but not limited to information on: Productivity, survival, and mortality rates of this population; the occurrence and effect of inbreeding; effects to Sonoran Desert area bald eagles while outside the Sonoran Desert area; effects to Sonoran Desert area bald eagles' prey base and productivity, including effects of nonnative predatory fish and native fish restoration; effects of low-flying aircraft; the presence and abundance of pesticides and contaminants such as lead, mercury, or dichlorodiphenyldichloroethylene (DDE); the effects of climate change; and the effects from eggshell thinning.

(6) Information supporting the existing boundary developed in our May 1, 2008, final listing rule (73 FR 23966) for Sonoran Desert area bald eagles under consideration in this status review, or information indicating that the boundary should be modified.

If you submitted information in response to our notice of initiation of a status review, which was published in the **Federal Register** on May 20, 2008 (73 FR 29096), you do not need to resend it. We will include the submission in the public record, and we will consider the information in the preparation of our status review.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If you submit personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that the action may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

Federal actions taken prior to May 2008 are described in a notice of initiation of a status review of the Sonoran Desert area bald eagle, which was published in the **Federal Register** on May 20, 2008 (73 FR 29096). On August 27, 2008, the U.S. District Court for the District of Arizona granted the Center for Biological Diversity and Maricopa Audubon Society's unopposed motion to amend the previous court order (*Center for Biological Diversity v. Kempthorne*, CV 07-0038-PHX-MHM (D. Ariz.)) to extend the completion date of the bald eagle status review to October 12, 2009. Included in the motion submitted to the court were declarations discussing the need for additional time for Native American Tribes to compile and submit information.

At this time, we are soliciting new information on the status of and potential threats to the Sonoran Desert population of bald eagles. We will base our new determination as to whether listing is warranted on a review of the best scientific and commercial information available, including all such information received as a result of this notice. For more information on the biology, habitat, and range of the Sonoran Desert population of bald eagles, please refer to our previous 90-day finding published in the **Federal Register** on August 30, 2006 (71 FR 51549), and our final delisting rule for the bald eagle published in the **Federal Register** on July 9, 2007 (72 FR 37346).

Author

The primary authors of this notice are the staff members of the Arizona Ecological Services Office.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 7, 2009.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9-552 Filed 1-14-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 253 and 600

[Docket No. 080228332-81199-01]

RIN 0648-AW38

Magnuson-Stevens Act Provisions; Interjurisdictional Fisheries Act; Disaster Assistance Programs; Fisheries Assistance Programs

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, and the Interjurisdictional Fisheries Act (IFA), NMFS (on behalf of the Secretary of Commerce) proposes regulations to govern the requests for determinations of fishery resource disasters as a basis for acquiring potential disaster assistance. The regulations would establish definitions, and characteristics of commercial fishery failures, fishery resource disasters, serious disruptions affecting future production, and harm incurred by fishermen, as well as requirements for initiating a review by NMFS, and the administrative process it will follow in processing such applications. The intended result of these procedures and requirements is to clarify and interpret the fishery disaster assistance provisions of the MSA and the IFA through rulemaking and thereby ensure consistency and facilitate the processing of requests.

DATES: Comments must be submitted in writing on or before February 17, 2009.

ADDRESSES: You may submit comments, identified by 0648-AW38, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>;
- **Fax:** 301-713-1193, Attn: Robert Gorrell;
- **Mail:** Alan Risenhoover, Director, NMFS Office of Sustainable Fisheries,