

or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Wing net (butterfly trawl) means a trawl that is fished along the side of the vessel and that is held open by a four-sided, rigid frame attached to the outrigger of the vessel.

[64 FR 14054, Mar. 23, 1999, as amended at 64 FR 60731, Nov. 8, 1999; 67 FR 13101, Mar. 21, 2002; 67 FR 41203, June 17, 2002; 67 FR 71899, Dec. 3, 2002; 68 FR 8467, Feb. 21, 2003; 68 FR 17562, Apr. 10, 2003; 69 FR 25011, May 5, 2004; 70 FR 1832, Jan. 11, 2005; 71 FR 36032, June 23, 2006; 71 FR 50372, Aug. 25, 2006]

§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) *Application for and renewal of cooperative agreements.* (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually reconfirm that the criteria of either sections 6(c)(1) (A) through (E) or sections 6(c)(1) (i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator's finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) *Allocation and availability of funds.* (1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the fol-

lowing as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.

(c) *Financial assistance and payments.* (1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

(3)(i) The payment of the Federal share of costs incurred when conducting activities included under a

contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.

(4) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(1) No person shall engage in any activities identified in such sections of the Act that involve any pre-Act endangered species part without a valid Certificate of Exemption issued pursuant to this subpart B.

(2) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(3) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(b) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemptions as authorized by the provisions set forth in this subpart.

(c) Any person granted a Certificate of Exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(d) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term "ultimate user", for purposes of this paragraph, means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on