

Billing Code ????

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2009-N?]; [20124-1112-0000-F2]

Environmental Impact Statement and Habitat Conservation Plan for the Incidental Take of Seven Federally Listed Species by the Edwards Aquifer Recovery Implementation Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and draft habitat conservation plan; announcement of public scoping meetings; and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a draft Environmental Impact Statement (EIS) to evaluate the impacts of, and alternatives to, the proposed issuance of an Endangered Species Act of 1973, as amended (Act), section 10(a)(1)(B) permit to one or more members of the Edwards Aquifer Recovery Implementation Program (the “Applicant(s) for incidental take of seven federally listed species from activities associated with management and use of the Edwards Aquifer. The Applicant may include the Edwards Aquifer Authority (“EAA”).

DATES: Written comments on alternatives and issues to be addressed in the draft EIS must be received by close of business on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Public scoping meetings will be held

at seven locations throughout South Central and South Texas. Public meetings will be held between 6:00 p.m. and 8:00 p.m. Exact meeting locations and times will be noticed in local newspapers and at the Austin Ecological Services Office website, <http://www.fws.gov/southwest/es/AustinTexas/>, at least 2 weeks prior to each event.

ADDRESSES: For further information or to send written comments by mail contact: Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnett Road, Suite 200, Austin, TX 78758-4460; telephone 512/490-0057; facsimile 512/490-0974; or email luela_roberts@fws.gov. Note that your information request or comments are in regards to the draft EIS/HCP Edwards Aquifer Recovery Implementation Programs' Draft EIS.

SUPPLEMENTARY INFORMATION: This notice is published in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1506.6) and section 10(c) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The Service intends to gather the information necessary to determine impacts and alternatives to support a decision regarding the potential issuance of an incidental take permit to the Applicant(s), and the implementation of the supporting draft HCP.

The Edwards Aquifer Recovery Implementation Program ("EARIP") is a collaborative, consensus-based stakeholder process to protect and contribute to the recovery of the federally listed species associated with the San Marcos and Comal Springs, while also protecting the Edwards Aquifer as a water supply source. The EARIP consists of a diverse group of regional stakeholders. The stakeholders that have executed a Memorandum of Agreement with the Service regarding participation in the EARIP

include: Aquifer Guardian in Urban Areas, Alamo Cement Company, Bexar County, Bexar Metropolitan Water District, Carol G. Patterson, City of Garden Ridge, City of New Braunfels, City of San Marcos, City of Victoria, Comal County, CPS Energy, Dow Chemical, East Medina Special Utility District, EAA, Gilleland Farms, Greater Edwards Aquifer Alliance, Greater San Antonio Chamber of Commerce, Guadalupe Basin Coalition, Guadalupe-Blanco River Authority, Guadalupe County Farm Bureau, John M. Donahue, Ph.D., Larry Hoffman, Mary Q. Kelly, Nueces River Authority, New Braunfels Utilities, Preserve Lake Dunlap Association, Regional Clean Air and Water Association, San Antonio River Authority, San Antonio Water System, San Marcos River Foundation, South Central Texas Water Advisory Committee, South Texas Farm and Ranch Club, Texas Bass Federation, Texas Commission on Environmental Quality, Texas Department of Agriculture, Texas Living Waters Project, Texas Parks and Wildlife Department, Texas Water Development Board, and Texas Wildlife Association.

We also announce plans for a series of public scoping meetings located throughout the region served by the Edwards Aquifer Authority (“EAA”) and affected by the management of the Edwards Aquifer area and a public comment period.

The Service intends to prepare a draft EIS to evaluate the impacts of, and alternatives to, the proposed issuance of an incidental take permit under the Act to the Applicant. The Applicant proposes to apply for an incidental take permit through development and implementation of an HCP. The proposed HCP will include measures necessary to minimize and mitigate the impacts to the maximum extent practicable of potential proposed taking of federally listed species and the habitats upon which they

depend by the management and use of the Aquifer and the areas associated with the Comal and San Marcos springs..

Background

Section 9 of the Act prohibits “taking” of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. The term “harm” is defined in the regulations as 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 the regulations as actions that create the likelihood of injury to listed species 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). However, the Service may, under specified circumstances, issue permits that allow the take of federally listed species, provided that the take occurs incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits 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 impact of such taking; (3) The applicant will develop a draft HCP and 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 we may require as being necessary or appropriate for the purposes of the habitat conservation plan.

Thus, the purpose of issuing a permit is to allow management and use of the Edwards Aquifer and the use of areas associated with the Comal and San Marcos springs, while preserving protected species and their habitat that are dependent on water from the Aquifer. Adoption of a multispecies habitat conservation approach, rather than a species-by-species/project-by-project approach, will reduce the costs of implementing species minimization and mitigation measures, and eliminate cost and time-consuming efforts associated with processing individual incidental take permits for each user of the Edwards Aquifer. In addition, the multispecies habitat conservation plan approach provides a program including avoidance, minimization and mitigation for each species that is coordinated on a landscape level and provides increased benefits to the covered species. The Service expects that the Applicant(s) will request permit coverage for a period of between 20 and 50 years.

Scoping Meetings

The purpose of the scoping meetings is to provide the public with a general understanding of the background of the proposed HCP and activities that would be covered by the draft HCP, alternative proposals under consideration for the draft EIS, and the Service's role and steps to be taken to develop the draft EIS for the draft HCP. The meeting format will consist of a one hour open house prior to the formal scoping meeting that will provide an opportunity to learn about the proposed action, permit area, and species covered. The open house will be followed by a formal presentation of the

proposed action, summary of the NEPA process, and presentation of oral comments from meeting participants. A court reporter will be present at each meeting and an interpreter will be present when deemed necessary. The primary purpose of these meetings and public comment period is to solicit suggestions and information on the scope of issues and alternatives to consider when drafting the EIS. Oral and written comments will be accepted at the meetings. Comments can also be submitted to persons listed in the addresses section above.

Once the draft EIS and draft HCP are completed and noticed for review, there will be additional opportunity for public comment on the content of these documents through an additional public hearing and comment period.

Alternatives

The proposed action presented in the draft EIS will be compared to the No-Action alternative. The No-Action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared.

No-Action Alternative

Under the no action alternative, the management and use of the Edwards Aquifer and the use of areas associated with the Comal and San Marcos springs would continue regardless of whether a 10(a)(1)(B) permit is sought or issued. The Applicant, and those potentially covered by the permit, would continue to be subject to the take prohibition of the ESA. Where potential impacts could not be avoided, and where a Federal nexus exists, measures designed to minimize and mitigate for the impacts would be addressed through individual formal or informal consultation with the Service. In the absence of a Federal nexus, the Applicant(s), and other parties in the region taking actions that would

affect the protected species, would potentially need individual section 10(a)(1)(B) incidental take permits on a project-by-project basis if activities might result in the incidental take of a federally protected species within the proposed permit area. This project-by-project approach would be more time-consuming, less efficient, and could result in an isolated independent mitigation approach, which might be less beneficial to the covered species than a regional permit.

Proposed Alternative

The proposed action is the issuance of an incidental take permit for the covered species within the proposed permit area for a period of between 20 and 50 years. The proposed HCP, which must meet the requirements in section 10(a)(2)(A) of the Act by providing measures to minimize and mitigate the effects of the potential incidental take of covered species to the maximum extent practicable, would be developed and implemented by the Applicant(s). This alternative could allow for a comprehensive mitigation approach for unavoidable impacts and also reduce the permit processing effort for the Service.

The actions to be covered under the requested incidental take permit have yet to be determined. They may include general activities associated with the management of the Aquifer, pumping from the Aquifer, actions to protect spring flow, land stewardship, and recreational activities at and near the San Marcos and Comal springs. Construction activities covered for new facilities may include construction of recharge structures, well fields, pipelines, and related types of activities.

The Applicant(s) expects to apply for an incidental take permit for seven species listed as endangered or threatened within the permit area. These species include: fountain

darther (*Etheostoma fonticola*), San Marcos salamander (*Eurycea nana*), San Marcos gambusia (*Gambusia georgei*), Texas blind salamander (*Eurycea rathbuni*), Peck's cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), and the Comal Springs riffle beetle (*Heterolemis comalensis*). Other species that are currently not listed as threatened or endangered may also be covered. The Service will also evaluate possible impacts to species not listed here, such as the whooping crane.

Counties that may be included in the proposed permit area are those counties within the EAA's jurisdiction to manage the Edwards Aquifer including all, or portions of, eight counties, including Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina and Uvalde counties. Moreover, EAA's organic legislation establishes a five-mile buffer beyond the jurisdictional boundary, reflecting the existence of a contributing zone to the aquifer recharge area, in which EAA has authority to protect water quality. Consequently, the permit area may also include the eight counties within the EAA's jurisdiction proper and the portions of the four counties that contain the EAA's jurisdictional five-mile buffer located over the Edwards Aquifer contributing zone.

Species not covered by the proposed incidental take permit may also be addressed in the draft HCP. These species may include candidate species and federally listed species not likely to be affected by the covered activities. The purpose of addressing the additional species is to explain why the Applicant believe(s) these species will not be impacted by the covered activities.

Other alternatives considered will also be addressed in the draft EIS, including impacts associated with each alternative evaluated will be discussed in the draft EIS.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the 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.

Environmental Review

The Service will conduct an environmental review to analyze the proposed action, as well as other alternatives evaluated and the associated impacts of each. The draft EIS will be the basis for the impact evaluation for each species covered and the range of alternatives to be addressed. The draft EIS is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the alternatives on other resources such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft EIS and the Applicants' permit application, which will include the draft HCP. The draft EIS and draft HCP are expected to be completed and available to the public in September 2011.

Regional Director, Region 2
Albuquerque, New Mexico