



**Billing Code: 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R2–ES–2018–N118; FXES11130200000–189–FF02ENEH00]**

**Draft Safe Harbor Agreement Amendment and Application for an Enhancement of Survival Permit, Tres Rios Project, Phoenix, Arizona**

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

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application to amend an existing enhancement of survival permit from the City of Phoenix under the Endangered Species Act. The requested amended permit would authorize a change in baseline for the southwestern willow flycatcher, adjust the enrolled land acreage to reflect City land boundaries, and include the yellow-billed cuckoo in the Safe Harbor Agreement and the enhancement of survival permit associated with the City's Tres Rios Water Project. We invite the public to review and comment on the permit application and the associated draft safe harbor agreement amendment (SHA

amendment). In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed permit action qualifies for a categorical exclusion. We are accepting comments on the draft SHA amendment, and also on a draft NEPA screening form.

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

**ADDRESSES: *Obtaining Documents:*** You may obtain copies of the documents by any of the following methods:

- *Internet:* Download the documents at <https://www.fws.gov/southwest/es/arizona/>.
- *U.S. Mail:* You may receive a CD-ROM or hard copies by mail by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051-2517; calling (602) 242-0210; faxing (602) 242-2513, or emailing [FW2\\_HCP\\_Permits@fws.gov](mailto:FW2_HCP_Permits@fws.gov).
- *In-Person Document Review:* Copies of the documents are also available for public inspection and review, by appointment only, at the Service's Phoenix office (address above) or at the U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6093, Albuquerque, NM 87102; (505) 248-6401.

***Submitting Comments:*** To submit written comments, please use one of the following methods, and note that your comment is in reference to the "Draft SHA Amendment/Tres Rios Project in Phoenix, Arizona":

- *U.S. Mail:* Field Supervisor, Phoenix office (address above).
- *Fax:* 602–242–2513.
- *Email:* FW2\_HCP\_Permits@fws.gov.

We request that you submit comments only by the methods above. Generally, we will post any personal information you provide us (see **Public Availability of Comments**).

**FOR FURTHER INFORMATION CONTACT:** Jeff Humphrey, Field Supervisor, 602–242–0210 (telephone).

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce receipt of the City of Phoenix’s application to amend an existing enhancement of survival permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested amended permit would allow for the City of Phoenix to continue operation and maintenance activities associated with the Tres Rios Project, including maintenance of vegetation, roads, trails, water delivery systems, flood control capacity, and storm water facilities. The project area runs from approximately 91st Avenue downstream to the confluence of the Gila and Salt Rivers, and then west along the Gila River to approximately El Mirage Road in Maricopa County, Arizona. The amendment to the permit would make three changes to the original permit: (1) add the yellow-billed cuckoo (*Coccyzus americanus*) to the City’s 2014 SHA; (2) adjust the enrolled acreage from the 927 acres specified in the 2014 SHA to 924 acres, in order to rectify boundary errors; and (3) adjust covered species baselines to reflect the 2015

habitat assessment, which better represents the area and its conservation benefit. The baseline for the Yuma Ridgway's (clapper) rail (*Rallus obsoletus* [=longirostris] *yumanensis*) remains at 5 acres. The southwestern willow flycatcher (*Empidonax traillii extimus*) baseline changed from 22.5 acres to a zero baseline, and we determined that the yellow-billed cuckoo baseline is 6 acres.

The applicant plans to continue operation and maintenance activities associated with the Tres Rios Project, Tempe Reach, including maintenance of vegetation, roads, trails, water delivery systems, flood control capacity, and storm water facilities. Initial implementation of the Tres Rios Project was a cooperative project between the applicant and the U.S. Army Corps of Engineers to restore, enhance, and maintain 924 acres of native riparian and wetland vegetation along the lower Salt and Gila Rivers in Maricopa County, Arizona.

We invite the public to review and comment on the permit amendment and the associated draft safe harbor agreement amendment (draft SHA amendment). In accordance with National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements, we have determined that the proposed action qualifies for a categorical exclusion. We are accepting comments on the permit application, draft SHA amendment, and draft NEPA screening form, which supports using a categorical exclusion.

## **Background**

Enhancement of survival permits issued for safe harbor agreements encourage non-Federal landowners, including non-Federal operators holding easements on private lands, to implement conservation measures for habitat that is, or is likely to develop into,

suitable habitat for listed species, by assuring landowners/operators that they will not be subjected to increased property use restrictions if suitable habitat develops and the covered species is detected in the future. Application requirements and enhancement of survival permit issuance criteria for safe harbor agreements are provided under section 10(c) of the ESA and its implementing regulations from the Code of Federal Regulations (CFR) at 50 CFR 17.22 and the NEPA and its implementing regulations at 40 CFR 1506.6.

### **Proposed Action**

The proposed action is the Service's issuance of an amended permit to the City of Phoenix for covered activities in the permit area for up to 50 years, pursuant to section 10(a)(1)(A) of the ESA. The amended permit would cover "take" of the yellow-billed cuckoo associated with covered activities occurring within the permit area.

The draft SHA amendment commits the City of Phoenix to implement conservation measures to improve habitat for the covered species on Tres Rios lands while allowing for covered activities within the project area to continue.

To meet ESA section 10(a)(1)(A) permit requirements for the proposed amendment, the applicant developed and proposes to implement the SHA amendment, which describe the actions the City of Phoenix has agreed to undertake to improve habitat within the Tres Rios project area.

Expected benefits include, but may not be limited to improvement of riparian habitat that can be used by covered species and other native fauna, limiting the amount of new disturbance to riparian habitat, and improving public environmental education.

We will evaluate the permit amendment request along with associated documents and comments we receive to determine whether the permit amendment meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the draft SHA amendment and amend the associated permit. We will fully consider all comments we receive during the public comment period, and we will not make our final decision until after the comment period ends.

### **Public Availability of Comments**

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act (5 U.S.C. 552), NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, 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**

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy Lueders,

Regional Director, Southwest Region,

Albuquerque, New Mexico.

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