



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2020-N118; FXES1114010000-201-FF01E00000]

Proposed Safe Harbor Agreement for Streaked Horned Lark Habitat Restoration, Linn County, Oregon

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 permit application from Scott Erion pursuant to the Endangered Species Act of 1973 for streaked horned lark (lark) which is federally listed as threatened. The permit application includes a draft safe harbor agreement (SHA) developed for the conservation of the lark. The permit if issued would authorize the incidental take of the lark associated with habitat management actions intended to benefit the lark. We have prepared a draft environment action statement (EAS) for our preliminary determination that the proposed SHA and permit issuance may be eligible for categorical exclusion under the National Environmental Policy Act. We are making the permit application package, including the proposed SHA and draft EAS, available for public review and comment.

DATES: To ensure consideration, written comments must be received from interested parties no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: To view documents, 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 “Erion Property SHA.”

- *Internet:* Documents may be viewed on the Internet at <http://www.fws.gov/oregonfwo/>.
- *Email:* FW1ErionSHAcomments@fws.gov
- *U.S. Mail:* State Supervisor, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Elise Brown, U.S. Fish and Wildlife Service (see **ADDRESSES**); telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an enhancement of survival permit application from Scott Erion pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would authorize the incidental take of the streaked horned lark (*Eremophila alpestris strigata*) resulting from the habitat management activities that are expected to provide a net conservation benefit for the species. The permit application includes a proposed safe harbor agreement (SHA) that describes the existing baseline conditions, and the activities that are intended to produce a net conservation benefit for the lark.

Background

Under a SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-federal property owners to implement conservation efforts for listed species by providing assurances that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or

distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through SHAs for threatened species are found in 50 CFR 17.32(c). As provided for in the Service's final Safe Harbor Policy (64 FR 32717; June 17, 1999), SHAs provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of listed species to such an extent that it returned the species back to the originally agreed upon baseline conditions.

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. 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.

We listed the streaked horned lark as a threatened species, designated critical habitat, and issued a special rule on October 3, 2013 (78 FR 61452). The special rule, issued under section 4(d) the ESA, exempts some land management activities including certain common practices by agricultural operations, and noxious weed control activities, on non-federal land from take prohibitions of section 9 of the ESA and our regulations in order to provide for the conservation of the lark. The listing and 4(d) rule were

challenged in court, see *Center for Biological Diversity v. Zinke*, No. 3:18-cv-00359 (D. Or.), resulting in a remand of the rule to the Service, although the rule was not vacated during the remand. The Service will submit an updated proposed listing determination for the lark, including reconsideration of the 4(d) rule if appropriate, to the **Federal Register** by March 21, 2021.

Historically, the lark was likely distributed throughout grassland habitats found in the Willamette Valley, Oregon, as well as ranging from southern British Columbia, Canada, the Puget lowlands of Washington, and south to valleys in southwestern Oregon. Currently, the lark's range has been constricted due to various factors, but in Oregon the species still commonly breeds in Benton, Lane, Linn, Marion, Polk, Clackamas, Washington, and Yamhill Counties—with large populations occurring on lands that are part of the Service's Willamette Valley National Wildlife Refuge Complex. Streaked horned lark preferred nesting habitat is bare ground, with minimal, short-statured vegetation in the immediate vicinity, but anthropogenic disturbances, such as field mowing or disposal of material dredged from water bodies, has reduced the availability of such nesting habitat within the lark's range. At the same time, lark nesting habitat can be created from "disturbance" events that create bare ground—such as from prescribed fire, mowing during the spring and summer months, and field disking.

Proposed Action

Scott Erion and the Service jointly developed the proposed SHA for the conservation of the streaked horned lark. The physical area addressed by this proposed SHA and associated permit encompasses approximately 315 acres in Linn County, Oregon ("enrolled lands"), which are located within the range of larks. The Service determined that the baseline condition for the SHA and associated permit, is zero larks. This baseline was determined through surveys conducted before management activities for the benefit of the lark commenced. The enrolled lands are being retired from

agricultural usage and being converted to native prairie/wetland habitats common to the Willamette Valley.

Management actions occurring under this proposed SHA are intended to create and maintain habitat conditions supportive of streaked horned lark, and thus increase the distribution and abundance of larks through the development, maintenance, and enhancement of habitat. The management activities include mowing, disking, prescribed fire, herbicide application to control weeds, and reseeded with native plants. These management activities are similar to agricultural activities that can qualify for exemption from “take” under the current 4(d) rule for the lark. The applicant seeks the particular assurance of an SHA even if incidental take associated with the conservation management activities on the enrolled lands might otherwise be exempted under the 4(d) rule.

Specific treatments and follow-up management actions will be implemented under an adaptive framework. In addition, the SHA provides for the monitoring of streaked horned lark and supporting research opportunities, as needed. The Service will provide technical assistance for implementation of the proposed SHA. The Service proposes to enter into the SHA and to issue a permit to Mr. Erion authorizing incidental take of the covered species caused by covered activities as a result of lawful activities within the enrolled lands, if permit issuance criteria are met. Both the SHA and the permit would have a term of 10 years.

The draft EAS now available for public review (see **ADDRESSES**) indicates that the proposed SHA 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 SHA, 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 adequacy of the SHA 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.

Authority

We provide this notice in accordance with the requirements of section 10(c) 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,
U.S. Fish and Wildlife Service.

[FR Doc. 2020-25697 Filed: 11/19/2020 8:45 am; Publication Date: 11/20/2020]