



4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2018-N062; FXES11140300000 FF03E00000]

Habitat Conservation Plan for Mitchell's Satyr and Poweshiek Skipperling Butterflies; Categorical Exclusion for Indiana and Michigan Habitat Restoration and Management Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received applications from the Michigan Department of Natural Resources (MDNR) and the Indiana Department of Natural Resources (IDNR) for incidental take permits (ITP) under the Endangered Species Act. If approved, the permits would authorize the incidental take of two federally endangered butterflies, the Mitchell's satyr and the Poweshiek skipperling. The MDNR is applying for an ITP for take of the Mitchell's satyr and Poweshiek skipperling, while the IDNR is applying for an ITP for the Mitchell's satyr only. The ITP applications include one habitat conservation plan to cover activities associated with maintaining, managing, and restoring the fen habitats occupied

by these species. We have made a preliminary determination that the HCP and permit applications are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We are accepting comments on the applicants' draft HCP, and our low-effect screening form and environmental action statement.

DATES: To ensure consideration, please send your written comments on or before [**INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: *Document Availability:*

- *Internet:* You may obtain copies of the documents on the Internet at <https://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>.
- *U.S. Mail:* You can obtain the documents by mail from the Michigan Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).
- *In-Person:* To view hard copies of the documents in person, go to the Ecological Services Office (8 a.m. to 4 p.m.) listed under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: In your comment, please specify whether your comment addresses the draft HCP, EAS, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Electronically:* Submit by email to EastLansing@fws.gov.
- *By hard copy:* Submit by U.S. mail or hand-delivery to U.S. Fish and Wildlife Service; Michigan Ecological Services Field Office, 2651 Coolidge Rd., Ste. 101, East Lansing, Michigan 48823.

FOR FURTHER INFORMATION CONTACT: Carrie Tansy, Michigan Ecological Services Field Office, 2651 Coolidge Rd., Ste. 101, East Lansing, Michigan 48823; telephone (517-351-8375), or by facsimile (517-351-1443). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800-877-8339. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We have received applications from the Michigan Department of Natural Resources (MDNR) and the Indiana Department of Natural Resources (IDNR) for 20-year incidental take permits (ITP) under the ESA. The MDNR is applying for an ITP for take of the endangered Mitchell's satyr (*Neonympha mitchellii mitchellii*) and Poweshiek skipperling (*Oarisma poweshiek*) butterflies. The State of Indiana is applying for an ITP for the Mitchell's satyr only. The applications address the potential for "take" of the federally endangered butterflies that is likely to occur incidental to the implementation of habitat management activities designed to benefit the species. We are requesting comments on the proposed HCP and our preliminary determination that the plan qualifies as eligible for a categorical exclusion under the National Environmental Policy Act.

Background

We listed the Mitchell's satyr as endangered on June 25, 1991 (56 FR 28825), and the Poweshiek skipperling as endangered on October 24, 2014 (79 FR 63672). Section 9 of the ESA prohibits the "taking" of endangered species. However, provided certain criteria are met, we are authorized to issue permits under section 10(a)(1)(B) of the ESA for take of federally

listed species, when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations define “harm” as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Harass, as defined, means “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). However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) The applicant will develop a proposed HCP and ensure that adequate funding for the HCP will be provided; (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP. In addition to meeting other specific criteria, actions undertaken through implementation of the

Habitat Conservation Plan (HCP) must not jeopardize the continued existence of federally listed animal or plant species.

Applicants' Proposal

The MDNR and IDNR (hereafter, the applicants) have submitted an HCP in support of their applications for ITPs to address take of the Mitchell's satyr and Poweshiek skipperling. Covered activities include actions necessary to maintain, manage, and restore fen habitats occupied by these two endangered butterflies. The HCP's area encompasses the counties of Berrien, Branch, Cass, Jackson, Oakland, Van Buren, and Washtenaw in Michigan and LaGrange County in Indiana. The covered activities include the following: hydrology restoration, prescribed burning, mowing/hydro-axing, vegetation removal, biological control of invasive species, livestock grazing, seeding and planting, and butterfly surveys. The applicants have determined that actions associated with the maintenance and restoration of butterfly habitat has the potential to incidentally take the species. Both butterfly species could be injured or killed by the actions to maintain and restore their habitat.

The HCP's proposed conservation strategy is designed to minimize and mitigate the impacts of covered activities on the covered species. The biological goals are to complement the needed conservation actions to restore and conserve the species' habitat in Michigan and Indiana. The proposed action consists of the issuance of ITPs and implementation of the proposed HCP. Three alternatives were considered in the HCP. The proposed alternative in the draft HCP is the issuance of ITPs to the State of Indiana and the State of Michigan to authorize take of MSB and PS on private lands and public lands. The first alternative considered, but not selected, was

restricting the HCP to public agencies only. However, this would miss the opportunity to work more efficiently with non-public landowners where the species frequently occur and thus result in fewer conservation actions to benefit the species. The second alternative considered, but not selected, was for the current status quo or no action (i.e., only existing management techniques that are approved on a site-by-site, project-by-project basis under ESA section 7 consultation or 10(a)(1)(A) recovery permits). This alternative results in a lower efficiency, as each agency or organization develops and applies for individual permits or authorizations rather than being part of a coordinated effort. The quantity and quality of conservation actions is expected to be lower under the status quo than under the other alternatives considered. Under the proposed alternative, non-Federal cooperators who wish to conduct habitat management activities for the butterflies may participate through certificates of inclusion by agreeing to implement the conservation measures and other requirements of the HCP. The certificates of inclusion will be issued by each State and will convey all of the ITPs incidental take authorization.

Our Preliminary Determination

We are requesting comments on our preliminary determination that the applicants' proposal will have a minor or negligible effect on the endangered butterflies and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (December 2016). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable

future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusion under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). However, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and their implementing regulations. If we determine that all requirements are met, we will issue permits under section 10(a)(1)(B) of the ESA to the MDNR and IDNR. We will not make our final decision on the permit application until after the end of the public comment period, and we will fully consider all comments we receive during the comment period.

Public Comments

You may submit your comments and materials related to the draft HCP, DEA, or other supporting documents by one of the methods listed in **ADDRESSES**. We request that you send comments by only one of the methods described in **ADDRESSES**.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection by appointment, during normal business hours, at the Michigan Ecological Services Field Office in East Lansing, Michigan (see **FOR FURTHER**

INFORMATION CONTACT). 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 ask us in you comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: April 27, 2018.

Lori H. Nordstrom,
Assistant Regional Director,
Ecological Services,
Midwest Region

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