



Billing Code: 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2017–N083; FXES11140200000–178–FF02ENEH00]

Notice of Availability of a Draft Candidate Conservation Agreement, Draft Candidate Conservation Agreements with Assurances, and Draft Environmental Assessment for Activities within Eddy County, New Mexico, and Culberson County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice advises the public that the Center of Excellence in Hazardous Material Management (CEHMM; applicant) and the New Mexico State Land Office (NMSLO, applicant) have applied to the Fish and Wildlife Service (Service) for two separate enhancement of survival permits pursuant to the Endangered Species Act of 1973, as amended (Act). The permit application includes draft programmatic candidate conservation agreement with assurances (CCAA) for the Texas hornshell and other covered species (the Rio Grande River cooter, gray redhorse, blue sucker, and Pecos springsnail) in west Texas and southeast New Mexico. A separate permit application includes a draft programmatic candidate conservation agreement with assurances (CCAA) for the Texas hornshell and other covered species (the Rio Grande River cooter, gray redhorse, blue sucker, and Pecos springsnail) that is valid only on New Mexico State

trust lands. Additionally, the Service received a draft candidate conservation agreement (CCA) for the Texas hornshell and the other covered species from the Bureau of Land Management (BLM) that would address threats to these species on Federal land in southeastern New Mexico. The CCAAs, and associated permits, would authorize incidental take resulting from voluntary activities to restore, maintain, enhance, or create habitat for the covered species. The Service also announces the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act. We are making the permit application packages, including the draft CCA, draft CCAAs, and draft EA, available for public review and comment.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Any comments we receive after the closing date or not postmarked by the closing date may not be considered in the final decision on this action.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103, or by emailing fw2_hcp_permits@fws.gov.

Obtaining Documents:

- *Internet:* You may obtain copies of the draft EA, draft CCA, and draft CCAA on the U.S. Fish and Wildlife Service's (Service) web site at <https://www.fws.gov/southwest/es/newmexico>
- *U.S. Mail:* A limited number of CD-ROM and printed copies of the draft EA, draft CCA, and draft CCAA are available, by request, from the Field Supervisor,

by mail at New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113; by phone at 505-346-2525; or by fax at 505-346-2542. Please note that your request is in reference to the draft Candidate Conservation Agreement and Candidate Conservation Agreement with Assurances for the Texas Hornshell.

- *In-Person:* Copies of the draft EA, draft CCA, and draft CCAA are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:
 - U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., Room 6034, Albuquerque, NM 87102.
 - U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113

Comment submission: You may submit comments by one of the following methods.

- *U.S. Mail:* New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113; by phone at 505-346-2525; or by fax at 505-346-2542.
- *Email:* fw2_nm_es@fws.gov.

FOR FURTHER INFORMATION CONTACT: Debra Hill, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505-346-2525; or by facsimile 505-346-2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Center of Excellence in Hazardous Material Management (CEHMM; applicant) and the New Mexico State Land Office (NMSLO, applicant) have each applied to the Service for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; Act). The permit applications include draft CCAAs for the Texas hornshell (a mussel species) and other covered species (the Rio Grande River cooter, a turtle species; gray redhorse and blue sucker, two fish species; and the Pecos springsnail) in west Texas and southeast New Mexico. The CCAAs and associated permits would authorize incidental take resulting from voluntary activities to restore, maintain, enhance, or create habitat for these species. Additionally, the Service received a draft CCA for the Texas hornshell and the other covered species from the Bureau of Land Management (BLM). The Service also announces the availability of a draft EA that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.; NEPA). We are making the permit application packages, including the draft CCA, draft CCAAs, and draft EA, available for public review and comment.

Background

Private and non-Federal property owners are encouraged to enter into the CCAA through CEHMM; participants with leased acres on NMSLO lands are encouraged to enter into the CCAA through the NMSLO; and Federal agencies, permittees, and lessees are encouraged to enter into the CCA. Through the CCAAs and CCA the participants voluntarily undertake management activities on their properties to

enhance, restore, or maintain habitat benefiting species that are proposed for listing under the ESA, candidates for listing, or species that may become candidates or proposed for listing. Enhancement of survival (EOS) permits are issued to the applicants in association with approved CCAAs to authorize incidental take of the covered species from covered activities, should the species become listed. Through the CCAAs and their associated EOS permits, the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species become listed under the ESA in the future, provided certain conditions are met. Although there are no assurances associated with the CCA, enrollees have a high degree of certainty that they will not be subject to increased land use restrictions by the Service if the covered species become listed under the ESA in the future.

Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d)(2)(ii) and 17.32(d)(2)(ii), respectively. See also the joint policy on CCAAs, which was published in the Federal Register with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (80 FR 95164; December 27, 2016).

Proposed Action

The proposed action involves the issuance of two section 10(a)(1)(A) EOS permits by the Service to the applicants and approval of the proposed programmatic CCA and CCAAs to facilitate recovery activities on Federal and non-Federal lands in west Texas and southeastern New Mexico for the benefit of the proposed endangered species candidate Texas hornshell and other covered sensitive species (the Rio Grande River

cooter, gray redhorse, blue sucker, and Pecos springsnail). The other covered species inhabit the same habitat and benefit from similar conservation measures as the Texas hornshell. The proposed term of the permits is 30 years.

The proposed CCAAs would implement conservation measures that contribute to the recovery of the Texas hornshell and the other covered species. The proposed agreements would include the Service, CEHMM, and participants in the private lands CCAA, or the Service, NMSLO, and participants in the State lands office CCAA. CEHMM or NMSLO would hold separate EOS permits and enroll participants, who would hold individual certificates of inclusion (CI). Participants in the CCAAs may include landowners, oil and gas operators, commercial/agricultural water withdrawers, and livestock producers that hold leases, permits, or other authorizations on private or State lands. The EOS permits' authorization of "take" would become effective if any of the species become listed, as long as the enrolled landowner is in compliance with the terms and conditions of the respective CCAA, their CI, and the EOS permit. The CCAAs, the EOS permits, and the CIs would provide incentives for non-Federal property owners to participate in conservation efforts for the Texas hornshell and the other covered species.

The CCAAs are part of a larger conservation effort for the Texas hornshell and the covered species within New Mexico that includes the CCA among the Service, the Bureau of Land Management, CEHMM, and participants that address conservation measures for the same species on Federal land. Participants in the CCA each hold an individual certificate of participation (CP) and include oil and gas operators, commercial/agricultural water withdrawers, livestock producers, Carlsbad

Irrigation District, and other interested stakeholders that hold Federal leases, permits, or other authorizations. The CCA cannot include an EOS permit, and therefore, any enrolled Federal land management agency is not authorized for incidental take of the covered species in the event a listing occurs, and no assurances are provided by the Service to Federal land management agencies. Instead, if any of the covered species are listed under the Act, incidental take will be provided under a biological opinion, granting the participants a high degree of certainty that additional conservation measures or limitations, above those contained in the CCA and individual CPs, will not be imposed upon them should one or more of the species become listed in the future.

We have worked with the applicants to design conservation activities expected to have a net conservation benefit to the covered species within the covered area; however, landowners and enrollees would not have to conduct every activity in this list in order for their actions to have a net conservation benefit on the covered species. Each participant will need to follow their individual CIs or CPs and the conservation measures included within. Some examples of these conservation actions include the following: (1) Prevent new surface disturbance in habitat occupied by the Texas hornshell within the Black and Delaware Rivers; (2) Avoid new development within the Black and Delaware Rivers, Blue Springs, and their associated U.S. Geological Survey (USGS) 100-year floodplain; (3) Site new projects to take advantage of existing and available infrastructure; (4) Avoid obstructing or disrupting the natural flow of ephemeral drainages to the Black and Delaware Rivers; (5) Implement erosion control measures; (6) Avoid water withdrawal in habitat occupied by the Texas hornshell within the Black and Delaware Rivers; (7)

Maintain minimal stream flows and cease withdrawal of water within the Black and Delaware Rivers if stream flows reach minimum levels; (8) Avoid using low-water crossings when other routes are available; (9) Clear invasive shrubs and replant with native plants in areas adjacent to occupied sites; and (10) Buy or lease water rights during periods of low flow to maintain minimal stream flows.

Alternatives

We considered four alternatives to the proposed action as part of the environmental assessment process—the No Action Alternative; Development of a CCA only Alternative; Development of a CCAA only Alternative; and, Development of a CCA and CCAA (covering both private and State lands). Under the No Action Alternative, a coordinated effort to conserve the covered species on non-Federal properties using a programmatic CCA and CCAA would not occur. Under the CCA only and the CCAA only alternatives, conservation would only be coordinated on either non-Federal or Federal lands rather than having a coordinated effort across the Black and Delaware Rivers. Under the CCA and CCAA alternative, conservation would be the same as the proposed action; however, State lands and private lands would be enrolled in the same CCAA.

Next Steps

We will evaluate the permit applications, associated documents, and comments we receive to determine whether the permit application meets the requirements of the Act, National Environmental Policy Act (NEPA), and implementing regulations. If we

determine that all requirements are met, we will sign the proposed CCAAs, issue EOS permits under section 10(a)(1)(A) of the Act to CEHMM and the NMSLO for take of Texas hornshell and the other covered species in accordance with the terms of the CCAAs and specific terms and conditions of the authorizing permits, and sign the proposed CCA with BLM. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representative or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Benjamin N. Tuggle,

Regional Director, Southwest Region,

Albuquerque,

New

Mexico.

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