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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2021-N028; FXES11140200000-223-FF02ENEH00]

Draft Low Effect Screening Form for a Categorical Exclusion and Candidate Conservation Plan; Texas Kangaroo Rat Candidate Conservation Agreement With Assurances, Montague, Clay, Wichita, Archer, Wilbarger, Baylor, Hardeman, Foard, Childress, Cottle, and Motley Counties, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, make available a draft low-effect screening form for a categorical exclusion (dCatEx form) under the National Environmental Policy Act and candidate conservation agreement with assurances (CCAA) for normal agricultural operations, recreation, and nature tourism in Montague, Clay, Wichita, Archer, Wilbarger, Baylor, Hardeman, Foard, Childress, Cottle, and Motley Counties, in Texas. Texas Parks & Wildlife Department has applied for an enhancement of survival permit (EOS) under the Endangered Species Act that would authorize incidental take of the Texas kangaroo rat. The dCatEx form evaluates the impacts of, and alternatives to, implementation of the proposed CCAA. We seek public comment on the CCAA, dCatEx form, and EOS application.

DATES: To ensure consideration, written comments must be received or postmarked on or before 11:59 p.m. eastern time on March 24, 2022. We may not consider any comments we receive after the closing date in the final decision on this action.

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 ``Texas Kangaroo Rat CCAA.''

Internet: <https://www.fws.gov/southwest/es/arlingtontexas/>.

U.S. Mail: You may obtain a CD-ROM containing the documents (limited supply) or printed copies, by request from Ms. Debra T. Bills, 2005 Northeast Green Oaks Boulevard, Suite 140, Arlington, TX 76006.

Email: arles@fws.gov.

Submitting Comments: You may submit written comments by one of the following methods. In your comments,

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please reference ``Texas Kangaroo Rat CCAA.''

Email: arles@fws.gov.

U.S. Mail: Debra T. Bills (street address above).

Fax: 817-277-1129.

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

FOR FURTHER INFORMATION CONTACT: Debra T. Bills, Field Supervisor, by mail (street address above); via phone at 817-277-1100, ext. 22113; or via the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: 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, we, the U.S. Fish and Wildlife Service (Service), may issue permits for incidental take if such take is authorized under an enhancement of survival of candidate species permit (EOS permit) and covered by a candidate conservation agreement with assurances (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 take of endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Background

The Texas Parks & Wildlife Department has applied to the Service for an EOS permit under section 10(a)(1)(A) of the ESA. If granted, the requested EOS permit would be in effect upon a listing of the Texas kangaroo rat (*Dipodomys elator*) under the ESA during the 10-year term of the CCAA, and would authorize incidental take of the species. The proposed incidental take would result from activities associated with otherwise lawful activities, including normal agricultural operations, recreation, and nature tourism resulting from ground disturbance and changes in vegetation community composition and structure. The CCAA includes conservation measures to minimize and mitigate direct and indirect impacts to the Texas kangaroo rat and provide net conservation benefits to the species.

Alternatives

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 incidental take of the covered species associated with annual production and preparation for market of crops, livestock, and livestock products and in the production and harvesting of agriculture, agronomic, horticulture, silviculture, and rangeland commodities within the permit area, in the event the covered species is listed under the ESA during the 10-year term of the CCAA. 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 will fully implement the CCAA if approved by the Service. The terms of the CCAA and EOS permit will also ensure that incidental take 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 proceed in either of the following ways:

1. The applicant would not plant, cultivate, produce, harvest, process, package, store, or market for wholesale or retail distribution any agricultural commodities. The applicant would not undertake management of agricultural waste.
2. The applicant would conduct the above-described activities, but would do so in a manner that avoids incidental take.

In either of the above two cases in the No Action Alternative, the applicant would not implement the conservation measures described in the CCAA.

Next Steps

We will evaluate the CCAA and comments we receive to determine whether the EOS application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 et seq.). 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. We will not consider anonymous comments. 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 the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 50 CFR 17.32) and NEPA (42 U.S.C. 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,
Regional Director, Southwest Region, U.S. Fish and Wildlife Service.
[FR Doc. 2022-03619 Filed 2-18-22; 8:45 am]
BILLING CODE 4333-15-P