



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2022-0081; FXES1111090FEDR-267-FF09E21000]

RIN 1018-BF83

### Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for the Kern Canyon Slender Salamander and Endangered Species Status for the Relictual Slender Salamander; Designation of Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; revisions and reopening of comment period

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our October 18, 2022, proposed rule (2022 proposed rule), and November 21, 2023, revised proposed rule (2023 revised proposed rule) to list the Kern Canyon slender salamander (*Batrachoseps simatus*) and the relictual slender salamander (*Batrachoseps relictus*) under the Endangered Species Act of 1973, as amended (Act), to designate critical habitat for both species, and to issue a rule under section 4(d) of the Act for the Kern Canyon slender salamander. This action will allow all interested parties an additional opportunity to comment on the proposed rule, as well as the opportunity to comment on a new provision for the 4(d) rule in response to previously submitted public comments and our necessary and advisable determination (including consideration of conservation and economic impacts) of the proposed 4(d) rule. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule.

**DATES:** The comment period on the proposed rule that published October 18, 2022 (87 FR 63150), is reopened. We will accept comments received or postmarked on or before

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

To ensure your comment is received and considered, you must submit it using one of the methods identified in the **ADDRESSES** section of this document. Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered.

**ADDRESSES:** *Comment submission:* All submissions must include the docket number [FWS-R8-ES-2022-0081]. You must submit comments using one of the following methods:

(1) *Electronic submission:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov>. In the Search box, enter FWS-R8-ES-2022-0081, which is the docket number for this action. Then, click the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.” Please ensure that you have found the correct document before submitting your comments.

(2) *U.S. mail:* Public Comments Processing, Attn: FWS-R8-ES-2022-0081, Policy and Regulations Branch, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

*Availability of supporting materials:* This document and supporting materials (including the species status assessment report, comments and information received on the 2022 proposed rule (87 FR 63150) and 2023 revised proposed rule (88 FR 81028), our consideration of economic impacts of the proposed 4(d) rule, and references cited) are available at <https://www.regulations.gov> at Docket No FWS–R8–ES–2022–0081.

**FOR FURTHER INFORMATION CONTACT:** Kim S. Turner, Acting Field Supervisor, Sacramento Fish and Wildlife Office; email: [fw8sfwocomments@fws.gov](mailto:fw8sfwocomments@fws.gov); telephone: 916–414–6700. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R8–ES–2022–0081 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

#### **SUPPLEMENTARY INFORMATION:**

##### **Information Requested**

We will accept written comments and information during this reopened comment period on our proposed rule to list the Kern Canyon slender salamander and the relicual slender salamander and designate critical habitat for both species. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available. Our final determination will take into consideration all comments and any additional information we receive during the reopened comment period on the 2022 proposed rule and 2023 revised proposed rule. Therefore, we request comments or

information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

Information to assist us with issuing protective regulations under section 4(d) of the Act (“4(d) rule”) that may be necessary and advisable to provide for the conservation of the Kern Canyon slender salamander. In particular, we seek information concerning:

(1) The extent to which we should include any of the Act’s section 9 prohibitions in the 4(d) rule;

(2) Whether we should consider any additional or different exceptions from the prohibitions in the 4(d) rule;

(3) Impacts (conservation and economic) associated with implementing the 4(d) rule;

(4) How frequently and in what geographical areas are activities that we propose to regulate under the 4(d) rule (e.g., sale, “take”) currently occurring;

(5) Whether there are other laws currently in place beyond what we describe in the economic considerations document that regulate the activities or “take” prohibited in the proposed 4(d) rule;

(6) The entities likely to request section 10(a)(1)(A) permits for conducting activities that would involve “take” that we propose to prohibit such as capture or handling of the Kern Canyon slender salamander;

(7) Data available on the time and economic costs of obtaining section 10(a)(1)(A) permits for these activities in accordance with our regulations at title 50 Code of Federal Regulations (CFR) § 17.32;

(8) The entities likely to develop habitat conservation plans and request section 10(a)(1)(B) permits for conducting activities that would involve incidental “take” of the Kern Canyon slender salamander that we propose to prohibit;

(9) Data available on the time and economic costs of obtaining section 10(a)(1)(B) permits in accordance with 50 CFR 17.32; and

(10) Any other entities not addressed in this revised proposed rule that may be affected by the 4(d) rule.

Please include any supplemental information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary of the Interior (Secretary) shall designate critical habitat on the basis of the best scientific data available.

You must submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**.

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

Because we will consider all comments and information received during all comment periods, our final determination may differ from our October 18, 2022 (87 FR 63150), proposed rule, or from the revised critical habitat boundaries and physical or biological features described in the November 21, 2023, comment period reopening (88

FR 81028). Based on the new information we received during the two prior comment periods, including comments on that information, and information received during this reopening of the comment period, we may conclude that the Kern Canyon slender salamander is endangered instead of threatened, that the relictuall slender salamander is threatened instead of endangered, or we may conclude that either or both species do not warrant listing as either endangered species or threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some additional areas if we find the benefits of exclusion outweigh the benefits of inclusion and will not lead to the extinction of the species.

In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the proposed 4(d) rule for the Kern Canyon slender salamander if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

If you already submitted comments or information on the October 18, 2022, proposed rule (87 FR 63150) or the November 21, 2023, revised critical habitat and comment period reopening (88 FR 81028), please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and its revisions, are available for public inspection on <https://www.regulations.gov> at Docket No. FWS–R8–ES–2022–0081.

## **Background**

On October 18, 2022, we published a proposed rule in the *Federal Register* (87 FR 63150) to list the Kern Canyon slender salamander as a threatened species with a 4(d) rule and a critical habitat designation of approximately 2,051 acres (ac) (830 hectares (ha)), and to list the relictual slender salamander as an endangered species with a critical habitat designation of approximately 2,685 ac (1,087 ha). Both species are found in the southern Sierra Nevada mountains. The Kern Canyon slender salamander is known from 19 sites, spread across areas of the Sequoia National Forest and other privately owned land within the Erskine Creek and Bodfish Creek Canyons in Kern County, California. Currently, habitat supporting the Kern Canyon slender salamander is primarily affected by habitat degradation from roads (Factor A), recreation (Factor A), inappropriate grazing (Factor A), fire (Factor A), and effects of climate change (Factor E). These threats continue to degrade the seep and spring habitat, and in some rare cases may result in direct mortality of individual Kern Canyon slender salamanders.

On November 21, 2023 (88 FR 81028), based on feedback from species experts, we proposed revisions to the critical habitat designation and the physical or biological features for both species. We reopened the comment period from November 23, 2023, to December 6, 2023, to allow all interested parties an opportunity to comment on the proposed changes.

During the initial comment period on the 2022 proposed rule, we also received comments from the public related to livestock grazing. The commenters stated that we inaccurately characterized the impacts of current grazing practices on both the relictual slender salamander and the Kern Canyon slender salamander in the proposed rule. They

requested that we except any take from managed livestock grazing by including this activity under our 4(d) exception for fuels management activities, as research has shown managed livestock grazing can reduce fuel loads and the risk of catastrophic fire. In addition, one of these commenters emphasized that managed grazing is compatible with healthy wetlands and amphibian conservation goals. In consideration of these comments, we now propose modifying the 4(d) rule to except otherwise prohibited take of the Kern Canyon slender salamander that occurs during grazing activities that results in negligible impacts to the Kern Canyon slender salamander. We also modified the wording of the proposed exception for fuels management activities in order to more clearly explain which activities would be covered by the 4(d) rule and to emphasize that the focus of the provision is on reducing effects to Kern Canyon slender salamander habitat. We are also adding more language to the preamble to clarify which activities and conservation measures would be covered under these exceptions.

After determining that the listing of the Kern Canyon slender salamander as a threatened species is warranted, in response to *Kansas Natural Resources Coalition, et al. v. USFWS, et al.* 780 F.Supp.3d 650 (W.D. Tex. 2025), our necessary and advisable determination under section 4(d) of the Act includes consideration of conservation and economic impacts of the proposed 4(d) rule for the Kern Canyon slender salamander.

Thus, we prepared a supplemental document considering the economic impacts of the 4(d) rule for the Kern Canyon slender salamander. Evaluating economic costs and benefits (economic impacts) of a 4(d) rule requires identifying the changes in regulatory requirements and behavior triggered specifically by the protections provided by the 4(d) rule beyond the determination to list the species. That is, we must consider the economic impacts of the world with the 4(d) rule and the world without the 4(d) rule. The world without the 4(d) rule includes the protections attributable to the listing of the species (i.e., baseline) as well as existing regulatory protections from the California Endangered

Species Act (CA Fish & Game Code Section 2050 et seq.) and the Lacey Act, as amended (16 U.S.C. 3371–3378). Our analysis of the incremental impacts (i.e., world with the 4(d) rule) includes individuals applying for research permits to study the Kern Canyon slender salamander, any section 7 analysis for activities that may result in incidental take not excepted under the 4(d) rule, or any section 10 analysis that would be needed on non-Federal lands where there is no overlap with other listed species.

In addition, we do not anticipate many new permits for incidental take will be required. A majority of the species' range is on Federal land, and the 4(d) rule excepts incidental take associated with activities related to fuels management and appropriate livestock grazing activities. For activities other than fuels management and appropriate livestock grazing activities, where there is no Federal nexus for section 7, there will be a new permit requirement which will replace the permitting currently required by California State law if certain standards are met. However, based on the available information at this time, we anticipate this to occur infrequently and in only limited circumstances. This is because only a small portion of the species' range is on private lands and the number of activities occurring on these lands that are expected to require a permit are minimal. Where there is a Federal nexus, the 4(d) rule does not change the obligations to consult under section 7 of the Act. Thus, we concluded that there will likely be limited change to the regulated community as a result of this rule.

In summary, we now reopen the public comment period for an additional 30 days to allow interested parties to comment on the new exception in the 4(d) rule, our consideration of economic impacts of the 4(d) rule, and our Regulatory Flexibility Act (RFA) analysis. Our April 2026 "Consideration of Economic Impacts for the 4(d) Rule for the Kern Canyon slender salamander" is available under supporting materials at <https://www.regulations.gov> at Docket No. FWS–R8–ES–2022–0081.

## **Proposed 4(d) Rule**

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a revised proposed 4(d) rule that is designed to address the Kern Canyon slender salamander's conservation needs. Section 4(d) requires the Secretary to issue such regulations as he deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species (In re: *Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011), citing *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), reviewed on other grounds, 515 U.S. 687 (1995)). As mentioned above, our necessary and advisable determination includes consideration of conservation and economic impacts. We explain below why we find that, if finalized, the prohibitions and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Kern Canyon slender salamander.

The protective regulations we are proposing for the Kern Canyon slender salamander incorporate prohibitions from section 9(a)(1) to address the threats to the species. We propose to include the following prohibitions of section 9(a)(1) of the Act and implementing regulations codified at 50 CFR 17.21 which make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever,

any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. This proposed protective regulation includes these prohibitions because the Kern Canyon slender salamander is likely to become in danger of extinction within the foreseeable future, and putting these prohibitions in place is intended to prevent further declines, preserve the species' remaining populations, slow its rate of decline, and decrease synergistic, negative effects from other ongoing or future threats.

As discussed in the 2022 proposed rule to list the relictual slender salamander and the Kern Canyon slender salamander (87 FR 63150; pp. 63172–63173), we have concluded that the Kern Canyon slender salamander is likely to become in danger of extinction within the foreseeable future primarily due to habitat loss and degradation from roads, recreation, inappropriate grazing, fire, and climate change (increased temperatures and decreased snowpack). These threats are impacting population resiliency and species redundancy and representation, thereby affecting the overall status of the Kern Canyon slender salamander. Therefore, regulating activities associated with impacts to Kern Canyon slender salamander from habitat loss and degradation is essential for the species' conservation. Although collection and commercial trade of the Kern Canyon slender salamander is not a threat driving the status of the species, the section 9 prohibitions related to trade and commerce through our application of 50 CFR 17.21(b), (e), and (f) will help limit any loss of individuals and assist in maintaining population dynamics for the species.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally.

Regulating take is intended to help preserve the species' remaining populations and slow their rate of decline. Therefore, we propose to prohibit take of the Kern Canyon slender salamander, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

The revised proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that are intended to incentivize conservation actions or actions that are not expected to rise to the level that would have a negative impact (i.e., would have only de minimis impacts) on the species' conservation. Exceptions to the prohibitions include the exceptions to the prohibition for endangered wildlife, as set forth in 50 CFR 17.21(c)(2)–(4), (d)(2) and exceptions for threatened wildlife at 50 CFR 17.31(c). This includes allowing law enforcement to possess and conduct other acts with illegally taken Kern Canyon slender salamander as necessary in performing their official duties.

To further the conservation of the species, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, a State conservation agency, or a federally recognized Tribe, who is designated by their agency or Tribe for such purposes, may, when acting in the course of their official duties, take threatened wildlife without a permit if such action is necessary to: (i) aid a sick, injured, or orphaned specimen; or (ii) dispose of a dead specimen; or (iii) salvage a dead specimen that may be useful for scientific study; or (iv) remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner. Such taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed, in an appropriate area. Any taking must be reported in writing to the Office of Law Enforcement, via contact methods listed at <https://www.fws.gov>, within 5 calendar

days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the Kern Canyon slender salamander that may result in otherwise prohibited take without additional authorization.

In addition, any employee or agent of the Service or of the National Marine Fisheries Service, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take the Kern Canyon slender salamander.

The revised proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the Kern Canyon slender salamander, are not expected to rise to the level that would have a negative impact (would have only de minimis impacts) on the species' conservation. The proposed exceptions to these prohibitions include fuels management and grazing activities that are expected to have negligible impacts to the Kern Canyon slender salamander and its habitat.

Wildfire is one of the primary threats to the Kern Canyon slender salamander, and the implementation of fuels management activities will assist in protecting and maintaining habitat for the species. Prescribed fire and fuel reduction activities (such as vegetation removal), when conducted in accordance with established fuels management plans, can reduce excessive vegetation and lower the risk of high-severity wildfire, thereby providing a conservation benefit to the species. Standards and guidelines for fuels management activities that support the conservation of the Kern Canyon slender salamander and its habitat are presented in established and recognized fuels or land management plans such as the Land Management Plan for the Sequoia National Forest (U.S. Forest Service (USFS) 2023, pp. 76–79) and the California Statewide Fuels Reduction Environmental Protection Plan (California Natural Resources Agency (CNRA) and California Environmental Protection Agency (CEPA) 2025, entire). Best management practices include using naturally ignited and prescribed fires to reduce fuels and meet resource management objectives; allowing fire to burn within riparian ecosystems when anticipated fire effects fall within the ecosystem’s natural range of variation; conducting fuel reduction activities outside of the species’ active period; establishing no-work buffers around sensitive habitat features within project areas; minimizing ground disturbance and discharge of sediment into water sources; avoiding the use of heavy machinery; using hand or small engine tools instead of large equipment; and monitoring occupied habitat during fuel reduction activities (USFS 2023, pp. 76–79; CNRA and CEPA 2025, pp. 3–6).

Thus, we propose to except take of the Kern Canyon slender salamander related to fuels management activities:

(1) That are conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur. This exception includes fuels management activities developed by a Federal, State, county, or other entity to reduce the risk or severity of fire

to protect and maintain habitat that supports the Kern Canyon slender salamander. These activities should be in accordance with established and recognized fuels management plans that include measures to minimize impacts to Kern Canyon slender salamander habitat.

(2) That occur on lands where there is no Federal nexus. This exception applies to those situations, whether currently existing or that may develop in the future, where fuels management activities are essential to reduce the risk of catastrophic wildfire, and when such activities will be carried out in accordance with an established and recognized fuels or land management plan that includes measures to minimize impacts to Kern Canyon slender salamander habitat.

Finally, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

All of the above prohibitions and exceptions were included in the 2022 proposed rule, although we have made some changes to the language of the exceptions in response to public comments. We now also propose to include an exception covering take of Kern Canyon slender salamander that occurs during managed livestock grazing activities that are expected to have negligible impacts on the Kern Canyon slender salamander.

Incompatible livestock grazing is a threat to the Kern Canyon slender salamander when it results in the direct or indirect destruction of riparian habitat. However, managed

livestock grazing activities, such as those conducted within the range of the Kern Canyon slender salamander, can provide a conservation benefit to the species. The conservation benefits provided by managed grazing activities include the maintenance of habitats that are used to support the species' life history. Grazing operations maintain grass and shrubland habitat from becoming overgrown and eventually fuel for wildfire, and appropriate grazing management can reduce fuel loads and the risk of catastrophic fire. Grazing operations that do not follow standard best management practices to avoid overgrazing, especially within riparian areas, would not be part of this exception.

Standards and guidelines for grazing operations that are beneficial to the Kern Canyon slender salamander and its habitat are outlined in the Land Management Plan for the Sequoia National Forest (USFS 2023, pp. 91–94) and the Central California Standards for Rangeland Health and Guidelines for Livestock Grazing Management (Bureau of Land Management (BLM) 2000, entire). Best management practices include limiting livestock utilization of willows and other woody riparian species and deep-rooted plants within riparian areas; limiting annual disturbance to streambanks; fencing of water sources, wetlands, and riparian areas; developing water sources to maintain ecologic and hydrologic function and processes; and locating salt blocks, supplemental feed, and livestock handling or management facilities away from wetland and riparian areas (BLM 2000, p. 9; USFS 2023, p. 93).

Specifically, we propose to except take of the Kern Canyon slender salamander associated with grazing activities:

(1) On Federal lands, as long as the grazing activities comply with the standards and guidelines of the Federal agency with jurisdiction over the land where the activities occur.

(2) On lands where there is no Federal nexus. Such activities will be carried out in accordance with best management practices that include appropriate grazing standards

and guidelines and measures to minimize impacts to Kern Canyon slender salamander habitat (especially riparian areas).

The revised proposed 4(d) rule provides for the conservation of the Kern Canyon slender salamander because it will regulate activities that pose a threat to the species or that may become a threat in the future. However, it also provides flexibilities in management and permitting requirements for several activities that are expected to have negligible impacts to the Kern Canyon slender salamander, as discussed above. Where there is a Federal nexus, the 4(d) rule does not change the consultation obligations under section 7 of the Act, although it may except the need for incidental take authorization. Please see our April 2026 “Consideration of Economic Impacts for the 4(d) Rule for the Kern Canyon slender salamander” on <https://www.regulations.gov> for our consideration of economic impacts. After considering the conservation needs of the species and the economic costs of the 4(d) rule, we have determined that the 4(d) rule is necessary and advisable to provide for the conservation of the species. We appreciate any public comment on the potential impacts (conservation and economic) of the proposed 4(d) rule.

### **Required Determinations**

#### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; title II of Pub. L. 104–121, March 29, 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a

certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

While we do not conduct RFA analyses on our classification determinations under the Act, in accordance with recent caselaw (*Kansas Natural Resources Coalition, et al. v. USFWS, et al.* 780 F.Supp.3d 650 (W.D. Tex. 2025)), we comply with RFA through consideration of conservation and economic impacts when promulgating 4(d) rules. Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities.

Some of the actions regulated by the proposed 4(d) rule are likely to involve Federal action agencies. 4(d) rules do not alter any obligations for Federal agencies under section 7 of the Act. Federal agencies, in consultation with the Service, are required to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirements. Consequently, it is our position that only Federal action agencies would be directly regulated during section 7 consultations (regardless of what is prohibited in 4(d) rules). The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Please see our April 2026 “Consideration of Economic Impacts for the 4(d) Rule for the Kern Canyon slender salamander” on <https://www.regulations.gov> for our consideration of impacts to small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic impact on a substantial number of small entities. We request information (see **Information Requested**) to ensure we fully understand the potential impacts of this proposed rule.

## List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

Accordingly, we propose further to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 87 FR 63150 (October 18, 2022) and 88 FR 81028 (November 21, 2023) as set forth below:

#### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Further amend § 17.43, as proposed to be amended at 87 FR 63150, by revising paragraph (h) to read as follows:

##### **§ 17.43 Special rules—amphibians.**

\* \* \* \* \*

(h) Kern Canyon slender salamander (*Batrachoseps simatus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Kern Canyon slender salamander. Except as provided under paragraph (v)(2) of this section and §§ 17.4, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under §17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to:

(A) Fuels management activities:

(1) That are conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur. This exception includes fuels management activities developed by a Federal, State, county, or other entity to reduce the risk or severity of fire to protect and maintain habitat that supports the Kern Canyon slender salamander. These activities should be in accordance with established and recognized fuels management plans that include measures to minimize impacts to Kern Canyon slender salamander habitat.

(2) That occur on lands where there is no Federal nexus. This exception applies to those situations, whether currently existing or that may develop in the future, where fuels management activities are essential to reduce the risk of catastrophic wildfire, and when such activities will be carried out in accordance with an established and recognized fuels or land management plan that includes measures to minimize impacts to Kern Canyon slender salamander habitat, and

(B) Grazing activities:

(1) On Federal lands, as long as the grazing activities comply with the standards and guidelines of the Federal agency with jurisdiction over the land where the activities occur.

(2) On lands where there is no Federal nexus. Such activities will be carried out in accordance with best management practices that include appropriate grazing standards and guidelines and measures to minimize impacts to Kern Canyon slender salamander habitat (especially riparian areas).

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