



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2021-0047; FXES1113080000-212-FF08ENVS00]

Enhancement of Survival Permit Application and Draft Safe Harbor Agreement, Nye, Esmeralda, Lincoln and Clark Counties, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the proposed draft safe harbor agreement and NEPA compliance documentation; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the receipt and availability of an application for an enhancement of survival permit (permit) under the Endangered Species Act (ESA) and an associated draft programmatic Safe Harbor Agreement (SHA). Additionally, consistent with the requirements of the National Environmental Policy Act (NEPA), we have prepared a draft environmental action statement supporting our preliminary determination that the proposed permit action qualifies for a categorical exclusion under NEPA. The Nevada Department of Wildlife (applicant) has applied for a permit under the ESA for the enhancement activities within the SHA, which will contribute to the recovery of the Pahrump poolfish (*Empetrichthys latos*). The permit would authorize the take of one species incidental to the enhancement and restoration of private and public lands. We invite the public and local, State, Tribal, and Federal agencies to comment on the proposed SHA, and NEPA categorical exclusion determination documentation. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Obtaining Documents: The documents this notice announces, as well as

any comments and other materials that we receive, will be available for public inspection in Docket No. FWS–R8–ES–2021–0047 at <http://www.regulations.gov>.

Submitting Comments: To send written comments, please use one of the following methods and identify to which document your comments are in reference—the draft SHA or NEPA compliance documentation.

- *Internet:* Submit comments at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2021–0047.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0047; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see **Public Comments** and **Public Availability of Comments** under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Glen W. Knowles, Field Supervisor, Southern Nevada Fish and Wildlife Office, by phone at 702–515–5244 or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of a permit application from the Nevada Department of Wildlife (applicant), for a 50-year enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of a programmatic safe harbor agreement (SHA) between the applicant and Service. The SHA provides for voluntary habitat restoration, maintenance, or enhancement activities that will contribute to the recovery of the Pahrump poolfish (*Empetrichthys latos*).

Service consideration of issuing a permit also requires evaluation of its potential impacts on the natural and human environment in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The Service has prepared a

draft environmental action statement, which includes a draft categorical exclusion (CatEx) pursuant to NEPA and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1501.4, to preliminarily determine if the proposed SHA is eligible for a categorical exclusion.

Background

Except for permitted exceptions, section 9 of the ESA (16 U.S.C. 1538 *et seq.*) prohibits the taking of fish and wildlife species listed as endangered under section 4 of the ESA; by regulation, take of certain species listed as threatened is also prohibited (16 U.S.C. 1533(d); 50 CFR 17.31). Regulations governing the permitted exception for allowable incidental take of endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal SHA program, go to:

<https://www.fws.gov/endangered/esa-library/pdf/harborqa.pdf>
<https://www.fws.gov/endangered/landowners/safe-harbor-agreements.html>

National Environmental Policy Act Compliance

The proposed permit issuance triggers the need for compliance with the NEPA. The draft categorical exclusion (CatEx) was prepared to determine if issuance of a permit, based on the draft SHA, would individually or cumulatively have a minor or negligible effect on the species covered, and would therefore be eligible for a CatEx from further environmental analysis under NEPA.

Proposed Action

Under the proposed action, the Service would issue a permit to the applicant for a period of 50 years for covered activities (described below) benefitting the Pahrump poolfish by relieving landowners from any additional section 9 liability under the ESA (16 U.S.C. 1531 *et seq.*). Landowners who have suitable habitat for Pahrump poolfish may be enrolled by the applicant under the SHA. Landowners would receive a certificate of inclusion when they sign a cooperative agreement. Thus, the landowners will be authorized to take Pahrump poolfish when the number of species has increased above the

baseline established in the SHA and cooperative agreement as a result of the landowner's covered activities. Although the permit and SHA will authorize incidental take of Pahrump poolfish associated with returning the enrolled property to its agreed-upon baseline condition, the Service anticipates that this level of take will not negatively impact the recovery of the species. It is not anticipated that cooperators will continuously seek to return to baseline during the pendency of their cooperative agreements; and during such time, the agreements will create short, mid-range, and long-term benefits for the recovery of the Pahrump poolfish. The applicant has requested a permit for one species, the Pahrump poolfish (*Empetrichthys latos*), which was, and remains as listed under the ESA as endangered in March 1967.

Safe Harbor Agreement Area

The geographic scope of this SHA encompasses suitable private and non-Federal lands within Nye, Esmeralda, Lincoln, and Clark Counties, Nevada.

Covered Activities

The proposed section 10(a) permit would allow incidental take of one covered species from covered activities in the proposed SHA area. The applicant is requesting incidental take authorization for covered activities, including but not limited to operation of vehicles and maintenance equipment, building or fence construction, gardening, hunting, recreational fishing, farming, mining, mowing, maintenance of landscaping and recreational facility infrastructure including irrigation facilities, commercial and non-commercial recreational activities, or cultivation of agricultural crops. As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property, and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the cooperative agreement, even if such use results in the take of individual Pahrump poolfish or harm to their habitat. Some of the conservation measures that will be used to achieve this include restoration of

springpool and springbrook habitats to approximate historical conditions, removal of aquatic nonnative species, control of invasive weed and plant species, modification of livestock grazing practices, and maintenance of seasonal flooding and soil moisture through pasture irrigation management strategies.

Public Comments

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 the draft SHA and associated documents. If you wish to comment, you may submit comments by any of the methods in **ADDRESSES**.

Public Availability of Comments

Any comments we receive will become part of the decision record associated with this action. 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 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.

Next Steps

Issuance of a permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the permit application, the SHA, associated documents, and any public comments we receive during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action and for the potential

issuance of an enhancement of survival permit. If the intra-Service consultation confirms issuance of the permit will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1539(c) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4371 *et seq.*) and NEPA implementing regulations (40 CFR 1501.4).

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U.S. Fish and Wildlife Service,
Las Vegas, Nevada.**

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