



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R2-ES-2023-N023; FXES1114020000-223-FF02ENEH00]

### Categorical Exclusion and Candidate Conservation Plan; Trinity River Authority Candidate Conservation Agreement with Assurances, Trinity River Basin, TX

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

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), make available a draft screening form for a categorical exclusion (dCatEx form) under the National Environmental Policy Act and also a candidate conservation agreement with assurances (CCAA) for water supply, water and wastewater treatment, and reservoir operations, as well as operation and maintenance activities for infrastructure associated with these services (e.g., pipelines, levees) in the Trinity River Basin, Texas. The Trinity River Authority (TRA) has applied for an enhancement of survival permit (EOS permit) that would authorize incidental take of four freshwater mussel species and two turtle species. If approved, the TRA would hold the permit and issue certificates of inclusion (CI) authorizing incidental take to participating non-Federal landowners (partners), including the North Texas Municipal Water District, Tarrant Regional Water District, City of Dallas, and City of Fort Worth. The dCatEx form evaluates the impacts of, and alternatives to, implementation of the proposed CCAA. We invite the public and local, State, Tribal, and Federal agencies to comment on the CCAA and EOS permit application, as well as on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality National Environmental Policy Act regulations and Department of the Interior (DOI) NEPA regulations and the DOI Departmental Manual. To make this

preliminary determination, we prepared the dCatEx form, also available for public review.

**DATES:** To ensure consideration, written comments must be received or postmarked on or before 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES: *Accessing Documents:*** You may access the dCatEx form and CCAA by any of the following means. In your request for documents, please reference the “Trinity River Authority CCAA.”

- *Internet:* <https://www.fws.gov/office/arlington-ecological-services/news>.
- *U.S. Mail:* You may obtain a CD-ROM containing the documents (limited supply), by request, from the U.S. Fish and Wildlife Service, Field Supervisor for the Arlington Texas Ecological Services Field Office, 501 West Felix Street, Suite 1105, Fort Worth, Texas 76115.

***Submitting Comments:*** You may submit written comments by one of the following methods. In your comments, please reference “Trinity River Authority CCAA.”

- *Email:* [arles@fws.gov](mailto:arles@fws.gov).
- *U.S. Mail:* Field Supervisor, Arlington Texas Ecological Serviced Field Office (street address above).

We request that you send comments by only one of the above methods.

**FOR FURTHER INFORMATION CONTACT:** Erik Orsak, Acting Field Supervisor, by mail (street address above) or via phone at 682-348-7397. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service

(Service), make available a draft screening form for a categorical exclusion (dCatEx form), and also a candidate conservation agreement with assurances (CCAA) for water supply, water and wastewater treatment, and reservoir operations, as well as operation and maintenance activities for infrastructure associated with these services (e.g., pipelines, levees) in the Trinity River Basin, Texas. The Trinity River Authority (TRA) has applied for an enhancement of survival permit (EOS permit) that would authorize incidental take of four freshwater mussel species and two turtle species. If approved, the TRA would hold the EOS permit and issue certificates of inclusion (CIs) authorizing incidental take to participating non-Federal landowners (partners), including the North Texas Municipal Water District, Tarrant Regional Water District, City of Dallas, and City of Fort Worth. The dCatEx form evaluates the impacts of, and alternatives to, implementation of the proposed CCAA. We invite the public and local, State, Tribal, and Federal agencies to comment on the CCAA and EOS permit application, as well as on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality National Environmental Policy Act regulations (NEPA; 40 CFR 1501.4) and Department of the Interior (DOI) NEPA regulations (43 CFR 46) and the DOI Departmental Manual. To make this preliminary determination, we prepared the dCatEx form, also available for public review.

## **Background**

Section 9 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a) of the ESA, the Service may issue permits for incidental take if such take is authorized under an enhancement of

survival of candidate species EOS permit and covered by a CCAA. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened/candidate species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

### **Permit Application**

The Trinity River Authority (TRA) has applied to the Service for an enhancement of survival (EOS) permit under section 10(a)(1)(A) of the ESA. Such permits authorize take that is incidental to otherwise lawful activities (50 CFR 17.3). If approved, the TRA would hold the EOS permit and issue certificates of inclusion (CIs) authorizing incidental take to participating partners, including the North Texas Municipal Water District, Tarrant Regional Water District, City of Dallas, and City of Fort Worth. The requested EOS permit, which is for a period of 10 years, would authorize incidental take of four freshwater mussel species [Texas heelsplitter (*Potamilus amphichaenus*), Trinity pigtoe (*Fusconaia chunii*), Texas fawnsfoot (*Truncilla macrodon*), and Louisiana pigtoe (*Pleurobema riddellii*)] and two turtle species [western chicken turtle (*Deirochelys reticularia miaria*) and alligator snapping turtle (*Macrochelys temminckii*)]. The proposed incidental take would result from activities associated with otherwise lawful activities during implementation of conservation measures intended to benefit at-risk species and ongoing water supply and water and wastewater treatment operations, including associated inspections, repairs, and maintenance activities for these operations. The CCAA and associated permit would implement a voluntary conservation strategy for freshwater mussels developed by the TRA and partners based on the National Strategy for the Conservation of Native Freshwater Mussels developed by the Freshwater Mollusk Conservation Society. A national freshwater turtle conservation strategy does not currently exist; however, the

CCAA also includes voluntary conservation measures that TRA and partners will implement to benefit freshwater turtles. Conservation outlined in the CCAA includes measures to minimize and avoid direct and indirect impacts to the covered species and their habitats, including a comprehensive monitoring and adaptive management program, compliance with existing environmental flow standards, conducting routine water quality monitoring of sites near existing mussel populations, conducting an invasive species monitoring and control program, conducting applied research on mussel survival in the Trinity River downstream of the Dallas/Fort Worth Metropolitan area, supporting turtle research and reintroduction programs in the basin, assessment of restoration potential in the Trinity River Basin for mussels and turtles, and public outreach and education about the resource needs of freshwater mussels and turtles. The expected result of the implementation of the conservation strategy and conservation measures, including any incidental take associated with activities covered by the permit, is a net conservation benefit to the Texas heelsplitter, Texas fawnsfoot, Trinity pigtoe, Louisiana pigtoe, western chicken turtle, and alligator snapping turtle. The intent of the CCAA and associated permit is to provide the TRA and partners with the opportunity to voluntarily conserve the species covered by the permit and their habitat, while carrying out existing and ongoing water supply and wastewater operations, while providing a net conservation benefit to the species. If approved, the EOS permit would be for a 10-year period following the signature of the CCAA and would authorize incidental take of the Texas heelsplitter, Texas fawnsfoot, Trinity pigtoe, Louisiana pigtoe, western chicken turtle, and alligator snapping turtle, if any of the species become listed under the ESA.

### **National Environmental Policy Act Alternatives**

The dCatEx form evaluates the impacts of, and alternatives to, implementation of the proposed CCAA.

### ***Proposed Action***

The proposed action involves the issuance of an EOS permit by the Service for the covered activities in the permit area, under section 10(a)(1)(A) of the ESA. The EOS permit would cover “take” of the covered species associated with actions implemented by the TRA and partners to conserve freshwater mussels and turtles, and the operation, inspection, repair, and maintenance of existing TRA and partner infrastructure within the permit area. An application for an EOS permit must include a CCAA that describes the conservation measures the applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed taking of covered species to the maximum extent practicable. The applicant, and any partners included through CI, will fully implement the CCAA if approved by the Service. The terms of the CCAA and EOS permit will also ensure that incidental take/enhancement of survival will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

### ***No Action Alternative***

We have considered one alternative to the proposed action as part of this process: No Action. Under a No Action alternative, the Service would not issue the requested EOS permit and the applicant would not implement the comprehensive conservation strategy for these species described in the CCAA. Without an EOS permit, the applicant and partners would either need to perform ongoing operations, inspections, repairs, and maintenance activities of their infrastructure in a manner that avoids incidental take, or they would need to seek coverage for take through another ESA mechanism, such as consultation under ESA section 7 (if a Federal nexus exists) or development of a habitat conservation plan under ESA section 10.

### **Next Steps**

We will evaluate the CCAA and comments we receive to determine whether the EOS permit application meets the requirements of section 10(a) of the ESA. We will also evaluate whether issuance of a section 10(a)(1)(A) permit would comply with section 7

of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue an EOS permit. If all necessary requirements are met, we will issue the EOS permit to the applicant.

### **Public Availability of Comments**

Written comments 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 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 under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Amy L. Lueders,**  
*Regional Director, Southwest Region,*  
*Albuquerque, New Mexico.*

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