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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-ES-2016-0004]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648-XE423]

Notice of Availability and Request for Public Comment on the Joint U. S. Fish and Wildlife Service and National Marine Fisheries Service Habitat Conservation Planning Handbook

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS) and the National Marine

Fisheries Service (NMFS), issue Endangered Species Act incidental take permits and help applicants develop conservation plans as a prerequisite to obtaining those permits. We announce the availability of and request public comment on a draft revision of our joint Habitat Conservation Plan (HCP) Handbook, which describes requirements, procedures, and guidance for permit issuance and conservation-plan development. The HCP Handbook initially was released in 1996, and revised by addendum in July 2000.

DATES: To ensure consideration, written comments on the draft HCP Handbook must be received or postmarked on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered.

ADDRESSES:

Availability of Documents:

Internet: You may obtain copies of all of the documents at: <http://www.regulations.gov/>.

Comment submission: You may submit written comments on the draft joint HCP Handbook by one of the following methods:

- *Electronically:* Go to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. In the Search box, enter **FWS-HQ-ES-2016-0004**, which is the docket number for this notice. On the left side of the screen, under the Document Type heading, click on the Notices link to locate this document, complete the required fields, and enter or attach

your comment.

- *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: **FWS-HQ-ES-2016-0004**; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

Instructions: We request that you send comments by only the methods described above.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Services.

All comments received will be a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. You may request at the top of your document that we withhold your personal information from public review; however, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Trish Adams, USFWS (phone: 703-358-2120; email: trish_adams@fws.gov), or Heather Coll, NMFS (phone: 301-427-8455; email: heather.coll@noaa.gov). Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (USFWS) and

the National Marine Fisheries Service (NMFS), issue Endangered Species Act section 10(a)(1)(B) incidental take permits and help applicants develop conservation plans as a prerequisite to obtaining those permits. With this notice, we announce the availability of and request public comment on a draft revision of our joint Habitat Conservation Planning (HCP) Handbook, which describes requirements, procedures, and guidance for section 10(a)(1)(B) permit issuance and conservation-plan development. The joint HCP Handbook initially was announced via a Federal Register notice on December 2, 1996 (61 FR 63854), and was revised by addendum, effective July 3, 2000 (65 FR 35242; June 1, 2000). The new, revised draft of the joint HCP Handbook we are announcing via this notice is intended to be more streamlined and user-friendly. It follows the HCP process from start to finish and incorporates feedback we have received about the program.

Background

The purpose of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA), is to protect and recover threatened and endangered species and the ecosystems upon which they depend. Section 9 of the ESA prohibits take of any fish or wildlife species listed as endangered, and take of many species listed as threatened is prohibited by regulation. “Take” is defined in section 3 as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Before 1982, the ESA had a mechanism for exempting Federal actions (section 7) from the prohibition on take, but it did not have one for non-Federal activities, except for permits to authorize take from scientific research or certain other conservation actions. Thus, non-Federal parties engaging in activities that resulted in take of listed species risked violating ESA section 9 take prohibitions. Congress recognized the need for a process to reduce conflicts between protection of listed species and economic development,

so it amended the ESA in 1982 to add an exemption for incidental take of listed species that would result from non-Federal activities (section 10(a)(1)(B)). “Incidental take” is that which is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. To obtain a permit for under section 10(a)(1)(B), applicants must develop a conservation plan that meets specific requirements identified in section 10 and its regulations (50 CFR 17.22 and 17.32; 50 CFR 222.25, 222.27, and 222.31). Among other requirements, the plan must specify (1) the impacts that are likely to result from the taking and (2) the measures that the permit applicant will undertake to minimize and mitigate such impacts. Conservation plans under section 10(a)(1)(B) have come to be known as “habitat conservation plans” (HCPs). Section 10(a)(2)(B) provides statutory criteria that must be satisfied before an incidental take permit (ITP) can be issued.

Handbook Purpose

The purpose of the joint HCP Handbook is to instruct USFWS and NMFS (Services) staff on how to assist applicants to develop HCPs in an efficient and effective manner while ensuring adequate conservation for listed species. The Handbook guides Services staff, phase by phase, through development, implementation, and environmental compliance, using streamlined approaches whenever possible. It draws upon past experience to help staff understand regulations and policy and navigate the various processes for completing an HCP and issuing a permit. Although the joint HCP Handbook is designed specifically for Services’ staff, it also can be helpful to other HCP practitioners, such as applicants, consultants, and partners.

Need for Handbook Revision

The HCP program has evolved in response to changes in society and our natural resources. Because of changes to the program, the USFWS decided to contract Management

Systems International to prepare an independent review of our HCP program in 2008, as well as a collection of input and recommendations for the program from various sources. These reviews and recommendations have provided the important feedback that our program is highly effective in achieving its purpose of avoiding, minimizing, and mitigating the effects of development on endangered (or threatened) species and their habitats, and, in some cases, exceeds minimum requirements and makes a positive contribution to improving species habitat and contributing to species recovery. However, feedback also has indicated that the processes used to develop and approve ITPs can be inefficient. Commonly expressed concerns related to inefficiency are: HCPs take too long to develop and cost too much; negotiations can be complex; implementation is too expensive; applicants perceive lack of certainty; and the benefits of the HCP program are not readily apparent to internal or external stakeholders. The proposed revisions to the Handbook address these concerns in various ways, ranging from clarification of existing guidance to policy-level changes.

Proposed Revisions Made to Handbook

The revised HCP Handbook reflects current USFWS and NMFS HCP practices, guidance, and policies; incorporates lessons from the 30-year history of implementing the HCP program; and provides guidance to assist applicants and the Services' staff to avoid common pitfalls that can delay HCP negotiations and development or processing of ITPs.

The goal is to provide a joint HCP Handbook that helps to streamline and improve efficiency of the HCP program. To accomplish this, we have reorganized the joint HCP Handbook, with the goal of walking Services staff and stakeholders through each stage of the HCP process, from the pre-application stage through ITP issuance and HCP implementation, including monitoring and compliance.

Some of the most significant changes to the joint HCP Handbook include:

(1) We introduced the concept that applicants should “start slow to go fast,” which emphasizes the benefits to applicants of pre-planning before jumping directly into HCP development, especially for landscape-scale HCPs.

(2) To streamline the ITP issuance process, we focused on the vital review and administrative steps without compromising legal integrity.

(3) We clarified the concept “maximum extent practicable.”

(4) We ensured consistency with revised or updated policies such as draft USFWS Mitigation Policy.

(5) We clarified the use of implementing agreements.

(6) We updated and clarified permit duration.

(7) We provided guidance on how to comply with section 106 of the National Historic Preservation Act.

(8) We provided guidance on addressing climate change.

(9) We updated and clarified what should be addressed through adaptive management versus foreseen and unforeseen circumstances.

(10) We provided guidance on when to initiate the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) process or intra-Service section 7 consultations, and when to seek assistance from the Solicitor or General Counsel.

(11) We updated and clarified information concerning take analysis, responding to public comments, public notices, permit decision documents, compliance monitoring, and ITP suspension and revocation.

Authority

16 U.S.C. 1531 *et seq.*

Dated: _____ June 22, 2016 _____

Angela Somma, Chief
Endangered Species Conservation Division
National Marine Fisheries Service

Dated: _____ June 20, 2016 _____

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

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