



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2017–N064; FXES1114010000–178–FF01E00000]**

**Notice of Intent to Prepare a Draft Environmental Impact Statement for the Proposed Deschutes River Basin Habitat Conservation Plan in Oregon**

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

**ACTION:** Notice of intent; notice of public scoping meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to evaluate the potential impacts on the human environment caused by alternatives to the Deschutes River Basin Habitat Conservation Plan (Deschutes River Basin HCP). The Deschutes River Basin HCP is being prepared in support of a request for an Endangered Species Act (ESA) incidental take permit (ITP) or ITPs authorizing incidental take of listed species caused by covered activities. The potential applicants for the ITP(s) include the City of Prineville, the Arnold Irrigation District, Central Oregon Irrigation District, North Unit Irrigation District, Ochoco Irrigation District, Swalley Irrigation District, Three Sisters Irrigation District, Tumalo Irrigation District, and the Lone Pine Irrigation District in Oregon. These eight irrigation districts comprise the Deschutes Basin Board of Control (DBBC). We are also announcing the initiation of a public scoping period to engage Federal, Tribal, State, and local governments and the public in the identification of issues and concerns, potential impacts, and possible alternatives to the proposed action for

consideration in the draft EIS. The National Marine Fisheries Service (NMFS) is a cooperating agency in the draft EIS process.

**DATES:** The public scoping period begins with the publication of this notice in the *Federal Register*. To ensure consideration, please send your written comments postmarked no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Service will consider all comments on the scope of the draft EIS analysis that are received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable.

*Public meetings:* The Service will conduct four public scoping meetings: Two in Madras, Oregon, and two in Bend, Oregon. The two Madras scoping meetings will be held on August 14, 2017, from 2 to 4 p.m. and 6 to 8 p.m., respectively, and the two Bend scoping meetings will be held on August 15, 2017, from 2 to 4 p.m. and 6 to 8 p.m., respectively.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods and note that your information request or comment is in reference to the development of the Deschutes Basin HCP and the preparation of the associated draft EIS:

- *U.S. mail:* U.S. Fish and Wildlife Service, Bend Field Office, Attn: Peter Lickwar, 63095 Deschutes Market Road, Bend, Oregon 97701–9857.

- *In-person Drop-off, Viewing, or Pickup:* Call (541) 383–7146 to make an appointment during regular business hours to drop off comments or view received comments at the above location. Written comments will also be accepted at the public meetings.

- *Email:* peter\_lickwar@fws.gov. Include “Deschutes River Basin HCP–draft EIS”

in the subject line of the message.

- *Fax:* U.S. Fish and Wildlife Service at 541–383–7638; Attn: Peter Lickwar.

We request that you send comments by only one of the methods described above.

See the **Public Availability of Comments** section below for more information.

*Public meetings:* The addresses of the scoping meetings are as follows:

*Madras, Oregon:* Inn at Cross Keys Station, 66 NW Cedar St, Madras, OR 97741.

*Bend, Oregon:* U.S. Forest Service Building, 63095 Deschutes Market Road, Bend, OR 97701.

**FOR FURTHER INFORMATION CONTACT:** Peter Lickwar, U.S. Fish and Wildlife Service, (see **ADDRESSES** above); email at peter\_lickwar@fws.gov or telephone 541–383–7146. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Service intends to prepare a draft EIS in accordance with the requirements of NEPA to evaluate the potential impacts on the human environment caused by alternatives to the Deschutes River Basin HCP. The Deschutes River Basin HCP is being prepared in support of a request for an ESA ITP or ITPs authorizing incidental take of listed species caused by covered activities. The potential applicants for the ITP(s) include the City of Prineville, the Arnold Irrigation District, Central Oregon Irrigation District, North Unit Irrigation District, Ochoco Irrigation District, Swalley Irrigation District, Three Sisters Irrigation District, Tumalo

Irrigation District, and the Lone Pine Irrigation District in Oregon. These eight irrigation districts (Districts) comprise the DBBC.

We are also announcing the initiation of a public scoping period to engage Federal, Tribal, State, and local governments and the public in the identification of issues and concerns, potential impacts, and possible alternatives to the proposed action for consideration in the draft EIS. The conservation measures in the Deschutes River Basin HCP would be designed to minimize and mitigate impacts caused by the take of covered listed species that may result from the storage, release, diversion and return of irrigation water by the Districts and the City of Prineville.

This notice was prepared pursuant to pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), and the requirements of NEPA (42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6. The primary purpose of the scoping process is for the public and other agencies to assist in developing the draft EIS by identifying important issues and identifying alternatives that should be considered.

The NMFS is a cooperating agency in the draft EIS process, and intends to adopt the draft EIS to address the impacts of issuing an ITP addressing listed species under its jurisdiction.

## **Background**

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to

threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulation as “an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3). The term “harass” is defined in the regulations as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided;

- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

### **Plan Area**

The Plan Area for the Deschutes River Basin HCP covers approximately 10,700 square miles of land in central Oregon. Bounded by the Cascades Mountains on the west, the Ochoco Mountains on the east, and the Columbia River to the north, the Deschutes River Basin includes six major tributaries above Lake Billy Chinook. Tributaries to the Deschutes River above the lake include the Crooked River, Metolius River, Little Deschutes River, Crescent Creek, Tumalo Creek, and Whychus Creek. Major tributaries of the lower Deschutes River include Shitike Creek, Trout Creek, Warm Springs River, and the White River. The first water diversions in the Deschutes River Basin started in the late 1860s, however, irrigation districts did not start to form until circa 1900.

The eight irrigation districts (Districts) are quasi-municipal corporations formed and operated under Oregon State law to distribute water to irrigators within designated district boundaries. The Districts span Crook, Deschutes, Jefferson, Klamath, and Wasco counties in Oregon. The Districts lie along and utilize the waters of the Deschutes River and its tributaries, including the Little Deschutes River, Crescent Creek, Crooked River,

Ochoco Creek, Tumalo Creek, Whychus Creek, and a number of smaller tributaries within the greater Deschutes River Basin. The City of Prineville (City), located in Crook County, is a municipality of about 7,350 residents. The City lies at the confluence of the Crooked River and Ochoco Creek, and has an economy based on agriculture and light industry.

The goals of the proposed Deschutes River Basin HCP are to avoid and minimize incidental take of the covered species associated with the Districts' and the City's activities, and to mitigate the impacts of unavoidable take, primarily by modifying irrigation water storage, release, and diversion operations in the Deschutes River Basin, including the mainstem Deschutes River and its tributaries. The Deschutes River Basin HCP would provide a district-wide permitting approach for the Districts and the City. The proposed term for the Deschutes River Basin HCP and ITP(s) is from 20 to 40 years.

### **Covered Activities**

The Districts and the City are seeking incidental take authorization under the ESA for activities that they conduct, permit, or otherwise authorize. The proposed covered activities may include, but are not limited to: operation and maintenance of storage dams and reservoirs; operation and maintenance of diversions, pumps, and intakes; operation and maintenance of water conveyance and delivery systems; diversion of water; return flow; and conservation measures and associated construction activities.

### **Covered Species**

Covered species under the proposed Deschutes River Basin HCP include threatened and endangered species listed under the ESA, and currently unlisted species that have the potential to become listed during the life of the HCP. The Districts and the

City are proposing to seek incidental take coverage for three federally listed species, and two non-listed species. The Deschutes River Basin HCP would provide long-term conservation and management of these species, which are discussed in more detail in the following paragraphs.

The Oregon spotted frog (*Rana pretiosa*) is a native aquatic species endemic to the Pacific Northwest. It was federally listed as threatened under the ESA on September 29, 2014 (79 FR 51658).

The bull trout (*Salvelinus confluentus*) is a member of the genus *Char*, and is native to Oregon. The bull trout has specific habitat requirements that influence its abundance and distribution. The bull trout is seldom found in waters where temperatures exceed 59 to 64 degrees Fahrenheit. The final listing determination of threatened status for the bull trout in the coterminous United States was made on November 1, 1999 (64 FR 58910).

The steelhead (*Oncorhynchus mykiss*) in the Deschutes River Basin is part of the Middle Columbia River Distinct Population Segment that was listed by NMFS as threatened, effective on February 6, 2006 (71 FR 834). However, on January 15, 2013, NMFS issued a final rule that designated the steelhead upstream of the Pelton Round Butte Hydroelectric Project on the Deschutes River as a nonessential experimental population (78 FR 2893). This designation has an expiration date of 12 years from the effective date of the rule. Unlike other anadromous members of the family Salmonidae, steelhead do not necessarily die after spawning and sometimes spawn more than once.

The Districts and the City also propose to cover the following non-listed species under NMFS jurisdiction under the Deschutes River Basin HCP: the sockeye salmon

(*Oncorhynchus nerka*), and the Middle Columbia River spring-run Chinook salmon (*Oncorhynchus tshawytscha*).

### **Draft Environmental Impact Statement**

For purposes of NEPA compliance, preparation of an EIS is required for actions that are expected or have the potential to significantly impact the human environment (40 CFR 1500–1508).

To determine whether a proposed Federal action would require the preparation of an EIS, the Service must consider two distinct factors: context and intensity (40 CFR 1508.27, Service and National Marine Fisheries Service HCP Handbook 2016). Context refers to the geographic scale (local, regional, or national) of significance of short and/or long-term effects/impacts of a proposed action. Intensity refers to the severity of the effects/impacts relative to the affected settings, including the degree to which the proposed action affects: an endangered or threatened species or designated critical habitat; public health or safety; scientific, historic or cultural resources; or other aspects of the human environment.

In determining whether the preparation of an EIS is warranted, we must also consider the ten components of intensity, as set forth under 40 CFR 1508.27(b):

1. Impacts that may be both beneficial and adverse. A significant impact may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the potential impacts are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA.
10. Whether the action threatens a violation of Federal, state, or local law or requirements imposed for the protection of the environment.

In this case, and after considering the above factors, the Service has determined that the Deschutes River Basin HCP–ITP action has the potential to significantly impact the human environment for the following reasons:

The Deschutes River Basin encompasses 10,500 square miles in Central Oregon and the Deschutes River is a major tributary to the Columbia River. On that basis, the covered area is of local, regional, and national significance.

The Applicants store, manage, and release water from the Deschutes River and its reservoirs for irrigation and municipal purposes. Hundreds of miles of irrigation conveyance systems are managed by the Applicants. Under the Deschutes River Basin HCP, modernization of these conveyance systems, which is already underway, is a covered activity that is likely to result in water conservation for farmers and listed species, and take decades to complete. Some portions of the conveyance systems have been listed on the National Historic Register, and will require additional analysis under NEPA. The covered activities may affect four ESA-listed species (the Oregon spotted frog, steelhead, spring chinook and the bull trout) and their critical habitat that by virtue of their listings and designations are of local, regional, and national significance. Given the geographic scale of the HCP and the nature and scope of the covered activities and species, the context and intensity of potential adverse and beneficial impacts of implementing the HCP on the human environment are likely to be of local, regional, and national significance.

The Service performed internal NEPA scoping for the Deschutes River Basin HCP–ITP action in close coordination with NMFS as a cooperating agency. During that internal scoping process, Service and NMFS staff reviewed the proposed ITP action and the purpose and need for taking the action, and identified the environmental issues requiring detailed analysis as well as identified connected, similar, and cumulative actions. The internal scoping analysis concluded that the proposed ITP action:

- Involves instream flow and habitat restoration decisions that significantly affect biodiversity and ecosystem functions across a large geographic area;
- Involves management decisions that are significantly controversial;

- Has highly uncertain effects or involve unique or unknown risks to biological, physical or other factors;
- Establishes precedents for future actions with significant effects;
- Will contribute to other individually insignificant but cumulatively significant impacts;
- Will have positive effects on wetlands, rivers, and ecologically critical areas but may have adverse effects on historic resources (canals) and farmlands;
- May affect some areas covered by the National Historic Preservation Act;
- Will adversely affect endangered or threatened species, their critical habitat, or other non-target species; and
- Will have social or economic impacts interrelated with significant natural or physical environmental effects.

The Service also determined with NMFS that the proposed Deschutes River Basin HCP-ITP action: is of sufficient size and complexity to warrant an EIS; is similar to previous HCP's issued in the Pacific Northwest that likewise required the preparation of an EIS; and may have significant effects on the human environment. On that basis and in accordance with regulations at 40 CFR 1501.4, 1507.3, and 1508.27, the Service believes preparation of an EIS is warranted. As such, we do not intend to prepare an environmental assessment for this action.

Therefore, before deciding whether to issue an ITP(s) for the Deschutes River Basin HCP, we will prepare a draft EIS to analyze the environmental impacts associated with this action. As noted above, NMFS is a cooperating agency in the draft EIS process,

and intends to adopt the draft EIS to address the impacts on the human environment of issuing an ITP(s) addressing listed species under its jurisdiction.

Under NEPA, a reasonable range of alternatives to a proposed project is developed and considered in the Service's environmental review document. In the draft EIS, the Service will consider the following alternatives: (1) No action (no ITP issuance); (2) the proposed action, which includes the issuance of take authorizations as described in the proposed Deschutes River Basin HCP; and (3) a range of additional reasonable alternatives. Alternatives considered for analysis in a draft EIS for an HCP may include: variations in the permit term or permit structure; the level of take allowed; the level, location, or type of minimization, mitigation, or monitoring provided under the HCP; the scope of covered activities; the list of covered species; or a combination of these factors.

The draft EIS will identify and analyze the potential direct, indirect, and cumulative impacts of Service authorization of incidental take under permit issuance and of implementing the proposed Deschutes River Basin HCP on biological resources, land uses, utilities, air quality, water resources, cultural resources, socioeconomics and environmental justice, recreation, aesthetics, and other environmental issues that could occur with implementation of each alternative. The Service will also identify measures, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant impacts of the proposed action on the quality of the human environment. Following completion of the draft EIS, the Service will publish a notice of availability and a request for comment on the draft EIS and the applicants' permit application(s), which will include a draft of the proposed Deschutes River Basin HCP.

## **Public Scoping**

The primary purpose of the scoping process is for the public to assist the Service, Districts, and the City in developing a draft EIS by identifying important issues and alternatives related to the applicants' proposed action. The scoping meetings will include presentations by the Service, Districts, and the City followed by informal questions and discussions. The Service welcomes written comments from all interested parties in order to ensure we identify a full range of issues and alternatives related to the proposed permit request. The Service requests that comments be specific. In particular, we seek comments on the following:

1. Management issues and goals to be considered in the development of the HCP;
2. Existing environmental conditions in the Districts and the City;
3. Other plans or projects that might be relevant to this proposed project;
4. Permit duration;
5. Areas and specific landforms that should or should not be covered;
6. Biological information concerning species in the proposed plan area;
7. Relevant data concerning these species;
8. Additional information concerning the range, distribution, population size, and population trends of the covered species;
9. Current or planned activities in the Plan Area and their possible impacts on the covered species;
10. Species that should or should not be covered;
11. Covered activities including potential avoidance, minimization, and mitigation measures;

12. Monitoring and adaptive management provisions;
13. Funding suggestions; and
14. Alternatives for analysis.

We will accept written comments at the public meetings. You may also submit written comments to the Service at our U.S. mail address, by email, or by fax (see **ADDRESSES** above). Once the draft EIS and draft HCP are prepared, there will be further opportunity for public comment on the content of these documents through an additional 90-day public comment period.

#### **Public Availability of Comments**

Comments and materials we receive, as well as supporting documentation we use in preparing the draft EIS, will become part of the public record and will be available for public inspection by appointment, during regular business hours, at the Service's Bend Field Office (see **FOR FURTHER INFORMATION CONTACT** section). Before including your address, phone number, e-mail address, or other personal identifying information in your comment(s), you should be aware that your entire comment(s)—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment(s) to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### **Reasonable Accommodation**

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Peter Lickwar (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call no later than

August 1, 2017. Information regarding the applicants' proposed action is available in alternative formats upon request.

**Authority**

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 et seq.), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable Federal laws and regulations, and applicable policies and procedures of the Service. This notice is furnished in accordance with 40 CFR 1501.7 of the NEPA regulations to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the draft EIS.

Theresa E. Rabot,  
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Portland, Oregon.

[FR Doc. 2017-15479 Filed: 7/21/2017 8:45 am; Publication Date: 7/24/2017]