

meet the requirements of SMCRA and the Federal regulations.

IV. Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, none chose to do so. No additional public comments were received.

The disclosure of Federal agency comments is made pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above finding, is approving the July 16, 1985 amendment to the Oklahoma program. The Director is amending Part 936 of 30 CFR Chapter VII to reflect approval of the above program modification. It should be noted that while the Director is approving the amendment which contains provisions relevant to blaster certification, the approval does not constitute approval of the Oklahoma amendment to establish a blaster certification program in accordance with 30 CFR Part 850. An amendment from the State to establish a blaster certification program is being handled through a separate rulemaking. See 50 FR 43724, October 29, 1985.

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 4, 1985.

Gary Bennethum,

Acting Deputy Director, Operations and Technical Services.

PART 936—OKLAHOMA

30 CFR Part 936 is amended as follows:

1. The authority citation for Part 936 continues to read as follows:

Authority: Sec. 503, Pub. L. 95-87, 91 Stat. 407 (30 U.S.C. 1253), unless otherwise noted.

2. 30 CFR 936.15 is amended by adding a new paragraph (e) as follows:

§ 936.15 Approval of regulatory program amendments.

(e) The following amendment submitted July 16, 1985, is approved effective January 1, 1986: Revisions to Oklahoma statute at 45 O.S. 1981, as amended by Enrolled Senate Bill No. 332, and signed by the Governor on July 8, 1985.

[FR Doc. 85-29209 Filed 12-9-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area in the Pacific Ocean at San Clemente Island, CA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is establishing a naval restricted area in the Pacific Ocean at San Clemente Island, California, in the vicinity of West Cove. The restricted area prohibits vessels from anchoring in that designated area for the protection of the Navy's submarine cables.

EFFECTIVE DATE: January 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Lukos at (213) 894-5806 or Mr. Ralph T. Eppard at (202) 272-0199.

SUPPLEMENTARY INFORMATION: The Corps of Engineers is establishing a restricted area in the vicinity of West Cove, San Clemente Island, California. This restricted area does not affect normal vessel traffic in the area except with regard to a prohibition on anchoring. The Corps of Engineers

published this proposal in the Notice of Proposed Rulemaking section of the Federal Register on September 3, 1985, and invited comments for a 30-day period ending on October 3, 1985 (50 FR 35573). No comments were received, however, it was observed that the proposed rule contained coordinates listed as longitude, followed by latitude which conventionally should be stated as latitude followed by longitude. The coordinates were correct as published and accordingly the reversal is made in this final rule.

On October 22, 1985, the Department of the Army consolidated the danger zone regulations in Part 204, and the restricted area/prohibited area regulations in Part 207 into a new Part 334. Proposed § 207.614a is renumbered to be § 334.921 in accordance with the new numbering system.

Note.—This regulation is issued with respect to a military function of the Defense Department, is not a major rule within the meaning of Executive Order 12291, and accordingly, the provisions of Executive Order 12291 do not apply. The Department of the Army certifies that this regulation would not have a significant economic impact on a substantial number of entities and thus does not require preparation of regulatory flexibility analysis.

List of Subjects in 33 CFR Part 334

Navigation, Navigation (Water), Water transportation, Waterways.

Accordingly, 33 CFR Part 334 is amended as follows:

PART 334—NAVIGATION REGULATIONS

1. The authority for Part 334 continues to read as follows:

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

2. Section 334.921 is added to read as follows:

§ 334.921 Pacific Ocean at San Clemente Island, Cal.; naval restricted area.

(a) *The area.* All waters between the northern and southern boundaries of the area known as West Cove seaward approximately four miles.

The northern boundary is defined by the coordinates:

33°00'52" N. 118°36'18" W.
32°58'30" N. 118°37'30" W.
32°59'20" N. 118°38'38" W.

The southern boundary is defined by the coordinates:

33°00'40" N. 118°35'27" W.
32°58'30" N. 118°36'40" W.
32°57'45" N. 118°38'38" W.

(b) *The regulation.* (1) The use of this area for anchorage is prohibited to all craft at all times.

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

Dated: November 21, 1985.

Approved:

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil Works).

[FR Doc. 85-29189 Filed 12-9-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2740 and 2910

[Circular No. 2573]

Recreation and Public Purposes Act Conveyances; Amendments Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Recreation and Public Purposes Act, as amended, provides the major avenue through which public lands are transferred, by conveyance or lease, to the States or their political subdivisions and to nonprofit corporations and associations. The Act provides procedures for the transfer of public lands for recreational and public purpose uses. This final rulemaking makes a number of amendments in the existing regulations to facilitate acquisitions of public lands by States, State instrumentalities and subdivisions, including counties and municipalities for recreational or public purpose uses. The final rulemaking does not affect the procedures as they relate to nonprofit corporations or associations.

EFFECTIVE DATE: January 9, 1986.

ADDRESS: Suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert C. Nauert, (202) 343-8693; or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the *Federal Register* on September 28, 1982 (47 FR 42684), with a 60-day comment period. Comments were received from ten different sources, six from Federal agencies, three from States and one from an environmental group.

The general comments on the proposed rulemaking expressed the view that the proposed rulemaking would make a number of improvements in the existing regulations and would

facilitate speedier action on applications for public lands for recreational and public use purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

The majority of the comments on the proposed rulemaking were directed at specific provisions. Those sections that received comments and the comments on them will be discussed individually.

The new definition of the term "public purpose" set out in the proposed rulemaking drew numerous comments. Most of the comments objected to the inclusion of the word "morals" in the definition. Most of the comments expressed the view that the inclusion of the word "morals" raised the implication that the Federal Government intended to regulate the morals of the public. The word was included in the regulations, not for the purpose of regulating the public's morals, but to cover such public purposes as use of public lands for police and public safety facilities, etc. Because the word is not really necessary to the definition and the uses for police and public safety facilities are clarified in the totally revised term "public purposes" in the final rulemaking, the word "morals" is no longer used.

Several comments raised the point that the term "conveyance" appeared several times in existing regulations and in the proposed rulemaking and that it was used in a way that made its meaning subject to some confusion. The comments questioned what constituted a conveyance, was it a sale or was it also a lease. Another comment made the point that transfers for recreation purposes that were made at no monetary consideration were not sales but were some other form of conveyance. The suggestions made in the comments were given careful consideration and the final rulemaking contains a new definition of the term "conveyance." In addition, the final rulemaking deletes from the proposed rulemaking the word "sale" and substitutes for it the word conveyance for clarification.

Several comments expressed the view that the changes in the policy section made by the proposed rulemaking were not clear as to the types of uses that were not permitted by the Recreation and Public Purposes Act and those uses that were more appropriately authorized under other authorities. The paragraph of the policy section covering uses has been rewritten by the final rulemaking to clarify the types of uses that are not permissible under the Act. This paragraph in the final rulemaking also requires that uses requiring development of the public lands for recreational or

public purposes will require the conveyee to commit to a development plan or program before the lease or conveyance is granted.

Other comments on the policy section of the proposed rulemaking stated that the paragraph regarding the disposal of lands acquired in an exchange under the Recreation and Public Purposes Act was not clear and recommended that it be clarified. This section of the proposed rulemaking was designed to reiterate the longstanding policy prohibition against acquiring non-Federal lands through the exchange process for the purpose of immediately disposing of those lands under the Act or any other disposal authority. This paragraph has been rewritten in the final rulemaking to clarify that non-Federal lands will not be acquired for disposal under the authority of the Act.

One comment pointed out what was perceived as an inconsistency between the policy prohibition in the proposed rulemaking against the conveyance of Federally-owned and reserved mineral interests under lands conveyed under the Recreation and Public Purposes Act and the amendment to § 2741.6 made by the proposed rulemaking that clarifies the authority to lease those minerals. The policy prohibition against conveyance of the reserved mineral interest under lands conveyed under the Act is designed to avoid the possibility of split estate situations whereby the mineral estate could be conveyed to the surface owner only to have the surface revert to the United States because of a failure of the owner to comply with the terms and conditions of the conveyance document. The amendment made by the proposed rulemaking to § 2741.6 on mineral leasing would reiterate the policy that reserved Federal mineral interests may be permitted or leased under applicable mineral leasing authorities. These reserved Federal mineral interests have been subject to leasing for years and the amendment was intended to specify the various laws that are involved. Careful review of the two amendments fails to reveal any inconsistency and the final rulemaking retains both of them.

Several of the comments questioned the need for inclusion in the proposed rulemaking of the preapplication consultation provision and questioned its enforceability. The section, which has been retained by the final rulemaking, was included to encourage potential applicants to discuss land acquisition proposals with the Bureau of Land Management well in advance of their filing of an application. Early consultation will enable applicants and

the Bureau to discuss requirements, schedules and processing procedures which will allow both parties to identify problem areas, procedural constraints and methods to expedite action on the proposal. While preapplication consultation is optional and cannot be required of an applicant, it is recommended in order to save time and make the processing of the proposal more efficient. Inclusion of this section simply formalizes preapplication consultation procedures that have been used by the Bureau for the past few years with excellent results, not only in this area but in several other areas of Bureau activity.

Several comments objected to the imposition of a filing fee by the proposed rulemaking and expressed the view that if a filing fee is to be imposed, a fee of \$100 is excessive. The Bureau of Land Management has imposed filing fees for a myriad of applications over the years with the amount of the fees being nominal and not truly reflective of the Bureau's costs of processing the applications. Section 304 of the Federal Land Policy and Management Act (43 U.S.C. 1734) authorizes the Secretary of the Interior to establish reasonable filing and service fees with respect to the applications relating to the public lands. The \$100 filing fee represents a minimum fee for processing applications under the Recreation and Public Purposes Act and does not recover the Bureau's full costs for the processing of the applications. The fee will be imposed for all applications regardless of the purpose of the application (e.g., recreation, public purpose) or the type of applicant (e.g., State and local governments, nonprofit associations, etc.). The final rulemaking adopts the \$100 filing fee of the proposed rulemaking with an amendment that fully describes the types of applications that will require the fee. The change was made in response to questions raised in the comments.

Several comments suggested revision of the language of the proposed rulemaking concerning the notice of realty action. One comment pointed out that the Recreation and Public Purposes Act contains provisions that if an application is not filed within 18 months of the lands classification (i.e., issuance of the notice), the lands which were so classified are to be restored to the operation of the applicable public land laws. The proposed rulemaking specified a 12-month period of segregation from the effect of the public land laws. The final rulemaking follows the language of the Act and provides for a period of segregation of 18 months.

Several comments suggested that time could be saved by combining the comment periods on a notice of realty action with that for a land use plan in those instances where a classification decision, in order to be implemented, would require an amendment to the Bureau of Land Management's land use plan. This suggestion has been adopted by the final rulemaking.

The proposed rulemaking contained a new policy directive which would permit immediate patents for using lands for sanitary landfill activities. This policy change was applauded by most of the comments. However, the comments expressed the view that the language of the proposed rulemaking was confusing and lacked clarity. After careful review of the provisions of the proposed rulemaking, this section has been rewritten in the final rulemaking. As a result of the fact that immediate patents may now be issued for lands to be used for sanitary landfill purposes, the lease with option to purchase alternative that appeared in the proposed rulemaking is no longer needed and has been removed by the final rulemaking.

Section 2742.1 of the proposed rulemaking contained a specific section regarding conveyances of omitted lands and unsurveyed islands under the provisions of section 211 of the Federal Land Policy and Management Act (43 U.S.C. 1721). This section has been deleted by the final rulemaking because it repeats language that already appears in §§ 2740.0-3(b), 2740.0-7(c) and 2741.1(c) of the existing regulations.

One comment questioned why §§ 2912.4 through 2912.4-2 of the existing regulations were needed. Those sections contain language explaining the requirements and procedures for leases when the proposed use of the lands under lease is for solid waste disposal. The comment is well taken and the sections are not needed and the final rulemaking deletes them. They are not needed because § 2912.1-1(b) authorizes the authorized officer to include in any lease such terms and conditions as are required by law and public policy. If the proposed use under a lease is for solid waste disposal purposes, the authorized officer would include a reference to applicable law and regulations.

Several comments were received on the provisions of the proposed rulemaking that would permit leasing of lands which included valid mining claims. The major concern raised by the comments was related to the significance of this change in the longstanding policy of the Bureau of Land Management with regard to challenging the validity of mining

claims. The comments also expressed concern about the possibility of conflicts arising between a lessee and a mining claimant on lands leased under this provision, as well as concerns about the possibility of damage claims or liability under dual-use situations. The issues raised in these comments have been carefully reviewed. Our review led to the conclusion that some of the concerns were appropriate and that the provisions of the proposed rulemaking, if implemented by the final rulemaking, might result in the types of problems and conflicts noted in the comments. Accordingly, the addition of a new paragraph (h) to § 2912.1-1 proposed by the proposed rulemaking has been deleted by the final rulemaking. The Bureau will continue the existing policy regarding leasing of mining claims that has been in effect for years. This policy requires that public lands included in a mining claim upon which a validity determination has not been made may not be leased or conveyed under the provisions of the Recreation and Public Purposes Act. To further reiterate and clarify this policy, the final rulemaking adds a new paragraph to the general policy section (2740.0-6) describing the policy. The policy statement makes it clear that the Bureau will not spend any of its funds to undertake a validity determination for the sole purpose of conveying property under the provisions of the Recreation and Public Purposes Act. If an applicant for those lands wishes to expend funds to undertake a validity contest of a mining claim, they may make a request for such action of the authorized officer and such contest may proceed if the authorized officer deems it appropriate after considering all of the issues. The applicant will be responsible for the full expense of any contest proceedings.

The principal authors of this final rulemaking are Keith Corrigan and John Mezes, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility act (5 U.S.C. 601 et seq.).

The changes made by the final rulemaking will expedite the processing of applications for disposal of public lands under the Recreation and Public Purposes Act to governmental and nonprofit entities, both large and small. The effect of the changes will be beneficial to all participants in the

program, but will not increase or decrease the overall benefits of the program.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0009 and 1004-0012.

List of Subjects

43 CFR Part 2740

Intergovernmental relations, Public lands—sales, Recreation.

43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.) (commonly known as the Recreation and Public Purposes Act), sections 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721, 1740) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), Part 2740 of Group 2700 and Part 2910 of Group 2900, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set out below.

Dated: November 6, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT—[AMENDED]

1. Part 2740 is amended by adding an authority citation to read:

Authority: The Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701).

Subpart 2740—[AMENDED]

2. Subpart 2740 is amended by:

A. Removing the authority citation in its entirety;

B. Amending section 2740.0-5 by adding new paragraphs (d) and (e) to read:

§ 2740.0-5 Definitions.

(d) "Public purpose" means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for

and integral to, i.e., and essential part of, the public purpose.

(e) "Conveyance" means a transfer of legal title. Leases issued pursuant to subpart 2912 of this title are not conveyances.

C. Section 2740.0-6 is amended by adding new paragraphs (c), (d), (e) and (f) to read:

§ 2740.0-6 Policy.

(c) Where lands are conveyed under the act with a reservation of the mineral estate to the United States, the Bureau of Land Management shall not thereafter convey that mineral estate to the surface owner under the provisions of section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(d) Lease or conveyance of lands for purposes other than recreational or public purposes is not authorized by the act. Uses which can be more appropriately authorized under other existing authorities shall not be authorized under the act. Approval of leases or conveyances under the act shall not be made unless the public lands shall be used for an established or definitely proposed project. A commitment by lessee(s) or conveyee(s) to a plan of physical development, management and use of the lands shall be required before a lease or conveyance is approved. Use of public lands for nonrecreational or nonpublic purposes, whether by lease or conveyance, may be applied for under sections 203 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1732) or other applicable authorities.

(e) The Bureau of Land Management shall not exercise the exchange authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for the purpose of acquiring lands for later conveyance under the act.

(f) The Bureau of Land Management shall not use Federal funds to undertake determinations of the validity of mining claims on public lands for the sole purpose of clearing title so that the lands may be leased or conveyed under the act.

Subpart 2741—[Amended]

3. Subpart 2741 is amended by:

A. Removing the authority citation in its entirety;

B. Redesignating §§ 2741.3 through 2741.8 as §§ 2741.4 through 2741.9, respectively;

C. Adding a new § 2741.3 to read:

§ 2741.3 Preapplication consultation.

(a) Potential applicants should contact the appropriate District Office of the Bureau of Land Management well in advance of the anticipated submission of an application. Early consultation is needed to familiarize a potential applicant with management responsibilities and terms and conditions which may be required in a lease or patent.

(b) Any information furnished by the applicant in connection with preapplication activity or use, which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) Dependent upon the magnitude and/or public interest associated with the proposed use, various investigations, studies, analyses, public meetings and negotiations may be required of the applicant prior to the submission of the application. Where a determination is made that studies and analyses are required, the authorized officer shall inform the potential applicant of these requirements.

(d) The potential applicant may be permitted to go upon the public lands to perform casual acts related to data collection necessary for development of an acceptable plan of development as required in § 2741.4(b) of this title. These casual acts include, but are not limited to:

- (1) vehicle use on existing roads;
- (2) sampling;
- (3) surveys required for siting of structures or other improvements; and
- (4) other activities which do not unduly disturb surface resources. If, however, the authorized officer determines that appreciable impacts to surface resources may occur, he/she may require the potential applicant to obtain a land use authorization permit with appropriate terms and conditions under the provision of Part 2920 of this title.

D. Amending the redesignated § 2741.4 by adding a new paragraph (c) to read:

§ 2741.4 Applications.

(c) Each application shall be accompanied by a nonrefundable filing fee of \$100. The filing fee shall be required for new applications as well as for applications for change of use or transfer of title filed under § 2741.6 of this title.

E. Amending the redesignated § 2741.5 by:

1. Amending paragraph (f) by removing all after the first sentence thereof; and
2. Revising paragraphs (h) and (i) to read:

§ 2741.5 Guidelines for conveyances and leases under the act.

(h)(1) A notice of realty action which shall serve as suitable or unsuitable for conveyance or lease under the act shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the proposed effective date of the classification action. Notices specifying public lands classified as suitable shall include: the use proposed; whether the lands are to be conveyed or leased; and the terms, covenants, conditions and reservations which shall be included in the conveyance or lease document. The notice shall provide at least 45 days from the date of issuance for submission of public comments.

(2) If the notice of realty action states that the lands are classified as suitable for conveyance or lease under the act, it shall segregate the public lands described in the notice from appropriation under any other public land law, including locations under the mining laws, except as provided in the notice or any amendments or revisions to the notice. If, after 18 months following the issuance of the notice, an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in the notice shall return to their former status without further action by the authorized officer.

(3) The notice of realty action shall be published once in the *Federal Register* and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands covered by the notice.

(4) The notice published under § 1610.5-5 of this title, if designated in the notice, shall serve as the notice of realty action required by this section and shall segregate the public lands as stated in the notice. Any such notice given under § 1610.5-5 of this title shall be published and distributed under the provisions of this section.

(i) The authorized officer may effect a conveyance for a sanitary landfill on public lands if the ultimate use of the public lands after completion of landfill activities shall be for a recreational or public purpose.

F. Amending the redesignated § 2741.6 by amending paragraph (a) thereof by

removing the citation "§ 2741.3" and replacing it with the citation "§ 2741.4", by amending paragraph (b) thereof by removing the citation "§ 2741.6(a)" and replacing it with the citation "§ 2741.7(a)" and amending paragraph (c) thereof by removing the citation "§ 2741.7" and replacing it with the citation "§ 2741.8".

G. Amending the redesignated § 2741.7 by adding to paragraph (d) a sentence to read "Where such reserved minerals are subject to disposition under the provisions of the Mineral Leasing Act of 1920, as amended, and supplemented (30 U.S.C. 181 et seq.), the Materials Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), the regulations contained in Subchapter C of this title shall be utilized."

Subpart 2742—[Amended]

4. Subpart 2742 is amended by:
 - A. Removing the authority citation in its entirety;
 - B. Redesignating §§ 2742.1 through 2742.4 as §§ 2742.2 through 2742.5, respectively;
 - C. Adding a new § 2742.1 to read:

§ 2742.1 Lands subject to disposition.

Omitted lands and unsurveyed islands may be conveyed to States and their local political subdivisions under the provisions of section 211 of the Federal Land Policy and Management Act (43 U.S.C. 1721).

PART 2910—LEASES

Subpart 2912—[Amended]

5. Subpart 2912 is amended by:
 - A. Continuing the authority citation to read:

Authority: Secs. 211 and 310, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

§§ 2912.4, 2912.4-1 and 2912.4-2 [Removed]

- B. Removing §§ 2912.4, 2912.4-1 and 2912.4-2 in their entirety.

[FR Doc. 85-29292 Filed 12-9-85; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 715, 728, 731, 732, 737, 750, 752, 753, and Appendices

[AIDAR Notice 85-12]

Miscellaneous Changes to the AID Acquisition Regulation

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to reflect new office titles required by a reorganization, and to make minor editorial revisions and corrections.

EFFECTIVE DATE: December 10, 1985.

FOR FURTHER INFORMATION CONTACT:

M/SER/PPE, Mr. James M. Kelly, telephone (703) 235-9855.

SUPPLEMENTARY INFORMATION: We have determined that the changes being made by this Notice are not significant or major changes as defined by FAR 1.301(b), or FAR 1.501, or E.O. 12291.

As required by the Regulatory Flexibility Act, it is hereby certified that this Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 701, 702, 715, 728, 731, 732, 737, 750, 752, 753, and Appendices

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 701, 702, 715, 728, 731, 732, 737, 750, 752, 753, and the Appendices to Chapter 7 are unchanged and continue to read as follows:

Authority: Sec. 821, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 701.3—Agency for International Development Acquisition Regulation

701.376-1 [Amended]

2. Section 701.376-1, *Responsibility*, is amended by revising the first sentence to read as follows: "Responsibility for the development and maintenance of the

AIDAR is assigned to the Procurement Executive."

701.376-4 [Amended]

3. Section 701.376-4, *Implementation within AID contracting activities*, is amended by removing the reference to "the Director, Office of Contract Management," replacing it with a reference to "the Planning, Policy and Evaluation Staff (M/SER/PPE)."

Subpart 701.4—Deviations From the FAR or AIDAR

701.470 [Amended]

4. Section 701.470, *Procedure*, is amended as follows:

a. The initial reference to "the Office of Contract Management, Support Division," appearing in paragraph (a)(2) is removed and replaced by a reference to "the Planning, Policy and Evaluation Staff of the Associate Assistant to the Administrator for Management, M/SER/PPE, hereinafter referred to as 'PPE'."

b. The remaining references to "Support Division", and to "Office of Contract Management, Support Division" appearing in paragraphs (a)(2), (b)(2), (b)(3)(i), (c), and (f)(1), are removed and replaced by references to "PPE".

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

702.170-3 [Amended]

5. In section 702.170-3, *Contracting activities*, paragraph (a) is amended by removing (and not replacing) the reference to "Office of Commodity Management", and by removing the references to the "Office of Contract Management". The references to the "Office of Contract Management" are replaced by references to the "Office of Acquisition and Assistance Management".

6. Section 702.170-10, *Head of the contracting activity*, is amended by revising paragraph (a) as follows:

702.170-10 Head of the contracting activity.

(a) AID/Washington.

Position	Limitation
Director, Office of Acquisition and Assistance Management.	None.
Director, Office of Management Operations.	Use of small purchase procedures (\$25,000) for services and supplies. Unlimited authority when ordering against GSA or other established U.S. Government ordering agreements.

Position	Limitation
Director, Office of Foreign Disaster Assistance.	Contracts for disaster relief purposes during the first 72 hours of a disaster in a total amount not to exceed \$500,000 (AID Handbook 8, Chapter 5). Routine small purchase authority (\$25,000).
Director, Office of International Training.	Use of small purchase procedures up to \$10,000. Unlimited for procuring participant training based on published catalog prices, using M/SER/AAM approved forms.

Each of these Office Directors will issue warrants to qualified individuals to actually exercise the authority.

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.5—Unsolicited Proposals

715.504 [Amended]

7. In section 715.504, *Advance guidance*, paragraph (a) is amended by removing the reference to "PRE/SDB/SB", replacing it with a reference to "OSDBU/MRC".

715.506 [Amended]

8. Section 715.506, *Agency procedures and point of contact*, is amended by removing the reference to "PRE/SDB/SB", replacing it with a reference to "OSDBU/MRC".

PART 728—BONDS AND INSURANCE

Subpart 728.1—Bonds

728.105-1 [Amended]

9. In section 728.105-1, *Advance payment bonds*, paragraph (b) is amended by removing the reference "the Insurance Advisor, Office of Contract Management," replacing it with a reference to "the Planning, Policy and Evaluation Staff (M/SER/PPE)."

Subpart 728.3—Insurance

728.302 [Amended]

10. Section 728.302, *Notice of cancellation or change*, is amended by removing the reference to "the Insurance Advisor, Office of Contract Management," replacing it with a reference to "the Planning, Policy and Evaluation Staff (M/SER/PPE)."

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

731.109 [Amended]

11. Section 731.109, *Advance agreements*, is amended by removing the reference to "Overhead and Special Cost Branch, Office of Contract

Management," replacing it with a reference to "Overhead and Special Cost and Contract Close-Out Branch, Office of Acquisition and Assistance Management."

Subpart 731.2—Contracts With Commercial Organizations

731.205-6 [Amended]

12. Section 731.205-6, *Compensation for personal services*, is amended as follows:

a. Paragraph (a)(3) is amended by adding the following parenthetical phrase immediately after the paragraph title, "Overseas Recruitment Incentive": "(The term 'employee', as used in this paragraph, means an employee who is a U.S. citizen or resident alien.)"

b. Paragraph (b)(2) is amended by removing the reference "Support Division, Office of Contract Management," appearing at the end of the paragraph, replacing it with a reference to "Acquisition Support Division, Office of Acquisition and Assistance Management."

Subpart 731.3—Contracts With Educational Institutions

731.371 [Amended]

13. Section 731.371, *Compensation for personal services*, is amended as follows:

a. Paragraph (a) is amended by removing the reference "Support Division, Office of Contract Management," appearing at the end of the paragraph, replacing it with a reference to "Acquisition Support Division, Office of Acquisition and Assistance Management."

b. Paragraph (c), *Overseas Recruitment Incentive*, is amended by adding the following parenthetical phrase immediately after the title of paragraph (c):

"(The term 'employee', as used in this paragraph, means an employee who is a U.S. citizen or resident alien.)"

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 [Amended]

14. Section 731.770, *OMB Circular A-122, Cost Principles for Nonprofit Organizations; AID implementation*, is amended by removing the references to "The Director, Office of Contract Management" and "The Overhead and Special Cost Branch, Office of Contract Management (OSC)," appearing in paragraph (a), replacing them respectively with references to "The Director, Office of Acquisition and Assistance Management" and "The

Overhead and Special Cost and Contract Close-Out Branch, Office of Acquisition and Assistance Management (OCC)."

731.772 [Amended]

15. In § 731.772, *Compensation for personal services*; paragraph (c), *Overseas Recruitment Incentive*, is amended by adding the following parenthetical phrase immediately after the title of paragraph (c):
 "[The term 'employee', as used in this paragraph, means an employee who is a U.S. citizen or resident alien.]"

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

732.406-70-2 [Amended]

16. In section 732.406-70-2, *Circumstances for use of an LOC*, paragraph (a)(1) is amended by removing the reference to "Chapter 15C", replacing it with a reference to "Chapter 15E". Paragraph (a)(3) is amended by changing the first word from "To" to "The".

PART 737—SERVICE CONTRACTING

Subpart 737.2—Services of Experts and Consultants

737.270 [Amended]

17. In section 737.270, *Contracting for consulting services*, paragraph (c)(2) is amended by removing the parenthetical phrase at the end of the second sentence, replacing it with the following: "[located in the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI]".

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 750.70—Ratification of Unauthorized Contract Awards

750.7000 [Amended]

18. In section 750.7000, *Ratification of unauthorized contract awards*, paragraph (b) is amended by removing the reference to "the Director, Office of Contract Management", replacing it with a reference to "the Procedure Executive".

Subpart 750.71—Extraordinary Contractual Action To Protect Foreign Policy Interests of the United States

750.7109-1, 750.7110-1, 750.7110-2 and 750.7110-3 [Amended]

19. Sections 750.7109-1, *Filing requests*; 750.7110-1, *Investigation*;

750.7110-2, *Intra-agency coordination*; and 750.7110-3, *Submission of cases to the approving authority*, are amended by removing the reference each contains to "Office of Contract Management", replacing it with a reference to "Planning, Policy and Evaluation Staff (M/SER/PPE)".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

20. In section 752.7002, *Travel and transportation*, paragraph (d), *Alternate 73*, The contract clause titled "Travel Expenses and Transportation and Storage Expenses" is amended by:

- Changing the date of the clause from "(Aug. 1984)" to "(Nov. 1985)";
- Amending paragraph (n), *Storage of household effects*, of the clause to remove the reference to "paragraph(a), above", replacing it with a reference to "paragraph (1), above"; and
- Amending paragraph (o)(i) of the clause to remove the reference to "the Transportation Support Division, Office of Commodity Management", replacing it with a reference to "the Transportation Division, Office of Acquisition and Assistance Management".

752.7004 [Amended]

21. In section 752.7004, *Source and nationality requirements*, the contract clause titled "Source and Nationality Requirements for Procurement of Goods and Services" is amended by:

- Changing the date of the clause from "(Nov. 1984)" to "(Nov. 1985)";
- Amending subparagraph (b)(2) of the clause to remove the reference to "the AID Transportation Support Division, Office of Commodity Management. . ." replacing it with a reference to "the Transportation Division, Office of Acquisition and Assistance Management"; and
- Amending subparagraph (b)(5) of the clause to remove the reference to "Seventeen Street" as the street address of the Maritime Administration, replacing it with a reference to "Seventh Street".

PART 703—FORMS

Subpart 753.1—General

753.107 [Amended]

22. Section 753.107, *Obtaining forms*, is amended by removing the reference to "SER/MO/PUM", replacing it with a reference to "SER/MO/PM/D".

APPENDICES TO CHAPTER 7

Appendix B—Notice to Cost-Reimbursement Type Contractors of Changes in Applicable Standardized Government Regulations

23. Paragraph 5, *Duties and Responsibilities*, of Appendix B, is amended as follows:

- Paragraph 5(a)(1) is amended by removing the reference to "the Office of Contract Management, Support Division (Attention: SER/CM/SD/SS, Statistical Section)", replacing it with a reference to "the Office of Acquisition and Assistance Management Acquisition Support Division, Support Services Branch (SER/AAM/A/SUP)";
- Paragraph 5(b) is amended by changing the paragraph title from "Statistical section, SER/CM/SD/SS" to "SER/AAM/A/SUP";
- Paragraphs 5(b)(1) and 5(b)(2) are amended by removing the references to "SER/MO/PUM" and replacing them with references to "SER/MO/PM/D";
- Paragraph 5(c) is amended by removing the references to "SER/MO/PUM" and "SER/CM/SD/SS", replacing them respectively with references to "SER/MO/PM/D" and "SER/AAM/A/SUP"; and
- Paragraph 5(c)(2) and 5(c)(3) are amended by removing the reference to "SER/CM/SD/SS", replacing them with references to "SER/AAM/A/SUP".

Appendix C—Logistic Support Overseas to AID-Direct Contractors

24. Paragraph 2(b)(3) of Appendix C is amended by removing the reference to "SER/CM", appearing in the last sentence, replacing it with a reference to "SER/AAM".

Appendix F—Use of Collaborative Assistance Method for AID Direct Contracts for Technical Assistance

25. Paragraph 4(d)(3)(iii) of Appendix F is amended by removing the reference to "CM/SOD/OSC", replacing it with a reference to "AAM/A/OCC".

Appendix G—Approval and Reporting Procedures for Contractor Salaries

26. Appendix G is amended as follows:

- Paragraph 1(c) is amended by removing the reference to "SER/CM/SD/SS", replacing it with a reference to "SER/AAM/A/SUP";
- Paragraph 2(a) is amended by removing the parenthetical reference "(See AIDPR Appendix A.)" appearing at the end of paragraph 2(a), replacing it with "(See AIDAR Appendix A.)";
- Paragraph 3 is amended by removing the references to "SER/CM" appearing in the paragraph title and the

second sentence of the paragraph, replacing them with references to "SER/AAM", and by removing the reference to "SER/CM/SD/SS", replacing it with a reference to "SER/AAM/A/SUP"; and

d. Paragraph 4 is amended by removing the reference to "the Office of Contract Management.", replacing it with a reference to "the Office of Acquisition and Assistance Management."

Appendix H—Response to Audit Recommendations

27. Appendix H is amended as follows:

a. References to "SER/CM", appearing in paragraphs 2, 6 and 7(a), and in subparagraphs 5(b), 5(b)(1)(b), 5(b)(1)(c), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c)(iii), and 5(b)(4)(a), are removed and replaced with references to "SER/AAM";

b. References to "CM/SD/SS", appearing in subparagraphs 5(b)(1)(b), 5(b)(1)(c), 5(b)(1)(d), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c)(iii), and 5(b)(4)(a), and in paragraph 6, are removed and replaced with references to "AAM/A/SUP"; and

c. Paragraph 5(b)(3) is amended by removing the reference to "FM/PAD.", replacing it with a reference to "FM/PAFD."

Dated: November 25, 1985.

John F. Owens,

AID Procurement Executive.

[FR Doc. 85-29061 Filed 12-9-85; 8:45 am]

BILLING CODE 5115-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat for the Desert Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status and critical habitat for the desert dace (*Eremichthys acros*), and issues a special rule to allow take in accordance with state law. Known only from an area of thermal springs and immediate outflow creeks in Humboldt County, Nevada, the species survives in about eight of more than 20 springs in six square miles of the area known as Soldier Meadows. This action is being taken because habitat alterations have eliminated much former habitat and the existing population is potentially threatened by additional habitat alteration. This final rule would

implement the protection provided by the Endangered Species Act of 1973, as amended

DATE: The effective date of this rule is January 9, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE, Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131)

SUPPLEMENTARY INFORMATION:

Background

The desert dace (*Eremichthys acros*) is endemic to a series of thermal spring habitats in the Soldier Meadows area of Humboldt County, Nevada, where it was discovered in 1939 and described 11 years later by Carl Hubbs and R.R. Miller (1948). This species is the only member of the genus *Eremichthys*. The species has apparently survived in the Soldier Meadows area for at least tens of thousands of years. The species and genus is characterized by the presence of prominent horny sheaths on the jaws. No other cyprinid possesses such a remarkable feeding adaptation. The species is notable for its high temperature tolerance. Desert dace typically occur in water 67° to 97° F, but have been observed in water as hot as 100.4° F (Nyquist 1963). Water temperature appears to be a major factor controlling the distribution of desert dace within a spring system. When temperature at a springhead exceeds 100° F, desert dace are restricted to the somewhat cooler outflow downstream from the springs.

Most of the thermal springs and their outflow creeks inhabited by the desert dace occur on private lands. The local landowner has modified much of the species' habitat by diverting water away from natural channels into manmade ditches. The diversion of outflow water away from natural channels is especially detrimental in spring systems where the headpool temperature exceeds 100° F and the species can only occupy the outflow creeks.

Two reservoirs exist in the Soldier Meadows area approximately three miles from springs and outflows inhabited by desert dace. Channel catfish (*Ictalurus punctatus*) and smallmouth bass (*Micropterus dolomieu*) have been introduced into one of the reservoirs. If these exotics are introduced into nearby habitats

occupied by the desert dace, they would probably compete with and prey on the desert dace. Exotic species may also introduce disease or parasites to which the native species have not been previously exposed.

The Soldier Meadows area has been designated a Known Geothermal Resource Area. Geothermal exploration occurred in the area several years ago but was later abandoned. If geothermal exploration and development are resumed, these activities could impact the desert dace by interfering with the aquifers that supply water to thermal springs in the area.

The desert dace was included in the Service's Notice of Review of Vertebrate Wildlife published December 30, 1982 (47 FR 58454). In a petition dated April 4, 1983, and received April 12, 1983, the Desert Fishes Council requested that the desert dace be added to the List of Endangered and Threatened Wildlife. An administrative finding that the petition presented substantial information indicating that the requested action may be warranted was made May 9, 1983, and reported in the **Federal Register** on June 14, 1983 (48 FR 27273). Publication of the proposed rule on May 29, 1984 (49 FR 22355), signified that the requested action was warranted, and constituted a required finding in accordance with section 4(b)(3)(B)(ii) of the Act as amended in 1982.

Summary of Comments and Recommendations

In the May 29, 1984, proposed rule (49 FR 22355) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the following newspapers: *Fallon Eagle-Standard* (June 26, 1984); *Elko Daily Free Press* (June 26, 1984); *Las Vegas Review Journal* (June 27, 1984); and *Nevada State Journal* (June 26, 1984). In addition, a public hearing, requested by Mr. James A. Callahan on behalf of Mr. Ken Earp, owner of the Soldier Meadows Ranch, was held in Winnemucca, Nevada, on October 10, 1984. The hearing announcement was published on September 20, 1984 (49 FR 36886), and the comment period extended until October 22, 1984.

Nine letters of comment were received. Comments were received from both the Nevada State Office and

Winnemucca District Office of the Bureau of Land Management, Nevada State Office of Community Services, Nevada Department of Minerals, Nevada Department of Wildlife, Nevada Division of State Parks, Nevada Department of Agriculture, Nevada Division of Environmental Protection, and Mr. James A. Callahan, attorney. Three letters supported the proposed rule, one opposed the rule, four contained additional information, and one was a non-substantive comment.

The Nevada State Office of the Bureau of Land Management pointed out that although only a small portion of dace habitat occurs on public land, a habitat management plan has been completed, a dace transplant to two springs is planned, and a total of 307.22 acres of public land in Soldier Meadows has been designated both an Area of Critical Environmental Concern and a Research Natural Area. The Winnemucca District Office supported the proposed listing and expressed the view that the listing was consistent with District efforts to protect the dace and its habitat.

The Nevada Division of State Parks also supported the proposal and emphasized this support by stating that the area designated as critical habitat is listed in the Nevada Natural Heritage Program. This program identifies representative areas of the State's natural heritage, including plants, animals, and geological formations, as well as scenic and scientific areas, in an effort toward preserving those areas listed.

The Nevada Division of Environmental Protection had no objections to the proposed actions and stated that the proposal would have no apparent adverse impacts on Division programs.

The State Department of Minerals commented that the Soldier Meadows area has been designated as a Known Geothermal Resource Area and geothermal exploration had occurred in the area. This agency further stated that this geothermal resource appears to be of low temperature character useful for domestic or commercial purposes rather than power generation, but future exploration programs may delineate a greater potential for development. The Department recommended that consideration toward future resource development be evaluated before a final recommendation is made on the proposed rule. The Service replies that the 1982 amendments to the Act require that determinations to list species as threatened or endangered be based solely on the best scientific and commercial information available for

the species. Economic impacts are not allowed to be considered in making a listing determination. The Act specifies, however, that the economic impact of designating a particular area as critical habitat must be considered. The Service accordingly has prepared an economic analysis of the areas determined in this rule to be critical habitat. This analysis did not bring forth economic or other impacts to warrant consideration of revising the critical habitat designation.

The Nevada Department of Agriculture opposed the proposed rule on the basis that listing the desert dace as threatened would inhibit agricultural production at Soldier Meadows Ranch. The Service responds that the Endangered Species Act of 1973, as amended, only precludes Federal agencies from authorizing, funding, or carrying out activities that are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. Unless a proposed private action requires such Federal approval or funding, it would not be precluded by section 7 of the Act. However, the taking prohibitions in section 9 could apply to private actions that result in the taking of a threatened species.

The Nevada Department of Wildlife supported the proposed rule. It did express concern regarding the critical habitat designation since the species occurs primarily on private lands and the designation will provide very limited protection. The Department further suggested easement purchase or restricted development agreements with private landowners as a means of protecting the species. The Service agrees that designation of critical habitat on private lands affords little protection for the species unless Federal approval or funding is required for the action that occurs on private land. However, critical habitat designations can accompany the listing of species under the Act to serve as official notification to Federal agencies that their responsibilities under section 7 of the Act are applicable in a certain area.

The public hearing held on October 10, 1984, was attended by four individuals with only James A. Callahan, representing the owner of the Soldier Meadows Ranch, presenting a formal statement. No additional written comments were received following the public hearings.

Mr. Callahan was concerned that the proposed rule would adversely impact water rights and livestock grazing on private lands. The Service responds that the Endangered Species Act of 1973, as amended, only precludes Federal agencies from authorizing, funding, or

carrying out activities that are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. Unless a proposed action requires such Federal approval or funding, it would not be precluded by section 7 of the Act.

Mr. Callahan also questioned whether the Act allows for condemnation of private land. The Service responds that it prefers not to employ these powers while alternative means exist for preserving this fish and its habitat.

Additional concern was expressed by Mr. Callahan that desert dace would be transplanted to other water areas in Soldier Meadows. Service policy is to not transplant a species outside its historic range unless there are no other means of preserving the species. If waters within the historic range are not presently supporting dace populations, but are found to be suitable habitat, the Service would support transplants to these waters.

Mr. Callahan also asked if there are areas other than Soldier Meadows where desert dace are present. The Service has reviewed and concurs with scientific literature accepted by ichthyologists and other scientists, as correctly identifying the desert dace as a unique species endemic to a limited number of habitats within Soldier Meadows, Humboldt County, Nevada. No scientific information has ever been presented to the contrary.

Mr. Callahan further questioned whether the Soldier Meadows Desert Dace Habitat Management Plan developed by the Bureau of Land Management was in concert with present Fish and Wildlife Service plans to recover the species. The Service replies that the draft Habitat Management Plan was reviewed by Fish and Wildlife Service biologists and written comments provided to the Bureau of Land Management on January 25, 1983. Specific plans to implement portions of the Habitat Management Plan were also reviewed and commented on July 10, 1984. In both instances, the Service agreed with these plans.

The possibility that springs and riparian areas inhabited by dace would be fenced to exclude livestock was a concern of Mr. Callahan. The Service position presently is that livestock use in the area is not currently a threat to the continued existence of the species, but if livestock were to adversely impact the habitat of the species, control of livestock should be able to be accomplished in a manner that would allow continued livestock access to water in the immediate area.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the desert dace should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the desert dace (*Eremichthys acros*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The desert dace is endemic to warm springs and their outflow creeks in the Soldier Meadows area of Humboldt County, Nevada. Approximately eight warm springs with water temperatures as high as 100.4° F are occupied by the species. Many of the springs' outflow creeks have been diverted from their natural channels into manmade ditches, the diversions are for agricultural activities, such as irrigation and providing water for cattle on the Soldier Meadows Ranch. These diversions have reduced habitat available to the desert dace. Diversion of spring outflows is especially serious in those spring systems where the water in the spring headpool is too hot to be tolerated by the desert dace. In these systems the species exists only in the natural outflow. The manmade ditches do not provide suitable habitat for the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* There is no evidence that either disease or predation has contributed to the threatened status of this species. Disease and predation could both result from the introduction of species not native to this area (see Factor "E" below).

D. *The inadequacy of existing regulatory mechanisms.* At this time the only regulation applicable to the desert dace is a requirement for a State scientific collecting permit for taking the species. There are no laws or regulations to protect the habitat of the desert dace.

E. *Other natural or manmade factors affecting its continued existence.* Reservoirs have recently been constructed on the north and south end of the Soldier Meadows area. Channel catfish and smallmouth bass have been

introduced into the southern reservoir. If these exotics should enter habitat occupied by the desert dace they could further reduce dace numbers. The presence of exotic fishes is usually detrimental to native fishes in the western United States due to competition and predation (Deacon *et al.* 1964), as well as the introduction of exotic parasites and disease (Wilson *et al.* 1966). Much of the critical habitat is included in the Soldier Meadows Known Geothermal Resource Area. Although no exploration or drilling is currently occurring in the Soldier Meadows area, the resumption of such activity could result in interference with the thermal aquifers that supply water to springs in the area.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the desert dace as a threatened species, with critical habitat. This listing is appropriate because of past disturbance to habitats that has resulted in populations remaining at relatively low levels that may be adversely impacted by future ground water depletion, geothermal activities, agricultural development, and introduction of exotics. An explanation of the critical habitat designation is presented in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the desert dace to include all thermal springs and their outflows located within determinable section and fractional section boundaries in the Soldier Meadows area of Humboldt County, Nevada. The designated aquatic habitat within these boundaries is

somewhat evanescent, shifting in response to seasonal and other climatic factors. The area enclosed by the determinable boundary is approximately four miles long and varies from one to two and two-thirds miles wide. Mud Meadow Creek is near its eastern edge. The southern edge is approximately one mile north of Fly Creek.

Listing regulations of the Service, 50 CFR 424.12(b), state that when considering the designation of critical habitat, the Service shall focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements are to be listed with the critical habitat description.

With respect to the desert dace, the thermal springs and their outflows proposed as critical habitat satisfy all known criteria for ecological, behavioral, and physiological requirements of the species. The quantity and quality of water in the pools and outflow streams inhabited by this fish are the most important factors in its conservation. A range of favored temperatures between about 70° and 102°F restricts the fish to areas of the streams near the headwater pools, but these areas expand in summer, when pool temperatures are too high to be tolerated, and contract in winter, when temperatures in the lower streams drop below the favored range. These specialized requirements are met only in limited but seasonally variable portions of this one thermal spring area. Breeding and the growth of young desert dace are likewise confined to certain parts of the area. The species is native to these springs and outflows and is found nowhere else.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Such activities are identified for the desert dace as follows.

In the past, water diversions from spring outflow creeks have modified or eliminated much suitable habitat for this species. Additional modification of springs or their outflow creeks without regard for the species could further adversely affect the species and its critical habitat. In addition, the manipulation of water flows and surface disturbance associated with ranching, and geothermal energy exploration or development, could adversely modify remaining habitat of the desert dace.

It should be emphasized that critical habitat designations only affect activities of Federal agencies through section 7 of the Act. Federal actions that could possibly be affected by this rule include actions of the Bureau of Land Management associated with aquatic habitat modification, grazing, and leasing of lands for geothermal exploration and/or development. Such activities could result in adverse modification of desert dace habitat. Section 7 consultation is designed, however, to explore alternatives or modifications to proposed activities that could avoid jeopardizing the continued existence of listed species or adversely modifying their critical habitat. The consultation process could possibly provide recommendations for measures which, if adopted, would ensure compliance with section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant information obtained through the comment process and concludes that no adjustment of the critical habitat boundaries is warranted. Based on the Bureau of Land Management's existing Habitat Management Plan, the absence of any active or planned geothermal or oil and gas leases within or adjacent to the proposed critical habitat, the insignificant potential impacts to grazing, and the unquantifiable benefits that may result from the critical habitat designation, it is not expected that significant economic impacts will result from the designation of critical habitat on Federal lands. In addition, there is no known involvement of Federal funds or permits for private lands within the proposed critical habitat area. Therefore, no significant impact is expected as a result of this critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the

Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to the desert dace, this provision may affect the Bureau of Land Management in the administration of its portion of the critical habitat area.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances are set out at 50 CFR 17.32.

The above discussion generally applies to threatened species of fish and wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for its conservation. The desert dace is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization.

Given this fact, and the fact that the State currently regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection

permit system is more than adequate to protect the species from excessive taking, so long as such take is limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows take to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited.

Without this special rule, all of the prohibitions of 50 CFR 17.31 would apply. This special rule would allow for more efficient management of the species, and thus would enhance the conservation of the species. For these reasons, the Service concludes that this regulatory action is necessary and advisable for the conservation of the desert dace.

The final rule brings sections 5 and 6 of the Endangered Species Act into effect with respect to the desert dace. Section 5 authorizes the acquisition of lands or interests therein for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Fish and Wildlife Service would be able to grant available funds to the State of Nevada for management actions aiding the protection and recovery of this species.

Listing the desert dace as threatened would provide for development of a recovery plan for this fish. Such a plan would draw together the State and Federal agencies having responsibility for conservation of the dace. The plan would establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate the cost of the various tasks necessary to accomplish them. It would assign appropriate functions to each agency and a time frame within which to accomplish them.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in

connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Based on BLM's management of its portion of critical habitat, no significant economic impacts are expected to result from the designation of critical habitat on Federal land. In addition, there is no known involvement of Federal funds or permits for the private land included as critical habitat. Any conservation efforts by private landowners would be voluntary. Therefore, no significant

economic or other impacts are expected to result from the critical habitat designation on private land. These determinations are based on a Determination of Effects that is available from the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE Multnomah Street, Portland, Oregon 97232.

Literature Cited

- Deacon, J.E., C. Hubbs, and B.J. Zahuranec. 1964. Some effects of introduced fishes on the native fish fauna of southern Nevada. *Copeia* 1964:384-388.
- Hubbs, C.L. and R.R. Miller. 1948. Two new, relict genera of cyprinid fishes from Nevada. *Occ. Pap. Mus. Zool., Univ. Mich.*, No. 507, 30 pp.
- Nyquist, D. 1963. The ecology of *Eremichthys acros*, an endemic thermal species of cyprinid fish from northwestern Nevada. M.S. Thesis, Univ. Nevada, Reno, 247 pp.
- Wilson, B.L., J.E. Deacon, and W.G. Bradley. 1966. Parasitism in the fishes of the Moapa River, Clark County, Nevada. *Trans. California-Nevada Wildlife Soc.* 1966:12-23.

Author

The primary author of this final rule is Donald W. Sada, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno,

Nevada 89502 (702-784-5227 or FTS 470-5227).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife,
Fish, Marine mammals, Plants
(agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) . . .

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
Dace, desert	<i>Eremichthys acros</i>	U.S.A. (NV)	Entire	T	210	17.95(e)	17.44(m)

3. Add the following as special rules to 50 CFR 17.44:

§17.44 Special rules—fishes.

(m) Desert Dace (*Eremichthys acros*).

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of

applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

4. Amend 50 CFR 17.95(e) by adding critical habitat of the desert dace as follows: (The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11).

\$17.95 Critical habitat—fish and wildlife.

(e) . . .

Desert Dace "(*Eremichthys acros*)"

Nevada, Humboldt County. Thermal springs and their outflows plus surrounding riparian areas for a distance of 50 feet from these springs and outflows in T40N, R25E, SW¼ Section 5, NW¼NW¼ Section 8, W½ Section 18, W½SW¼ Section 19: T40N, R24E.

Section 23, N½SE¼ and S½NE¼ Section 24,
SE¼ Section 25, N½ Section 25, and N½
Section 26.



Primary constituent elements of the habitat are considered to be quantity, and thermal and chemical quality of water in headpools and spring outflow streams; presence of a

stable, natural substrate supporting food plants for the fish; and length of outflow streams; adequate for seasonal movements in response to changes of water temperature.

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-29237 Filed 12-9-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155-5175]

Pacific Coast Groundfish Fishery; Closure and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NMFS issues this notice closing the sablefish fishery off the coasts of Washington, Oregon, and California, and seeks public comment on this action. The Director, Northwest Region, NMFS, has determined in consultation with the State fishery management agencies of Washington, Oregon, and California that the 1985 fishery quota of 13,600 metric tons for sablefish was reached on November 22, 1985. This action will promote conservation and orderly management of the sablefish resource.

EFFECTIVE DATE: This notice is effective from 0001 hours Pacific Standard Time (p.s.t.), December 6, 1985, until 2400 hours p.s.t., December 31, 1985. Comments will be accepted until December 21, 1985.

ADDRESSES: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115, or E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. The aggregate data upon which this determination is based are available for

public inspection at the office of the Director, Northwest Region, during business hours until the end of the comment period.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten, 206-526-6150, or E.C. Fullerton, 213-548-2575.

SUPPLEMENTARY INFORMATION: The regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) at § 663.21(b) require the Secretary of Commerce (Secretary) to prohibit retention or landing of a species when the numerical optimum yield (OY) for that species is reached. The 1985 OY for sablefish is 13,600 metric tons (mt). Based on the best available information, and after consultation with the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game, the Regional Director determined that this quota was reached on November 22, 1985.

Until November, landings of sablefish seemed to be at rates that would almost reach but not exceed the 13,600-mt OY by the end of the year. The only regulation in effect was a 5,000-pound trip limit on sablefish smaller than 22 inches (total length). However, in mid-November unreported catches were discovered which pushed landings above 90 percent of OY. The regulations state at § 663.27(b)(3) that when 90 percent of OY is reached, the remaining 10 percent will be split equally, 5 percent for trawl gear and 5 percent for fixed gear, and a trip limit will be imposed on trawl landings equal to the average percentage of sablefish in trawl landings that contained that species in 1985. As a result, a trip limit of 13 percent sablefish was placed on trawl landings on November 25, 1985 (50 FR 49048, November 29, 1985).

Data available the last week in November indicate that the 13,600-mt OY for sablefish was reached on November 22, requiring prohibition of further landings of sablefish until January 1, 1986. This prohibition applies to all gear types, whether or not the 5 percent quota has been reached for fixed or trawl gear. This action supersedes the current trip limits for trawl-caught sablefish and for sablefish smaller than 22 inches, and is automatic

and non-discretionary under the regulations at § 663.21(b). Accordingly, the Secretary has determined that the OY quota has been reached, and retaining or landing sablefish caught off Washington, Oregon, or California must be prohibited on December 6, 1985, the earliest possible date of implementation. The three states also will prohibit landings of sablefish at this time.

Secretarial Action

No sablefish caught seaward of Washington, Oregon, or California may be taken and retained or landed from 0001 hours p.s.t., December 6, 1985, until 2400 hours p.s.t., December 31, 1985.

Classification

The determination to prohibit further retention or landings of sablefish is based on the most recent data available. This action is taken under the authority of Part 663 and is in compliance with Executive Order 12291. This section is covered by the regulatory flexibility analysis prepared for the authorizing regulations.

Because of the immediate need to prohibit further retention of sablefish and thereby prevent the overharvest that could otherwise result, the Agency finds that advance notice and public comment on this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. The public was notified at the November meeting of the Pacific Fishery Management Council, and again when fishing restrictions were imposed November 25, 1985, that landings of sablefish would reach the OY if not further curtailed. Public comments will be accepted for 15 days after this notice is published in the *Federal Register*. The Secretary, therefore, finds good cause to waive the 30-day delayed effectiveness provision of § 663.23(c).

(16 U.S.C. 1801 *et seq.*)

Dated: December 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-29263 Filed 12-5-85; 4:57 pm]

BILLING CODE 3510-22-M