



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R5–ES–2015–N203]; [50120–1112–0000–F2]**

**Receipt of an Application for an Incidental Take Permit for Karner Blue Butterfly,  
from the Slack Chemical Company, and Availability of Proposed Habitat  
Conservation Plan**

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

**ACTION:** Notice of availability, receipt of application.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of an application for an Incidental Take Permit (ITP) and a proposed Habitat Conservation Plan (HCP) from the Slack Chemical Company for public review and comment. We received the permit application from the Slack Chemical Company for incidental take of the endangered Karner blue butterfly resulting from the construction of a gravel access road, as well as from proposed mitigation activities over the next 10 years. Our preliminary determination is that the proposed HCP qualifies as low-effect in accordance with our Handbook for Habitat Conservation Planning and Incidental Taking

Permitting Process. To make this determination, we used our Low-Effect HCP Screening Form/Environmental Action Statement (EAS), the preliminary version of which is also available for review.

We provide this notice to (1) seek public comments on the proposed HCP and application; (2) seek public comments on our preliminary determination that the HCP qualifies as low-effect and is therefore eligible for a categorical exclusion under the National Environmental Policy Act (NEPA); and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to issue an ITP.

**DATES:** To ensure consideration, we must receive your written comments by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**ADDRESSES: *Reviewing documents:*** You may obtain copies of the proposed HCP and preliminary EAS for review by any of the following methods:

*Internet:* New York Field Office Web site, at <http://www.fws.gov/northeast/nyfo/>;

*In-person:* Copies will be available for public review during regular business hours at the New York Field Office (see **FOR FURTHER INFORMATION CONTACT**);

*U.S. mail:* You may request copies by sending a letter to the New York Field Office (see **FOR FURTHER INFORMATION CONTACT**); or

*Telephone:* Those who do not have access to the Web site or cannot visit our office may request copies by telephone at 607-753-9334.

**Submitting comments:** You may submit written comments by any one of the following methods:

*Email:* [FW5ES\\_NYFO@fws.gov](mailto:FW5ES_NYFO@fws.gov). Please put Slack Chemical HCP in the subject line; or

*U.S. mail:* Noelle Rayman-Metcalf (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Noelle Rayman-Metcalf, by U.S. mail at U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, NY 13045; or via phone at 607-753-9334.

**SUPPLEMENTARY INFORMATION:** We received an application from the Slack Chemical Company for an ITP for take of the federally listed endangered Karner blue butterfly (*Lycaeides melissa samuelis*) resulting from the construction of a gravel access road, as well as from proposed mitigation activities. To minimize and mitigate for the incidental take, the Slack Chemical Company will implement a conservation program as described in its proposed HCP. We prepared a preliminary EAS to comply with NEPA. The Service will evaluate whether the proposed action, issuance of an ITP to the Slack Chemical Company, is adequate to support a categorical exclusion. We are requesting comments on the proposed HCP and our preliminary determination that the plan qualifies as low-effect under NEPA.

## **Background**

Section 9 of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the Act 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. 1538). However, under section 10(a) of the Act, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations (October 1, 2006, 50 CFR 17.22; October 1, 2001, 50 CFR 17.32).

### **Proposed Project**

Slack Chemical Company is seeking a permit for the incidental take of the Karner blue butterfly for a term of 10 years. Incidental take of this species will occur in an approximate 0.10-acre area within a National Grid right-of-way (ROW). Slack Chemical Company proposes to construct a gravel access road through the ROW to access approximately 8 acres for construction of a parking lot for their trucking fleet and a building. The project is located in Grande Industrial Park, Saratoga Springs, Saratoga County, New York. An additional 4.81 acres of temporary impacts to enhance Karner blue butterfly habitat will occur due to periodic mowing.

Proposed covered activities include the new construction of a gravel access road, as well as periodic mowing of occupied habitat of two existing New York State Department of Environmental Conservation management areas, and one National Grid easement area, as well as the seeding of wild blue lupine and other nectar species within a

0.10 acre patch in National Grid's ROW. The HCP's proposed conservation strategy is designed to minimize and mitigate the impacts of covered activities on the covered species. The biological goal is to complement the existing conservation efforts in New York State for the butterfly.

The proposed action consists of the issuance of an ITP and implementation of the proposed HCP. One alternative to the proposed action was considered in the HCP: No action (*i.e.*, operation of the project without an ITP and without avoidance, minimization, or mitigation of Karner blue butterfly impacts). This alternative was deemed not practicable by Slack Chemical Company because the project would not have the important protections of the ITP and would not have the conservation benefits proposed by the Slack Chemical Company.

#### **National Environmental Policy Act**

We have made a preliminary determination that the Slack Chemical Company's proposed HCP, including proposed minimization and mitigation measures, will have a minor or negligible effect on the species covered in the plan, and that the plan qualifies as a "low-effect" HCP as described in the Service's HCP Handbook (61 FR 63854, December 2, 1996). Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by 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).

As further explained in the preliminary EAS, included for public review, our preliminary determination that the plan qualifies as a low-effect HCP is based on the following three criteria:

- (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the plan would result in minor or negligible effects on other environmental values or resources prior to implementation of the mitigation measures; and
- (3) Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant.

### **Next Steps**

We will evaluate the proposed HCP and comments we receive 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 evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements are met, we will issue the permit to the applicant.

### **Public Comments**

We invite the public to comment on the proposed HCP and preliminary EAS during a 30-day public comment period (see **DATES**). You may submit written comments by one of the methods in the **ADDRESSES** section.

All comments received, including names and addresses, will become part of the administrative record and will be available to the public. 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—will be publicly available. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

**Dated: July 21, 2016.**

**Cindy Schulz,  
Acting Assistant Regional Director—Ecological Services,  
Northeast Region .**

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