



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**[Docket No. FWS–R1–ES–2019–0091; FXES11140100000–212–FF01E00000]**

### **Final Environmental Impact Statement and Final Deschutes Basin Habitat Conservation Plan; Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon**

**AGENCY:** Fish and Wildlife Service, Interior, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service and National Marine Fisheries Service (together, the Services), announce the availability of a final environmental impact statement (FEIS) and habitat conservation plan (HCP) addressing covered activities by the Deschutes Basin Board of Control (DBBC)'s eight-member irrigation districts, and the City of Prineville (applicants). The applicants are seeking incidental take permits (ITPs) covering the incidental take of four covered species over a 30-year period. The HCP describes the steps the applicants will take to minimize,

mitigate, and monitor the impacts of incidental take of the covered species. The FEIS has been prepared, pursuant to NEPA, in response to these applications.

**DATES:** The Services' ITP decisions will occur no sooner than 30 days after publication of the U.S. Environmental Protection Agency's notice of the FEIS in the **Federal Register**, and will be documented in each agency's record of decision.

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

- *Internet:* <http://www.regulations.gov> under Docket No. FWS-R1-ES-2019-0091, or at <https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716>.
- *Upon Request:* You may request alternative formats of the documents directly from the Services (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Bridget Moran, by telephone at 541-383-7146, or by email at [bridget\\_moran@fws.gov](mailto:bridget_moran@fws.gov); or Scott Carlon, by telephone at 971-322-7436, or by email at [scott.carlon@noaa.gov](mailto:scott.carlon@noaa.gov). Hearing or speech impaired individuals may call the Federal Relay Service at 800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (jointly, the Services) announce the availability of a final environmental impact statement (FEIS) and final habitat conservation plan (HCP) addressing covered activities by the Deschutes Basin Board of Control (DBBC) member districts (Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts) and the City of Prineville (applicants) in Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon. The applicants are requesting an incidental take permit (ITP) covering

the take of the federally threatened Oregon spotted frog (*Rana pretiosa*) and the threatened bull trout (*Salvelinus confluentus*) from FWS; and a separate ITP covering take of the federally threatened Middle Columbia River steelhead trout (*Oncorhynchus mykiss*) and the non-listed sockeye salmon (*O. nerka*) from NMFS. Hereafter, these four species are collectively referred to as the “covered species.”

The ITPs, if issued, would authorize take of the covered species that may occur over the 30-year permit term incidental to the storage, release, diversion, and return of irrigation water by the DBBC member districts, and groundwater withdrawals, effluent discharges, and surface water diversions by the City of Prineville (collectively, the “covered activities”).

The HCP describes the impacts that will likely result from the take of the covered species and describes the steps the applicants will take to minimize and mitigate such impacts. The HCP also describes the covered species’ life history and ecology, as well as the biological goals and objectives of the HCP, adaptive management, monitoring, and funding assurances.

The FEIS was prepared by FWS in response to the ITP applications from the applicants, with input from NMFS as a cooperating agency. The Services also jointly considered comments received on the draft HCP and draft environmental impact statement (DEIS), in accordance with the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

## **Background**

All eight water districts are quasi-municipal corporations formed and operated according to Oregon State law to distribute water to irrigators (patrons) within designated geographic boundaries and in accordance with the individual water rights held by those patrons. The City of Prineville operates City-owned infrastructure and provides essential services—including public safety, municipal water supply, and sewage treatment—for

more than 9,000 residents. The applicants have determined that continued operation of irrigation and essential services requires ITPs to address unavoidable take of covered species, which is ongoing.

The applicants have proposed a conservation program to avoid, minimize, and mitigate the impacts of taking of the covered species. The HCP addresses the adverse effects of the covered activities on the covered species by reducing or eliminating those effects to the maximum extent practicable, and by mitigating effects that cannot be eliminated altogether. In general, adverse effects on listed species can result from direct harm or injury of individuals of the species, and through changes in habitat that interfere with the essential life activities of the species. Both types of effects are addressed in the HCP conservation measures. The covered activities affect the covered species primarily through changes in the hydrology (flow) of occupied waters associated with the storage, release, diversion, and return of irrigation water.

In the course of storing, releasing, diverting, and returning irrigation water, the applicants alter the hydrology of the Deschutes River and a number of its tributaries. In a similar fashion, the pumping of groundwater for municipal water supply by the City of Prineville affects the hydrology in one of those tributaries, the Crooked River. In most cases, the hydrologic changes resulting from activities covered by the HCP have adverse impacts on aquatic habitats for the covered species. When flows are reduced, the total area of usable habitat for aquatic species generally decreases and water temperatures typically increase to the extent that habitat quality is negatively impacted. The HCP's conservation measures will modify irrigation activities that reduce in-stream flow (storage and diversion of water) to address the adverse effects. As a result, with implementation of the HCP, flows in the affected reaches will be higher than they were historically (over the last 50+ years) in the winter, and water temperatures (particularly peak summer temperatures) will be lower.

The actions considered in the FEIS are approval of the HCP and issuance of ITPs (one from each of the Services) with a term of 30 years to the applicants, if permit issuance criteria are met. The Services will each make an independent decision regarding coverage for incidental take of the species under its respective jurisdiction.

### **Endangered Species Act**

Section 9 of the ESA and its implementing regulations prohibit “take” of fish and wildlife species listed as endangered (16 U.S.C. 1538(a)(1)). Section 4 of the ESA allows FWS and NMFS to issue regulations which prohibit the take of any fish and wildlife species listed as threatened, as well (16 U.S.C. 1533(d)). The take prohibition has been extended, in whole or in part, to the three covered species that are listed as threatened. However, steelhead that occur above Round Butte Dam on the Deschutes River are designated as a nonessential experimental population under section 10(j) of the ESA. Incidental take is allowed for legally authorized activities that may affect this species. This designation will expire on January 15, 2025, at which time take prohibitions shall be in place. Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1538). Under section 10(a) of the ESA, the Services may issue permits to authorize incidental take of listed fish and wildlife 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. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
3. The applicant will ensure that adequate funding for the HCP will be provided;

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Services may require as being necessary or appropriate for purposes of the HCP.

### **National Environmental Policy Act**

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), FWS prepared a FEIS analyzing the proposed action (identified as the Services' preferred alternative), a no-action alternative, and two additional alternatives to the proposed action. The environmental consequences of each alternative were analyzed to determine if significant impacts to the human environment would occur.

*Alternative 1 - No-action Alternative:* No ITPs would be issued, and the applicants' HCP would not be implemented. Under Alternative 1, ongoing applicant activities would remain subject to the take prohibition for listed species under section 9 of the ESA. This alternative assumes continuation of actions covered in an ESA section 7 biological opinion issued to the Bureau of Reclamation addressing the effects of water management activities in the Upper Deschutes River Basin to the Oregon spotted frog, and continuation of actions covered in other ESA section 7 consultation documents addressing the effects of Deschutes River Basin projects to the Middle Columbia River steelhead trout and the bull trout.

*Alternative 2 - Proposed Action, Deschutes Basin HCP:* Under this alternative, identified as the preferred alternative in the FEIS, the Services would issue 30-year ITPs to the applicants for incidental take of the four covered species caused by covered activities in the plan area, and the applicants would implement the HCP. Over the 30-year period of HCP implementation, in-stream flows would be modified to mimic more natural flow patterns to support the various life stages of the covered species.

*Alternative 3 - Enhanced Variable Streamflows:* Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, covered activities, and permit term as described for the proposed action, but with modifications to the HCP conservation strategy, including increased fall and winter flows in the Deschutes River below Wickiup Dam, in-stream protection of uncontracted water releases on the Crooked River for fish and wildlife, and the inclusion of a habitat improvement fund for projects in the Upper Deschutes River Basin.

*Alternative 4 - Accelerated Schedule for Enhanced Variable Streamflows:* Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, and covered activities as described for the proposed action, but with a 20-year permit term and modifications to the HCP conservation strategy for an accelerated schedule for increases in fall and winter flows in the Deschutes River below Wickiup Dam, in-stream protection of additional uncontracted water releases on the Crooked River for fish and wildlife, and the habitat improvement fund for projects in the Upper Deschutes River Basin.

As the DEIS was developed prior to the Council on Environmental Quality's issuance of updated regulations implementing NEPA which went into effect on September 14, 2020 (40 CFR 1506.13), the FEIS was completed under the previous regulations in the interest of time and efficiency.

### **EPA's Role in the EIS Process**

The Environmental Protection Agency (EPA) is charged with reviewing all Federal agency EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions addressed in these EISs. Therefore, EPA is publishing a notice in the **Federal Register** announcing this EIS, as required under section 309 of the Clean Air Act. EPA serves as the repository (EIS database) for EISs

prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

## **Public Involvement**

The notice of intent (NOI) to prepare a DEIS was published in the **Federal Register** on July 24, 2017 (82 FR 34326). The NOI also announced a public scoping period (July 24, 2017, through September 22, 2017), during which interested parties were invited to provide written comments related to the proposal. Four public scoping meetings were held: Two in Madras, Oregon, on August 14, 2017; and two in Bend, Oregon, on August 15, 2017. The meetings were convened in accordance with NEPA procedures (40 CFR 1501.7). Using public scoping comments, FWS prepared a DEIS to analyze the effects of the above alternatives on the human environment, with input from NMFS as a cooperating agency. A notice of availability (NOA) of the DEIS and draft HCP was published by FWS in the **Federal Register** on October 4, 2019 (84 FR 53164), opening a 45-day public comment period. Also on that day, NMFS published a NOA for the draft HCP in the **Federal Register** (84 FR 53114), also announcing a 45-public comment period. The Services also published a 15-day extension of the comment period on October 29, 2019 (84 FR 58169; 85 FR 61026), bringing the total comment period to 60 days for both the DEIS and draft HCP. Two public open-house meetings were held, on October 15, 2019, in Bend, Oregon, and on October 16, 2019, in Prineville, Oregon, to solicit additional input from the public on the DEIS and draft HCP. A total of 1611 comment letters and electronic submissions were received from the public. The official comment period ended on December 4, 2019.

## **Next Steps**

The Services will evaluate the permit applications, associated documents, and public comments in reaching a final decision on whether the applications meet the



requirements of section 10(a) of the ESA (16 U.S.C. 1539 *et seq.*). The Services will also each evaluate whether the proposed permit action would comply with section 7 of the ESA. If the requirements are met, the Services will issue the ITPs to the applicants. Each agency (FWS and NMFS) will issue a record of decision, and approve or deny the request for an ITP no sooner than 30 days after publication of EPA's NOA of the FEIS in the **Federal Register**.

### **Public Review**

We are not requesting public comments on the FEIS and HCP, but any written comments we receive will become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in a 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**

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA and its implementing regulations (40 CFR 1503.1 and 1506.6).

**Dated:** \_\_\_\_\_.

Robyn Thorson  
**Robyn Thorson,**  
*Regional Director,*

*U.S. Fish and Wildlife Service.*

**Dated:** \_\_\_\_\_.

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**Angela Somma**

*Chief, Endangered Species Conservation,  
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