



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2023-0084; FXES1114080000-223-FF08ECAR00]

### Notice of Intent to Prepare a Draft Environmental Impact Statement for the Desert Tortoise General Conservation Plan, CA

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

**ACTION:** Notice of intent to prepare an environmental impact statement; notice of public scoping meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), provide this notice to open a public scoping period and announce public scoping meetings in accordance with the National Environmental Policy Act. We intend to prepare an environmental impact statement (EIS) to evaluate the impacts on the human environment related to our proposal to implement a general conservation plan for the federally threatened desert tortoise (*Gopherus agassizii*) in California, pursuant to the Endangered Species Act.

**DATES: *Submitting Comments:*** We must receive any written comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

***Public Meetings:*** The Service will hold three public meetings during the scoping period to attempt to allow all interested parties to participate.

- *In-Person Public Meeting:* We will hold an in-person public meeting on August 10, 2023, from 6 p.m. to 8 p.m. Pacific Time in Victorville, California, at the Hilton Garden Inn (12603 Mariposa Road, Victorville, CA 92395).
- *Virtual Meetings:* We will hold virtual meetings on July 25, 2023, from 10 a.m. to 12 p.m., and on July 27, 2023, from 6 p.m. to 8 p.m. Pacific Time. More information about the public meetings is available at

<https://www.virtualpublicmeeting.com/usfws-desert-tortoise-gcp-eis>.

**ADDRESSES: *Obtaining Documents:*** To assist the public in evaluating the Service's proposed action, which would be approval of the general conservation plan (GCP), we have provided a preliminary draft GCP for review. You may obtain copies of the draft GCP online in Docket No. FWS-R8-ES-2023-0084 at <https://www.regulations.gov>.

Public comments will also be available at <https://www.regulations.gov>.

***Submitting Written Comments:*** You may submit your written comments using one of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2023-0084.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R8-ES-2023-0084; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

For more information, see **Public Availability of Comments** under

#### **SUPPLEMENTARY INFORMATION.**

***Public Meetings:*** A link and access instructions to the public meetings will be posted to <https://www.fws.gov/office/carlsbad-fish-and-wildlife> at least 1 week prior to the public meeting dates.

**FOR FURTHER INFORMATION CONTACT:** Ray Bransfield, Fish and Wildlife Biologist, by email at [ray\\_bransfield@fws.gov](mailto:ray_bransfield@fws.gov) or via phone at (805) 677-3398.

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 provide this notice of intent for preparing

an environmental impact statement (EIS), opening a public scoping period, and announcing public scoping meetings in accordance with requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and its implementing regulations. The Service will serve as the lead Federal agency for purposes of NEPA. We intend to prepare an EIS to evaluate the impacts on the human environment related to our proposal to approve a general conservation plan for the desert tortoise in California, pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) The U.S. Bureau of Land Management (Bureau) will serve as a cooperating agency under NEPA, as some lands under consideration for mitigation activities are administered by the Bureau.

The primary purpose of the scoping process is for the public and other parties to assist in developing the draft EIS by identifying important issues and alternatives that should be considered. This scoping notice was prepared pursuant to the updated regulations implementing NEPA, issued by the Council on Environmental Quality on July 16, 2020 (85 FR 43304).

### **Purpose and Need for the Proposed Action**

The purpose of the proposed GCP is to provide a mechanism by which the Service can increase efficiency and standardize compliance with section 10(a)(1)(B) of the ESA for activities on certain non-Federal lands in the plan area that have the potential to incidentally take desert tortoises. Instead of a lengthy and complicated processing of individual incidental take permit applications and associated habitat conservation plans for applicants, the proposed approval and implementation of the GCP would allow the Service to substantially reduce the time and effort needed to issue incidental take permits that meet the parameters established in the GCP while ensuring project mitigation contributes to long-term recovery for desert tortoise. The GCP would require use of minimization measures that have proven effective over time in reducing mortality of

desert tortoises during various types of activities, including the translocation of desert tortoises from non-Federal project sites to conservation areas. The GCP would also direct required mitigation to fund or implement recommended actions in the revised recovery plan for the desert tortoise (76 FR 53482) and additional actions to ensure the mitigation contributes to the species' long-term recovery.

Section 10 of the ESA directs the Service to issue incidental take permits to non-Federal entities for take of endangered and threatened species when the permit applicant satisfies the criteria in section 10(a)(2)(B). Processing individual incidental take permits requires Service staff to conduct lengthy reviews of applicant-prepared minimization and mitigation measures for each individual project, to prepare appropriate documentation compliant with NEPA, and to conduct intra-Service consultation and coordination. The Service and potential permit applicants would greatly benefit if the Service is able to (1) streamline this process for desert tortoise incidental take permits, (2) provide specific direction to applicants to incorporate the most current measures to minimize the take of desert tortoises into their applications, and (3) better incorporate mitigation from incidental take permits into a comprehensive strategy that contributes to recovery of the desert tortoise.

The GCP would fulfill a need for better conservation of the desert tortoise within the California desert in a more comprehensive and consistent manner. It would also substantially reduce the time and effort expended by Service staff in processing individual incidental take permits while improving the appropriate standards for protection of desert tortoises in development areas and furthering the species' recovery in conservation areas.

### **Preliminary Proposed Action and Alternatives**

As required by 40 CFR 1501.9(d)(2), we are providing a preliminary description of the proposed action, which is the Service's approval of a GCP for the desert tortoise in

California. If we approve use of a GCP, project proponents within the GCP's permit areas would be able to apply for incidental take permits for the desert tortoise in a streamlined manner. The Service would only issue incidental take permits under the GCP if the individual applications met its issuance criteria, which would provide clear guidance on how to best minimize, mitigate, and monitor the effects of incidental take on desert tortoises. We will prepare a final EIS prior to deciding on whether to approve a GCP.

The EIS will include a reasonable range of action alternatives and a no-action alternative. The action alternatives will likely include variations in the duration of the general conservation plan, the size and locations of permit and mitigation areas, potential translocation areas for desert tortoises found on project sites, and the types of effectiveness monitoring. At this time, the Service proposes to approve a GCP with a duration of 10 years, with an option to renew it if it is meeting expectations, covering a broad range of development activities, translocating desert tortoises into conservation areas to augment depleted populations, and implementing recovery actions within the broad desert tortoise conservation areas described in the recovery plan. Regarding the duration of the GCP, we may consider longer or shorter alternatives. We will consider alternatives to translocating desert tortoises long distances to conservation areas, such as moving them to parcels that are closer to the sites of development. We will also evaluate whether to include or exclude specific areas outside of conservation areas where the GCP would be available and whether to include or exclude specific areas within conservation areas to use for mitigation. Under the no-action alternative, the Service would not approve the GCP and would not implement a streamlined process for considering incidental take permits.

## **Background**

### *Endangered Species Act*

Section 9 of the ESA prohibits the "take" of fish and wildlife species listed as

endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The Endangered Species Act's implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). 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. 1532(19)). The regulations define "harm" as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (50 CFR 17.3).

Under section 10(a)(1)(B) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. The implementing regulations for incidental take permits define "incidental taking" as "any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity" (50 CFR 17.3). Section 10(a)(2)(B) of the ESA lists the criteria for the Service's issuance of incidental take permits to non-Federal entities. If the applicant meets the following criteria, the Service must issue an incidental take permit:

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 plan 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 Service may require as being necessary or appropriate for the purposes of the GCP in support of issuance of an incidental take permit.

The Service proposes to approve a GCP that provides specific direction regarding how to best minimize, mitigate, and monitor the effects of incidental take to applicants seeking ESA section 10(a)(1)(B) permits for the desert tortoise within a defined permit area. Under standard practices, applicants are responsible for developing the “conservation plan” required by section 10(a)(2)(A) of the ESA; the development of the conservation plans and iterative reviews require substantial time and effort, both for the applicant and Service staff. The Service must then prepare a NEPA document for public review, address any comments received from the public, conduct an internal consultation pursuant to section 7(a)(2) of the ESA, and conclude the NEPA process before reaching a decision on whether to issue the incidental take permit.

In almost every incidental take permit that the Service has processed since the listing of the desert tortoise in 1990 (55 FR 12178), the applicant and Service agreed on the most appropriate means of minimizing, mitigating, and monitoring the effects of take on desert tortoises soon after the applicant contacted us. However, the standard practices described in the previous paragraph generally require at least 12 to 24 months to complete. A streamlined approach to the process, with more direction upfront from Service staff, would result in more effective means of minimizing and mitigating impacts to desert tortoises and allow staff to expend more time on implementing recovery work, with overall concomitant positive effects on the recovery of the species. Such a process would also provide a higher degree of certainty to applicants.

### **Covered Activities**

We propose to cover commercial, agricultural, residential, industrial, and infrastructure development within the planning area that a Federal agency does not fund, authorize, or carry out. The GCP would also cover the operations and maintenance of existing facilities, such as utilities’ transmission and distribution lines. The Service intends the covered activities to be inclusive; that is, we will consider for coverage any

future activity that has the same general effects on the desert tortoise as those described in this GCP. The Service will retain the right to recommend that the non-Federal entity pursue an individual incidental take permit if the scope of the proposed activity is likely to affect desert tortoises in a manner that we have not considered in this GCP.

Additionally, the GCP would cover activities along existing rights of way in the California desert where the Federal agency no longer has discretionary authority; consequently, interagency consultation, pursuant to section 7(a)(2) of the ESA, does not apply in these areas. The GCP would apply to such rights of way that lie within conservation areas. Within conservation areas, the GCP would be available only for projects that intended to improve the safety and functionality of the existing right of way; the Service will not consider its use appropriate if the proposed project changes the basic function of the existing right of way.

### **Plan Areas**

We propose to define “permit areas” and “mitigation areas” in the GCP. The permit area would be the area where incidental take permits deriving from the GCP would be available to applicants. Non-Federal lands outside of conservation areas in southern Inyo County, eastern Kern County, northern Los Angeles County, the desert portion of San Bernardino County, eastern Riverside County, and portions of Imperial County comprise the permit areas. As discussed in the previous section, the GCP would also apply to existing non-Federal rights of way across Federal lands under certain circumstances.

The required mitigation for issuance of an incidental take permit would occur within the boundaries of mitigation areas. Mitigation areas would generally include “desert tortoise conservation areas,” which the recovery plan for the desert tortoise describes as Bureau of Land Management conservation lands (California Desert National Conservation Lands and areas of critical environmental concern) as identified in the

California Desert Conservation Area Plan, as amended by the Desert Renewable Energy Conservation Plan, National Park Service lands, and other conservation areas or easements managed for desert tortoises.

### **Covered Species**

The Mojave population of desert tortoise is the only species proposed for coverage under the GCP. The Service listed the Mojave population of desert tortoise (all desert tortoises north and west of the Colorado River in Arizona, Utah, Nevada, and California) as threatened on April 2, 1990. We designated critical habitat for the desert tortoise in California, Nevada, Arizona, and Utah in a final rule published February 8, 1994 (59 FR 5820).

The GCP includes an analysis of impacts to the desert tortoise that are likely to result from covered activities. We anticipate that incidental take permits under the GCP would result in the take of few desert tortoises. We have reached that conclusion because, since the listing of the desert tortoise in 1990, we have issued 14 incidental take permits for the desert tortoise in California that have resulted in the translocation of approximately 43 desert tortoises. We are unaware of any desert tortoises that died during permitted activities.

Additionally, we have limited the GCP's permit area to portions of the desert where conservation of the desert tortoise in the long term is infeasible, with the exception of non-Federal rights of way that comprise a negligible portion of plan area. Based on analysis in the original and revised recovery plans for the desert tortoise, we consider recovery of the desert tortoise to be infeasible in the permit area because most of the land there is in private ownership; it would be practically and financially impossible to secure and manage habitat in that area, which also frequently includes rural development and its associated impacts to desert tortoises.

We have not proposed a numerical limit on the number of desert tortoises that use

of the GCP may affect. Instead, we would evaluate the survey results of individual applicants for incidental take permits and authorize an appropriate amount of incidental take based on the survey results and the nature of the proposed project. We would track the aggregate amount of incidental take and make that information available to the public.

The biological goals of the GCP focus on minimizing the amount of take of desert tortoises and maximizing the conservation benefits of the mitigation that results from the issuance of incidental take permits. To minimize the number of desert tortoises that proposed actions would kill or injure, the Service would require permittees to implement standard methods, such as fencing work areas, surveying for individuals within project areas, translocating desert tortoises to suitable off-site habitat, implementing worker education programs, implementing measures to manage predators on site, and contributing to the regional management program for common ravens (*Corvus corax*). Over the course of implementation of the GCP, the Service would update protocols for various protective measures, such as testing for disease, as new information and improved methods become available.

To mitigate the effects of take and maximize conservation benefits for desert tortoises, the GCP would provide applicants with several options, such as land acquisition (securing and conserving habitat), non-acquisition (restoration and enhancement of habitat), purchase of mitigation bank credits, other actions needed to protect and conserve desert tortoises, or a combination of these activities. The Service would require that all mitigation occur within the conservation areas as defined in the recovery plan for the desert tortoise and mapped in the GCP that will contribute to long term conservation of desert tortoise.

### **Summary of Anticipated Impacts**

The draft EIS will identify and describe the effects of the GCP alternative and a range of other reasonable alternatives on the human environment that are reasonably

foreseeable and have a reasonably close causal relationship to the proposed action. This includes effects that occur at the same time and place as the proposed action or alternatives and/or effects that are later in time or farther removed in distance from the proposed action or alternatives. Expected impacts include, but are not limited to, positive and negative impacts to the desert tortoise, geology and soils, air quality, water resources, other biological resources, health and safety, land use, recreation, aesthetics, historical and cultural resources, transportation, public services and utilities, and socioeconomics. We will analyze the effects of these expected impacts in the draft EIS.

The analysis will consider the adequacy of each alternative to maintain or enhance the status of the desert tortoise in light of the expected effects and other best available information. Impacts on air quality, water resources, and other biological resources, such as fish, wildlife, and the desert ecosystem, will be evaluated at a broad, programmatic level of detail and are expected to include incremental negative impacts from development that are minimized and or mitigated at the landscape level through application of applicable law, including local and State regulations. Under each alternative, significant impacts to water resources, State-protected species, and ecosystems would typically be avoided or minimized by the local agency's compliance with local and State regulations governing development. We expect that most, if not all, of the projects that applicants may propose to cover under the GCP would undergo additional public review under the California Environmental Quality Act.

### **Schedule for the Decision-Making Process**

The Service will conduct an environmental review to analyze the effects of the proposed action, along with a range of other reasonable alternatives in the draft EIS. Following completion of the environmental review, the Service will publish a notice of availability and request for public comments on the draft EIS and the revised draft GCP. The Service expects to make the draft EIS and revised draft GCP available to the public

in summer 2023. After public review and comment, we will review any comments we receive and any other new information to determine whether to approve the GCP for use. We will also evaluate whether implementation of the GCP would comply with section 7(a)(2) of the ESA. The Service expects to make the final EIS and final GCP available to the public in late 2023. At least 30 days after the final EIS is available, the Service will complete the record of decision in accordance with applicable timeframes established in 40 CFR 1506.11.

### **Public Scoping Process**

The issuance of this notice of intent provides an opportunity for public involvement in the scoping process to guide the development of the EIS.

To attempt to allow all interested parties to participate, the Service will hold three public meetings during the scoping period, both in-person and virtual. See **DATES** and **ADDRESSES** for the dates and times of the public scoping meetings. The public scoping meetings will provide the Service an opportunity to present information pertinent to the GCP and for the public to ask questions on the scope of issues and alternatives we should consider when preparing the draft EIS and to discuss ideas with Service staff. We will not record comments at the public meetings; we will accept scoping comments only in writing, by the methods listed in **ADDRESSES**.

### *Reasonable Accommodations*

Persons needing reasonable accommodations to attend and participate in the public scoping meetings should contact the Service's Palm Springs Fish and Wildlife Office, using one of the methods listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible. To allow sufficient time to process requests, please make contact no later than 1 week before the desired public meeting. Information regarding this proposed action is available in alternative formats upon request.

### *Request for Identification of Potential Alternatives, Information, and Analyses Relevant*

*to the Proposed Actions*

We request data, comments, views, arguments, new information, analysis, new alternatives, or suggestions on the proposed action from the public; affected Federal, State, Tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. We will consider these comments in developing the draft EIS. Specifically, we seek:

1. Biological information, analysis and relevant data concerning the desert tortoise and other wildlife;
2. Potential effects that the GCP could have on the desert tortoise and its associated ecological communities or habitats;
3. Potential effects that the GCP could have on other aspects of the human environment, including ecological, aesthetic, historic, cultural, economic, social, environmental justice, or health effects;
4. Other possible reasonable alternatives to the proposed action that the Service should consider, including additional or alternative avoidance, minimization, and mitigation measures;
5. The presence of historic properties—including archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns—in the proposed permit area, which are required to be considered in project planning by the National Historic Preservation Act;
6. Information on other current or planned activities in, or in the vicinity of, the plan area and their possible impacts on the desert tortoise, including any connected actions that are closely related and should be discussed in the same draft EIS; and
7. Other information relevant to the GCP and its impacts on the human

environment.

Once the Service has prepared the draft EIS, we will provide further opportunity for comment on the GCP through an additional public comment period.

### **Public Availability of Comments**

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, might 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 and supporting documentation we use in preparing the draft EIS will be available for public inspection online in Docket No. FWS-R8-ES-2023-0084 at <https://www.regulations.gov> (see **FOR FURTHER INFORMATION CONTACT**).

### **Decision Maker and Nature of Decision to Be Made**

The decision maker is the Assistant Regional Director for Ecological Services (ARD) of the Pacific Southwest Region of the Service. If, after publication of the record of decision, we determine that all requirements are met for approval of incidental take permits under the GCP, the ARD will issue a decision on whether to approve the GCP.

### **Authority**

We provide this notice in accordance with the requirements of section 10(c) of the Endangered Species Act of 1973 (16 U.S.C. 1539(c)) and its implementing regulations (50 CFR 17.22) and National Environmental Policy Act regulations pertaining to the

publication of a notice of intent to issue an environmental impact statement (40 CFR 1501.9(d)).

**Michael J. Senn,**

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*U.S. Fish and Wildlife Service,*

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