



Billing Code 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2019-N024; FXES11140100000-190-FF01E00000]

Proposed Programmatic Candidate Conservation Agreement with Assurances for the Island Marble Butterfly in San Juan County, Washington

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 an enhancement of survival (EOS) permit application from the Washington Department of Fish and Wildlife pursuant to the Endangered Species Act (ESA). The requested permit would authorize the incidental take of the island marble butterfly, proposed for listing as endangered, should the species become federally listed under the ESA. The permit application includes a proposed candidate conservation agreement with assurances (CCAA) that describes the habitat management actions that will be taken for the conservation of the island marble butterfly. We announce the availability of a draft

environmental action statement addressing the CCAA and proposed permit. We invite the public to review and comment on the documents.

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

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the “Island Marble Butterfly CCAA.”

- *Internet:* Documents may be viewed or downloaded on the Internet at <http://www.fws.gov/wafwo/>.
- *Email:* wfwo_lr@fws.gov.
- *U.S. Mail:* Acting State Supervisor, Public Comments Processing, Attn: **FWS–R1–ES–2019–N024**; U.S. Fish and Wildlife Service; 510 Desmond Drive SE, Suite 102; Lacey, WA 98503.
- *In-Person Drop-off, Viewing or Pickup:* Call 360–753–6046 to make an appointment (necessary for viewing or picking up documents only), during regular business hours at the above address. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Tom McDowell, U.S. Fish and Wildlife Service (see **ADDRESSES**); telephone: 360–753–6046; facsimile: 360–753–

9405. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Service has received an application from the Washington Department of Fish and Wildlife (WDFW) for an EOS permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The requested 15-year permit would authorize the incidental take of the island marble butterfly (*Euchloe ausonides insulanus*), which is proposed to be federally listed as endangered, in the event it becomes listed, in exchange for habitat conservation actions that are expected to provide a net conservation benefit for the species. The application includes a proposed programmatic candidate conservation agreement with assurances (CCAA) that describes the existing baseline conditions and the activities that are intended to produce a net conservation benefit for the island marble butterfly on private and county lands on San Juan and Lopez Islands in San Juan County, Washington. Non-Federal property owners may continue to enroll in this CCAA so long as the CCAA remains in effect and the island marble butterfly is not listed as endangered under the ESA.

Background

Section 9 of the ESA prohibits the “take” of fish and wildlife species listed as endangered or threatened. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes 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). The term “harass” is defined in our regulations as 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). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

Under a CCAA, private and other non-Federal property owners voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat to benefit species that are candidates or proposed for listing under the ESA. An ESA section 10(a)(1)(A) enhancement-of-survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner's agreed-upon conservation measures and routine property-management actions (e.g., agricultural, ranching, or forestry activities) result in take of the covered species if the covered species is listed. Through a CCAA and associated enhancement of survival permit, issued pursuant to section 10(a)(1)(A) of the ESA, non-Federal property owners agree to implement conservation efforts for covered species, and the Service provides assurances to property owners that they will not be subjected to additional conservation measures nor additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the original agreement.

Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively. See also our joint policy on CCAAs, which we published in the *Federal Register* with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999).

On April 12, 2018, the Service published in the *Federal Register* a proposed rule to list the island marble butterfly as endangered and to designate critical habitat for the species (83 FR 15900). In anticipation of the potential listing of the island marble butterfly under the ESA, WDFW requested assistance from the Service in developing a CCAA addressing this species on behalf of private landowners and San Juan County on San Juan and Lopez Islands, Washington.

The island marble butterfly was historically known from just two areas along the southeast coast of Vancouver Island, British Columbia, Canada: the Greater Victoria area at the southern end of Vancouver Island; and near Nanaimo and on adjacent Gabriola Island. The last known specimen of the island marble butterfly from Canada was collected in 1908 on Gabriola Island, and the species is now considered extirpated from the province. After 90 years without a documented occurrence, the island marble butterfly was rediscovered in 1998 on San Juan Island, San Juan County, Washington. Subsequent surveys in suitable habitat across southeastern Vancouver Island and the Gulf Islands in Canada, as well as the San Juan Islands and six adjacent counties in the United States (Whatcom, Skagit, Snohomish, Jefferson, Clallam, and Island counties), revealed only two other occupied areas: one on San Juan Island and another on Lopez Island. Since 2006, the number and distribution of island marble butterfly populations have

declined. Habitat has been lost through conversion and degradation, particularly from agricultural and residential development, plant community succession and changes associated with invasive plants, and herbivory of host plants (and the resulting indirect predation on butterfly eggs and larvae) by deer. The island marble butterfly is presently only known to occur in a single area centered on American Camp at San Juan Island National Historical Park, including small areas of land immediately east and west adjoining the National Park. This currently occupied area is located at the southern tip of San Juan Island.

Proposed Action

The Proposed Action is issuance of a requested 15-year Permit with the option for renewal based on WDFW's commitment to implement the proposed CCAA, including issuance of certificates of inclusion to participating non-Federal landowners. The proposed CCAA would implement conservation measures that contribute to the recovery of the island marble butterfly. The take authorization under the proposed permit becomes effective if the species is listed, as long as the enrolled landowner is in compliance with the terms and conditions of their certificate of inclusion and the EOS permit. The CCAA "emphasis areas" are the expansive, non-forested, open areas within the agricultural and residential landscape within the central valley on San Juan Island, the central valley on Lopez Island, and areas adjacent to American Camp within the San Juan Island National Historical Park. The combined CCAA covered area totals approximately 8,800 acres. However, landowners with open areas outside of these emphasis areas may also enroll in the CCAA. Primary conservation measures implemented under the CCAA include

habitat patch establishment/creation, habitat patch maintenance, habitat patch management, avoiding development of detrimental habitat, and optional deer management (fencing or lethal control). Additional conservation measures include allowing resource agency staff to monitor habitat patches and use of habitat patches by the butterfly, and to salvage/rescue the butterfly when necessary. Covered landowner activities include ongoing agricultural, ranching, recreational, and transportation use/maintenance activities, and ongoing activities associated with enrollee occupancy (e.g., property management and maintenance), in addition to the implementation of CCAA conservation measures.

The draft EAS now available for public review (see **ADDRESSES**) includes a finding that the proposed CCAA and permit decision may be eligible for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We are making the permit application package, including the proposed CCAA and draft EAS, available for public review and comment.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action, including the adequacy of the CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17, and adequacy of the EAS pursuant to NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, 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 your comment to 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. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*), and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Robyn Thorson,

Regional Director,

Pacific Region, U. S. Fish and Wildlife Service.

[FR Doc. 2019-10553 Filed: 5/20/2019 8:45 am; Publication Date: 5/21/2019]