DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[CODE; FXES111X0500000–XXX–FF05E00000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Karner Blue Butterfly and Frosted Elfin in the Albany Pine Bush Preserve, Albany, Colonie and Guilderland, New York; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Albany Pine Bush Preserve Commission (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed endangered Karner blue butterfly incidental to otherwise lawful activities associated with expansion of an existing trail system and routine property maintenance and management activities within the Albany Pine Bush Preserve. The applicant also seeks take coverage for the frosted elfin butterfly, listed as threatened by the State of New York, should it become federally listed in the future. The applicant proposes a conservation program to minimize and mitigate the impacts of unavoidable incidental take of the two species, as described in its habitat conservation plan (HCP). We invite public comment on the application, which includes the applicant’s proposed HCP, and the Service’s preliminary determination that the covered actions and incidental take which may occur under this proposed HCP, if implemented, qualifies as “low effect,” and therefore our issuance of the requested ITP authorizing the take would

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federalregister.gov/d/2020-17725
and on
govinfo.gov
be categorically excluded from further review under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].


Submitting Comments: You may submit comments by one of the following methods:


For additional information about submitting comments, see Request for Public Comments and Public Availability of Comments under SUPPLEMENTARY INFORMATION.
FOR FURTHER INFORMATION CONTACT: Noelle Rayman-Metcalf, by telephone at 607–753–9334, or by email at Noelle_rayman@fws.gov. Hearing or speech impaired individuals may call the Federal Relay Service at 800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Section 9 of the ESA and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened (16 U.S.C. 1538). Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct” (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed 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 (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant’s Proposed Project

The applicant requests a 20-year ITP to take two covered species, the endangered Karner blue butterfly and the frosted elfin (should it become federally listed in the future). The applicant determined that unavoidable take is reasonably certain to occur incidental to the proposed construction of 2.7 miles of trail and routine property maintenance and management activities that will affect approximately 1.94 acres (ac) of occupied or suitable habitat for the covered species.
The conservation program in the applicant’s proposed HCP is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species, and is intended to complement ongoing conservation efforts for the covered species in New York State. The HCP proposes establishment and ongoing maintenance of approximately 6 ac of wild blue lupine to increase breeding and foraging habitat for the covered species to offset the anticipated impacts of the taking.

**National Environmental Policy Act**

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 et seq.). The Service has made a preliminary determination that the impact of the covered actions and the incidental take likely to result from the applicant’s project, including expansion of the existing trail system, routine property maintenance and management activities, and the proposed conservation program, would individually and cumulatively have a minor or negligible effect on the Karner blue butterfly, the frosted elfin, and the environment. Therefore, we have preliminarily concluded the covered actions and incidental take which may occur under this proposed HCP, if implemented, qualifies as “low effect,” and therefore our issuance of the requested ITP authorizing the take would be categorically excluded from further review under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect ITP is one in which covered actions and incidental take in accordance with the HCP would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and
reasonably foreseeable similarly situated projects, would not over time result in
significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine
whether the permit application meets the requirements of section 10(a) of the ESA (16
U.S.C. 1531 et seq.). We will also conduct an intra-Service consultation pursuant to
section 7 of the ESA to evaluate the effects of the proposed take. After considering the
above findings, we will determine whether the permit issuance criteria of section
10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to
the applicant.

Request for Public Comments

The Service invites the public to comment on the proposed HCP and draft
environmental action statement during a 30-day public comment period (see DATES).
You may submit comments by one of the methods shown under ADDRESSES.

Public Availability of Comments

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. All submissions from organizations or businesses, and from individuals
identifying themselves as representatives or officials of organizations or businesses, will
be made available for public disclosure in their entirety.
Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA regulation 40 CFR 1506.6.

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Ecological Services.

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