

those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites include the following:

- Historically critical shortages caused by frequent staff turnover;
- Current unmatched vacancies in a Health Profession Discipline;
- Projected vacancies in a Health Profession Discipline;
- Ensuring that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and
- Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached Loan Repayment Program contracts entered into under this section.
- Consistent with this priority ranking, in determining applications to be approved and contracts to be accepted, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.
- Funds appropriated for the LRP in FY 2000 will be distributed among the health professions as follows: allopathic/osteopathic practitioners will receive 30 percent, registered nurses 15 percent, mental health professionals 10 percent, dentists 15 percent, pharmacists 12.5 percent, optometrists 7.5 percent, physician assistants 5 percent, other professions 5 percent. This requirement does not apply if the number of applicants from these groups, respectively, is not sufficient to meet the requirement.
- The IHS will give priority in funding among health professionals to physicians in the following priority specialties: anesthesiology, emergency room medicine, general surgery, obstetrics/gynecology, ophthalmology, orthopedic surgery, otolaryngology/otorhinolaryngology, psychiatry, radiology and dentistry. Funding for these priority specialties is within the 30 percent established for allopathic/osteopathic practitioners.

The following factors are equal in weight when applied, and are applied when all other criteria are equal and a selection must be made between applicants.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, would be selected.

- An applicant's length of current employment in the IHS, tribal, or urban program.

- Availability for service earlier than other applicants (first come, first served); and
- Date the individual's application was received.

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/or contact on a year-by-year basis, as determined by the IHS. Participants extending their contract will receive up to the maximum amount of \$20,000 per year plus an additional 20 percent for Federal Withholding. Participants who were awarded loan repayment contracts prior to FY 2000 will be awarded extensions up to the amount of \$30,000 a year and 31 percent in tax subsidy if funds are available, and will not exceed the total of the individual's outstanding eligible health profession educational loans.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the Loan Repayment Program unless the obligation will be completely satisfied before they begin service under this program.

This program is not subject to review under Executive Order 12373.

The Catalog of Federal Domestic Assistance number is 93.164.

Dated: September 28, 1999.

**Michel E. Lincoln,**

*Acting Director.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Record of Decision for Issuance of an Endangered Species Permit To Allow Incidental Take of the Endangered Karner Blue Butterfly in Wisconsin

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

**ACTION:** Record of decision.

**SUMMARY:** Notice is hereby given that the Fish and Wildlife Service (Service) has decided to issue a permit to allow incidental take of the endangered Karner blue butterfly (*Lycaeides melissa samuelis*) within the State of Wisconsin. The permit is issued under the authority of section 10(a) of the Endangered Species Act of 1973, as amended (ESA), for a duration of 10 years. Issuance of this permit allows for implementation of the Statewide Habitat Conservation Plan

(HCP) for Karner Blue Butterfly in Wisconsin. Alternative A, as analyzed by the Environmental Impact Statement (EIS), allows for implementation of a consolidated, statewide plan designed to conserve butterfly habitat while carrying out otherwise lawful land use activities on public and private lands. The lead applicant is the Wisconsin Department of Natural Resources (DNR). In addition, 25 Partners to the HCP will work together to implement this plan. This decision is based upon information and analysis found in the HCP, Implementing Agreement, Partner Species and Habitat Conservation Agreements, EIS, and comments from the public on the HCP/EIS. This Record of Decision was prepared in accordance with the Council on Environmental Quality Regulations (40 CFR 1505.2).

#### SUPPLEMENTARY INFORMATION:

##### Background

The listing of the Karner blue butterfly on December 14, 1992, and the attending prohibition on "take" of the butterfly or its habitat posed a restraint on many land uses and land management activities in Wisconsin. In order to avoid violation of Section 9 of the ESA, non-Federal landowners must obtain a Section 10(a)(1)(B) permit to authorize incidental take of Federally listed species. Beginning in 1994, the DNR spearheaded an effort to address land use issues throughout Wisconsin through the development of a statewide HCP.

On April 1, 1999, the Service received an application for an incidental take permit under the ESA from the Wisconsin DNR. The application was submitted on behalf of a partnership of 26 landowners that include state agencies, county forest departments, industry, a conservation organization, and others. In accordance with the regulations, an HCP accompanied the permit application. In addition, the DNR prepared the EIS that accompanied this HCP, in coordination with the Service. A **Federal Register** Notice announcing receipt of the permit application, and soliciting comments on the application, was published on April 14, 1999. In addition, notices regarding the availability of the draft and final EIS were published on April 16, May 7, and July 2, 1999. Seven comments were received during the public interest review and responses to those comments were incorporated into the final EIS.

##### Description of Proposal

The application for an incidental take permit (ITP) seeks authorization for take of the Karner blue butterfly in

conjunction with a variety of land use and land management activities throughout the species range in Wisconsin. These activities include forestry practices, utility right-of-way management, transportation management, agricultural practices, recreation management, and barrens, prairie, and savanna management. A strong commitment to adaptive management and monitoring provides for changing practices over time to ensure long-term conservation of the species. In addition, the HCP incorporates an innovative Participation Plan that allows other landowners to become party to the permit and encourages private landowner participation in conservation of the Karner blue butterfly on a voluntary basis.

The project area encompasses the entire State of Wisconsin. However, the High Potential Range of the butterfly encompasses 7 million acres within Wisconsin, and that is the area where there is a potential to "take" the butterfly. Within that range, partners have established a goal of no-net-loss (and possibly a gain) of suitable Karner blue butterfly habitat which will be accomplished with a variety of conservation strategies. Management of forestry tracts, for example, will include pre-treatment surveys to determine whether butterflies are present and, if present, treatments such as cutting or removal of understory will be carried out to allow for the movement of butterflies into newly created early successional habitat. In other words, new habitat will become available for occupation as the older forest becomes less suitable. The effect of this type of forestry management will be to create a shifting mosaic of habitat capable of supporting the butterfly. Another example of a conservation strategy designed to enhance conservation of Karner blue butterflies involves managing of utility rights-of-way. In these circumstances, butterflies are conserved by mowing at certain heights that minimize harm to eggs or larva or by restricting use of certain types of pesticides that are more harmful to lepidopterans. Through changing techniques for managing the R-O-W corridors, the utility partners have minimized harm to the butterfly and, in many cases, will create or maintain habitat that is needed for their existence in those R-O-Ws. Overall, a variety of conservation strategies serve to create a disturbance dependent landscape that must exist for the continued survival of this species.

The DNR is the lead applicant for this effort and is committed to providing

administrative oversight during implementation of this HCP. Twenty-five partners to the HCP have entered into legally binding Species and Habitat Conservation Agreements (SHCA) with the DNR. These SHCAs outline the conservation and/or recovery measures that each Partner will take to reach the goals of the HCP. In addition, the DNR has developed an SHCA to outline what will be done on DNR properties to both conserve and recover the butterfly. Processes for inclusion of future partners are included in the HCP. The ITP application requested a permit for a 10-year period.

The HCP was submitted in accordance with the regulations at 50 CFR Part 17.22(b)(1)(iii). The Service determined that the HCP met statutory requirements and based its decision to issue an ITP on the following analysis.

#### **ESA Section 10(a)(2)(A) HCP Criteria**

##### *1. The Impact That Will Likely Result From Such Taking*

The HCP/EIS, Implementing Agreement, and associated SHCAs adequately describe the proposed activities and the anticipated impact on the Karner blue butterfly and its habitat within the project area. Due to the nature of the species, disturbance of the landscape is necessary for continued survival. The activities that are anticipated to take the butterfly will be the same activities that will ensure availability of suitable habitat. In other words, the take of individuals will occur during land management/land disturbance activities, but the disturbance must occur for the habitat to remain suitable. The Karner blue butterfly will benefit at a population level at those sites in spite of the take of individuals during the manipulation of the landscape. Failure to manage habitats across the Wisconsin landscape would actually result in loss of Karner blue butterflies due to loss of their habitat through natural succession. The HCP and SHCAs provided sufficient information for the Service to evaluate the impacts of the proposed activities. The Service's analysis of the project impact is described its Biological Opinion on the issuance of an Incidental Take Permit, dated September 16, 1999.

##### *2. The Steps That Will Be Taken To Monitor, Minimize, and Mitigate Such Impacts, The Funding That Will Be Available To Implement Such Steps, and the Procedures To Be Used To Deal With Unforeseen Circumstances*

The applicant's HCP, along with the partner SHCA's, provide measures to

avoid or minimize harm to individuals, mitigation measures to compensate for unavoidable losses, and a monitoring program to assure that suitable habitat is maintained to achieve a goal of no-net-loss throughout the documented range in Wisconsin. The HCP provides adequate funding and includes measures to ensure implementation of the HCP components.

Conservation measures include management of forest habitats in a manner that creates a shifting mosaic of available habitat, management of rights-of-way to minimize harm to individuals during mowing and pesticide application, and creation of suitable habitats across the landscape which contribute to recovery of the Karner blue butterfly. In addition, manipulation of existing Karner blue butterfly habitat in a manner that does not allow for regeneration must meet certain criteria. Larger landowners, for example, must mitigate for permanent loss of habitat.

In order to assure that the goal of no-net-loss is achieved, the DNR and HCP Partners have designed a monitoring program that will measure the outcome of land treatments through pre-treatment surveys and post-treatment surveys, research, and annual monitoring of a representative sample of all known element occurrences of the Karner blue butterfly. The DNR is prepared to share Natural Heritage Data with the Service and the Service will be fully able to participate in oversight activities, site visits, and HCP committee activities as the DNR and Partners move into implementation of this HCP. If the expected outcome of land management activities is not met (i.e., no-net-loss), the HCP Partnership is committed to using adaptive management to address the need to change their activities to be consistent with conservation of the butterfly.

The treatment of unforeseen circumstances in the HCP is consistent with the Service's Habitat Conservation Plan Assurances ("No Surprises") Rule, dated February 23, 1998.

##### *3. Alternative Actions To The Taking the Applicant Considered and the Reasons Such Alternatives Are Not Proposed To Be Utilized*

Alternatives to the proposed project are described in the HCP. Due to the nature of the project (consolidated, statewide plan), alternatives other than a statewide HCP were limited to an HCP with mitigation banking, a reduced scope HCP and no action. The DNR took the lead to develop a statewide plan, along with multiple partners, to enable Wisconsin to conserve this species on a scale that will provide for more long-

term benefits and regulatory certainty to the citizens of Wisconsin. All of the other alternatives would result in the processing of multiple permits by the Service, in response to multiple landowner needs. Alternatives to the proposed project would either not accomplish the anticipated benefit that will be gained as a result of large-scale conservation effort, or were more injurious to Karner blue butterflies through lack of action (disturbance) on the landscape. As described above, the Karner blue butterfly is dependent upon a landscape that requires disturbance. Since natural processes such as fire are not part of today's landscape, the habitat must be actively managed to maintain an early successional component for this species. The no action alternative would result in long-term harm to the butterfly population due to the habitat becoming unsuitable over time.

#### *4. Other Measures That The Director May Require as Being Necessary or Appropriate for the Purposes of the Plan*

The HCP Partnership worked closely with the Service in developing this HCP. Over a period of five years, the Service was able to provide input on appropriate conservation measures, minimization of take, steps to promote recovery, and legal and regulatory matters. The Partnership incorporated recommended measures designed to conserve the Karner blue butterfly, including adaptive management and monitoring to ensure that anticipated goals are achieved. Mitigation will compensate for losses and the minimum expected outcome is no-net-loss of available habitat over the 10-year permit period. Positive outreach and education efforts are expected to provide a net increase in available habitat over time, although this has not been "guaranteed" due to the voluntary nature of the strategy to involve private citizens. A follow-up evaluation of this private landowner strategy will be conducted after the HCP has been in its implementation phase for three years.

In addition to the requirements that an applicant's Habitat Conservation Plan must meet, the Service is responsible to assure that certain criteria found at 50 CFR 17.22 (b)(2) are met, prior to issuing an incidental take permit. The following paragraphs summarize the Service's findings relative to ITP issuance criteria.

#### **ESA Section 10(a)(1)(B) Permit Issuance Criteria**

##### *1. The Take Will Be Incidental*

The Service finds that the take will be incidental to otherwise lawful activities,

including forestry, utility right-of-way management, transportation corridor management, and other lawful activities as reviewed above. In addition, take of individuals will be primarily in the context of habitat manipulation that is beneficial to the long term survival of this species. Absent disturbance, the habitat will become unsuitable due to natural succession.

##### *2. The Applicant Will, to the Maximum Extent Practicable, Minimize and Mitigate the Impacts of the Taking*

The Partners to the HCP have committed to a wide variety of conservation measures, outreach activities, adaptive management, and other strategies designed to minimize harm to the species and mitigate for any unavoidable losses. Take of the butterfly will primarily occur in a manner that can be characterized as "short-term" take, or temporary disturbance of habitat that results in habitat improvement for the butterfly. Disturbance of the landscape will occur in a pattern designed to create a shifting mosaic of suitable Karner blue butterfly habitat over time. "Permanent take," in the form of habitat destruction, will be mitigated. The Service's biological opinion authorized this type of take at a level considered to be reasonable with the expectation that not much "permanent take" will occur under this ITP. The Service finds that the HCP Partnership has met this criterion under the Act and has provided for mitigation and minimization of take to the full extent requested.

##### *3. The Applicant Will Ensure That Adequate Funding for the HCP and Procedures To Deal With Unforeseen Circumstances Will Be Provided*

The HCP Partnership is committed to funding implementation of this Plan. The State of Wisconsin, Department of Natural Resources, has pledged to seek funding through their budget processes and has assured the Service that they will continue to fund HCP implementation to the extent that the State Legislature appropriates funds. The DNR has hired a full-time HCP Coordinator to oversee the HCP. Twenty-five other partners have committed to funding specific measures that are enumerated in their Species and Habitat Conservation Agreements. During the development of this HCP, the DNR and partners committed dollars not only in staff time, but in funding of research for development of protocols, funding of educational materials, and other activities.

The Service's HCP Assurances ("No Surprises") rule is discussed in the HCP

and measures to address changed and unforeseen circumstances have been identified. Adaptive management and monitoring will be implemented to address changes over the life of the permit; coordination mechanisms are in place to address changed circumstances that could be anticipated at the time of HCP development. Unforeseen circumstances would necessitate coordination between the Service and the DNR. The DNR has committed to a coordination process to address such circumstances.

The Service has, therefore, determined that the Partnership's financial commitment(s), along with their willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

##### *4. The Take Will Not Appreciably Reduce the Likelihood of the Survival and Recovery of the Species in the Wild*

The issuance of this permit has been reviewed by the Service under Section 7 of the Act. The biological opinion rendered a determination that issuance of this ITP will not jeopardize the continued existence of the Karner blue butterfly in the wild. The take that is authorized through the Incidental Take Permit will be largely unquantifiable due to the nature of the action, that is, "short term" taking associated with habitat disturbance. However, survival and recovery of this species would be impossible absent habitat disturbance since the species depends on an early successional plant community. Any permanent, long-term take will be mitigated. The level of permanent take has been set at a threshold that the Service has determined is reasonable.

##### *5. Other Measures the Secretary May Require as Being Necessary or Appropriate for the Purposes of This Plan Have Been Met*

The Service and the Office of the Field Solicitor, U.S. Department of the Interior, were involved in early discussions regarding the HCP, Implementing Agreement, and partner SHCAs. The Service commented on draft documents, participated on the HCP team and subteams during the development phase, and worked closely with the DNR to assure that conservation of the species would be assured and recovery would not be jeopardized. The HCP incorporates Service recommendations for minimization and mitigation, as well as steps to monitor the effects of this HCP and ensure success. Annual monitoring and reporting mechanisms have been designed to ensure that changes to

management strategies can be implemented if the outcome of proposed management regimes is inconsistent with the HCP goals for the species. It is the Service's position that no additional measures are required to implement the intent and purpose of the HCP.

### National Environmental Policy Act Determination and Public Comment

An Environmental Impact Statement (EIS) was prepared to accompany this HCP due to the large scale of the effort and the Service's determination that this HCP was precedent setting. The EIS analyses the Proposed HCP and No Action alternatives in detail. The EIS describes the process that was followed to develop the HCP, including the input of partners and the interested public.

A Notice of Intent to prepare an EIS was announced in the **Federal Register** on June 5, 1995. Public scoping meetings followed at three locations in Wisconsin. The DNR also provided avenues for public involvement in the planning process and development of the HCP. Many interests were represented throughout the development process. Once the ITP application was received by the Service, an announcement of availability of the draft EIS was made in the **Federal Register** on April 16, 1999. The Service's permit requirements also call for announcement of availability of permit applications. Therefore, a more detailed announcement was made in the April 14, 1999, **Federal Register** which included a description of the proposed HCP and the EIS and included a web site address for complete documentation. Several hundred copies of the HCP/EIS were distributed to interested parties, including those that had expressed an interest during the development phase. An additional four requests for the HCP/EIS were received as a result of the announcement of availability of the drafts. Seven comment letters were received during the public review period and responses to the comments have been incorporated into the document(s). The announcement of the final EIS was made on July 2, 1999.

Based on the findings described in this record of decision, the Service has decided to issue an ESA Section 10(a)(1)(B) Incidental Take Permit to the Wisconsin Department of Natural Resources and HCP Partnership for a period of 10 years.

Dated: September 27, 1999.

**William F. Hartwig,**

*Regional Director, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.*

[FR Doc. 99-25535 Filed 10-1-99; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of Two Single Family Residences on 0.75 acres each of the 54.9 acres Platted as the Diamond Sky Subdivision on City Park Road in Travis County, TX

**SUMMARY:** Anthony Franzetti (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit numbers TE-016491-0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and occupation of two single family residences on City Park Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before November 3, 1999.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s)

and EA/HCPs should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE-016491-0 when submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Scott Rowin at the above Austin Ecological Services Field Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

*Applicant:* Anthony Franzetti plans to construct two single family residences on 54.9 acres platted as the Diamond Sky Subdivision, on City Park Road Austin, Travis County, Texas. This action will eliminate less than two acres of habitat and indirectly impact less than 18 additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing the remaining balance of the property, approximately 53 acres, in a conservation easement in perpetuity.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would increase the impacts.

**Thomas L. Bauer,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Migratory Bird Permits; Notice of Intent To Prepare Two Management Plans and Environmental Assessments for Take of Wild Peregrine Falcons

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

**ACTION:** Notice of intent.

**SUMMARY:** The American peregrine falcon (*Falco peregrinus anatum*) was removed from the protection of the U.S. Endangered Species Act (ESA) on August 25, 1999. The arctic peregrine falcon (*F. p. tundrius*) was removed from ESA protection in 1994. Due to their special status as recently delisted subspecies, we intend to develop two