Fish and Wildlife Service

Receipt of Application and Availability of a Recirculated Draft Environmental Impact Report/Environmental Impact Statement for Issuance of Permits To Allow Incidental Take of Threatened and Endangered Species Within the Multiple Species Conservation Program Planning Area in San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the receipt of an application and the availability of a Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement for the proposed issuance of incidental take permits, pursuant to the Endangered Species Act of 1973, as amended, for species federally listed as threatened or endangered. The proposed take would occur due to urban development in southwestern San Diego County, California. The City of San Diego has submitted an application, and the County of San Diego, the Cities of Chula Vista, Coronado, Del Mar, and Santee, and the Otay Water District (applicants) intend to apply to the U.S. Fish and Wildlife Service within the foreseeable future for incidental take permits pursuant to the Endangered Species Act.

The applications include a regional Multiple Species Conservation Program Plan and individual Subarea Plans and Implementing Agreements. The Multiple Species Conservation Program is intended to conserve listed and unlisted species, thereby reducing the uncertainty associated with development and future species' listings.

The U.S. Fish and Wildlife Service anticipates that each of the applicants will request permits for 12 listed animals: the threatened western snowy plover (*Charadrius alexandrinus nivosus*), coastal California gnatcatcher (*Polioptila californica californica*), bald eagle (*Haliaeetus leucocephalus*), and the red-legged frog (*Rana aurora draytoni*); and the endangered Riverside fairy shrimp (*Streptocephalus woottoni*), California brown pelican (*Pelecanus occidentalis californicus*), American peregrine falcon (*Falco peregrinus anatum*), light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sterna antillarum*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and southwestern arroyo toad (*Bufo microscaphus californicus*).

The U.S. Fish and Wildlife Service also anticipates that each applicant will request assurances for future incidental take, should it become necessary, of 5 endangered plants, 12 plants and 1 animal proposed for listing, and 55 other unlisted species (29 plants, 18 birds, 3 reptiles, 3 mammals, and 2 invertebrates). These species would be listed on the permits, with take authorization effective upon listing. Plants would be covered by the permits to the extent that take of plants is prohibited by the Endangered Species Act of 1973, as amended. The exact number of species for which assurances are sought may change between the draft and final Environmental Impact Report/Environmental Impact Statement.

The Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement evaluates the effects on the human environment expected to occur from proposed issuance of the permits. Adoption of the Multiple Species Conservation Program Plan, and adoption of the Concept Plan for the Otay Valley Regional Park within the Multiple Species Conservation Program planning area, would be at the programmatic level. Project level actions, including adoption of Subarea Plans, are evaluated for the County of San Diego, and the Cities of San Diego, Chula Vista, Coronado, Del Mar, and Santee. Another proposed action evaluated in the document is the adoption of the County of San Diego's Biological Mitigation Ordinance. Incidental take resulting from the above actions would be minimized and mitigated by implementation of the regional Multiple Species Conservation Program Plan.

Federal approval of the Multiple Species Conservation Program Plan is required pursuant to the special section 4(d) rule for the coastal California gnatcatcher. Incidental take of the coastal California gnatcatcher is allowed under section 4(d) of the Endangered Species Act of 1973, as amended, if take results from activities conducted in accordance with the California Natural Community Conservation Planning Act, the Natural Community Conservation Planning Process Guidelines, and the Natural Community Conservation Planning Southern California Coastal Sage Scrub Conservation Guidelines provided that all of the issuance criteria for incidental take permits have been met.

The Multiple Species Conservation Program and Draft Joint Environmental Impact Report/Environmental Impact Statement are being recirculated due to project changes that warrant issuance of new documents with new analyses. Earlier drafts of the documents were made available to the public during spring of 1995 (60 FR 25734).

DATES: Written comments on the Multiple Species Conservation Program Plan, Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement, and City of San Diego Implementing Agreement should be received on or before October 15, 1996.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue, Carlsbad, California 92008. Comments also may be sent by facsimile to telephone (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Gilbert, Fish and Wildlife Biologist, at the above address; telephone (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement should immediately contact Ms. Gilbert. Copies of this Draft Joint Environmental Impact Report/ Environmental Impact Statement have been sent to City and County libraries in the greater San Diego area, and to all agencies and individuals who participated in the scoping process or requested copies. In addition, copies of the Multiple Species Conservation Program Plan and City of San Diego Implementing Agreement are available at public libraries and can be obtained by contacting the City of San Diego Clean Water Program, 600 B Street, Suite 500, San Diego, California 92101, telephone (619) 533–4200. All documents can be viewed, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Carlsbad Field Office (see ADDRESSES) and the City of San Diego's Clean Water Program Office.

Background

Under section 9 of the Endangered Species Act of 1973, as amended, and its implementing regulations, wildlife listed as threatened or endangered are protected from ''taking.'' The Endangered Species Act of 1973, as amended, defines take, in part, as killing, harming, or harassing listed wildlife. U.S. Fish and Wildlife Service regulations further define harm to include significant habitat modification that results in death or injury of listed wildlife (50 CFR 17.3). Under limited

circumstances, the U.S. Fish and Wildlife Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities. The taking prohibitions of the Endangered Species Act of 1973, as amended, do not apply to listed plants on private lands unless such take would violate State law. Regulations governing permits are in 50 CFR 17.22 and 17.32. Under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, the U.S. Fish and Wildlife Service may issue incidental take permits for listed animals for which an approved habitat conservation plan has been prepared. Among other criteria, issuance of such permits must not jeopardize the existence of listed species, both plant and animal.

The proposed action would allow incidental take of listed animals over a 50-year period. Take would occur on approximately 314,900 acres of habitat within the 581,600-acre planning area. Approximately 102,400 acres of the planning area is already developed. To mitigate the impacts of the proposed take, the applicants propose establishment of a 171,917-acre preserve within the boundaries of a Multiple Habitat Planning Area. Twenty-four habitats are represented in the Multiple Habitat Planning Area, including 6 rare or protected habitats. In addition, 85 species are expected to be adequately protected under the Multiple Habitat Planning Area.

The Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement considers the environmental consequences of 5 alternatives, including the applicants' habitat conservation plan (the Multiple Species Conservation Program Plan) and the no action alternative. Under the no action or no project alternative, the regional Multiple Species Conservation Program Plan would not be implemented. Jurisdictions would either avoid take of listed species within the planning area or apply for individual permits under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, on a project-by-project basis. Existing land use and environmental regulations would apply to all projects proposed within the planning area. Existing regulatory practices require mitigation for impacts to sensitive species and habitats resulting in lands being set aside for open-space preservation. Analyses indicate that the amount of land potentially conserved within the Multiple Species Conservation Program planning area under the no action alternative would be similar to that conserved under the proposed action (Multiple Habitat Planning Area). However, under the no action alternative, greater habitat fragmentation would likely occur because the lands set aside for open-space preservation would not be assembled in coordination with a regional preserve design.

Other alternatives consider different preserve configurations. The coastal sage scrub scenario would conserve 84,900 acres. The coastal sage scrub alternative would include 21 habitats, providing adequate protection for 2 habitats, neither of which is rare. Twenty-six species would be covered under the coastal sage scrub alternative. The biologically preferred scenario would conserve 167,000 acres. The biologically preferred alternative would include 24 habitats, adequately protecting 9. Of these 9 habitats, 7 are considered rare. Seventy-three species are expected to be adequately protected under the biologically preferred alternative. The public lands scenario would conserve 147,000 acres. The public lands alternative would include 24 habitats and adequately protect 6, all 6 of which are rare. Thirty-five species are expected to be adequately protected under public lands.

Local jurisdictions would implement their respective portions of the Multiple Species Conservation Program Plan. Preserve establishment would be a cooperative effort among Federal, State, and local governments and private landowners. These groups would manage habitat on certain lands they currently own and on additional lands acquired for the preserve. Additional lands within the preserve would be acquired as compensation for impacts to habitat both inside and outside the preserve. Lands would be acquired from willing sellers.

In addition to off-site mitigation, take within the preserve would be avoided or minimized through local land-use regulation, environmental review, and resource protection guidelines. Land-use regulations would emphasize avoidance by limiting encroachment onto sensitive biological resources. Long-term preserve management plans would be prepared to address habitat management and land-use issues. The Multiple Species Conservation Program Plan provides guidelines for vegetative restoration and reintroduction, fencing, signs, fire management, grazing, predator and exotic species control, insects and disease, lighting, and other factors.

Each jurisdiction would sign an individual Implementing Agreement with the U.S. Fish and Wildlife Service and California Department of Fish and Game to identify the specific responsibilities and assurances of each party in implementing the Multiple Species Conservation Program Plan. Although each applicant has not yet completed an Implementing Agreement, all Implementing Agreements will follow a model. Because the Implementing Agreement is a legal contract to ensure that all actions in the Subarea Plans are implemented, the effects of individual Implementing Agreements should be the same as the effects of the corresponding Subarea Plans. If late submission of individual Implementing Agreements reveals effects significantly different from those analyzed in the Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement, the comment period would be reopened.

Should take authorizations be approved, each jurisdiction would then exercise its land-use review and approval powers in accordance with its Implementing Agreement and the Multiple Species Conservation Program. The 5 percent limit on interim loss of coastal sage scrub, imposed as part of the Natural Community Conservation Planning Program and special section 4(d) rule for the gnatcatcher, would be replaced by the conditions of each jurisdiction's permit and Implementing Agreement.

Each jurisdiction would be expected to adopt the final configuration of the Multiple Species Conservation Program preserve within its subarea boundary and adopt the recommendations of the Multiple Species Conservation Program through amendment of its General Plan or other applicable plans. Zoning would be retained or properties rezoned, as needed, and zoning regulations amended to reflect the preserve boundaries and to achieve consistency with the Multiple Species Conservation Program Plan. The Multiple Species Conservation Program guidelines for compatible land uses in and adjacent to the preserve are expected to be incorporated into the General Plan, zoning regulations, and approval process for projects, including adoption of appropriate mitigation guidelines. Procedures and regulations for interim controls will be necessary to address activities that would potentially impact sensitive habitats prior to issuance of permits to individual jurisdictions.

This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received will become part of the public record and may be released.

Dated: August 23, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

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DEPARTMENT OF JUSTICE

[AG Order No. 2049–96]

Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION OR TO PROVIDE COMMENT CONTACT: Lisalyn R. Jacobs, Counsel, Office of Policy Development, Department of Justice, 10th Street & Constitution Avenue, N.W., Washington, D.C. 20530, telephone (202) 514–9114.

SUPPLEMENTARY INFORMATION: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, which the President signed on August 22, 1996, vests in the Attorney General the authority to designate the kinds of government-funded community programs, services or assistance that are necessary for protection of life or safety and for which all aliens will continue to be eligible. This Order implements that authority.

Background

Section 401 provides a new rule that an alien who is not a ''qualified alien,'' as defined in § 431 of the Act, is not eligible for any ''Federal public benefit''—which, in general, means

(a) any grant, contract, loan, professional license or commercial license provided by a federal agency or through appropriated federal funds; or

(b) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, house-holds or families by a federal agency or through appropriated federal funds.

Section 411 also makes certain non-qualified aliens ineligible for state and local public benefits unless the state enacts new legislation after August 22, 1996 that affirmatively provides for such eligibility. In addition, § 403 of the Act makes qualified aliens ineligible for specific means-tested federal benefit programs for a five-year period after their entry into the United States as a qualified alien.

In addition to certain statutory exceptions, the Act authorizes the Attorney General to establish limited exceptions to these provisions for the following kinds of benefits:

Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

This authority appears in several places in the Act, including: § 401(b)(1)(D), with respect to federal public benefits; § 403(c)(2)(G), with respect to the five-year limited eligibility for federal means-tested public benefits; and § 411(b)(4), with respect to state and local public benefits. (This authority also appears in § 423(d)(7) in the context of new requirements with regard to individuals who execute an affidavit of support on behalf of a sponsored alien.)

Attorney General Review

As required by the statute, the Department of Justice has conducted preliminary consultations with other federal agencies regarding the scope and interpretation of these provisions and their proper application. Given the great variety of federal, state and local programs conducted or supported at the community level, including those administered by private non-profit organizations, and the limited time available, the Department's consultation process is still ongoing. At my direction, the Department is seeking additional, more specific recommendations from all appropriate federal agencies, from representatives of state and local governments, and from the public.

Given the immediate effective date of provisions of the Act, I have decided to provide a ''provisional specification'' of programs, services and assistance that will be exempt from the limitations on alien eligibility discussed above, based upon preliminary consultations with appropriate federal agencies and departments. This ''provisional specification'' is effective immediately and will continue in effect pending adoption of a revised specification, if necessary, after further consultations. Should ongoing consultations indicate that further refinements in this specification are appropriate under the Act, I will revise it accordingly.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification and nothing herein should be so construed.

2. The government-funded programs, services or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; serve purposes of the type described in paragraph 3, below, for the protection of life and safety; and do not condition the assistance according to the individual recipient's income or resources, as discussed in paragraph 4, below.

3. Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

(a) Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;

(b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;

(c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

(d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

(e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;

(f) Activities designed to protect the life and safety of workers, children and youths, or community residents; and

(g) Any other programs, services, or assistance necessary for the protection of life or safety.

4. The community-based programs, services or assistance specified in