

Billing Code: 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2023–N032; FXES11160200000–234–FF02ENEH00]

Candidate Conservation Agreement with Assurances for the Texas pimpleback (*Cyclonaias petrina*), Texas fawnsfoot (*Truncilla macrodon*), Texas fatmucket (*Lampsilis bracteata*), and Balcones spike (*Fusconaia iheringi*) in the Lower Colorado River Basin below O.H. Ivie Reservoir

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: This notice advises the public that the Lower Colorado River Authority (LCRA) and Lower Colorado River Authority Transmission Services Corporation (LCRA TSC), have applied for an enhancement of survival (EOS) permit supported by the *Candidate Conservation Agreement with Assurances for the Texas pimpleback (*Cyclonaias petrina*), Texas fawnsfoot (*Truncilla macrodon*), Texas fatmucket (*Lampsilis bracteata*), and Balcones spike (*Fusconaia iheringi*) in the Lower Colorado River Basin*

below O.H. Ivie Reservoir (CCAA). LCRA is a conservation and reclamation district in the State of Texas that provides multiple services in the Colorado River basin, including managing water supplies, managing floods along the Highland Lakes, producing and delivering power, managing parks and recreation areas, and supporting community development. LCRA TSC is a nonprofit corporation conducting electric transmission operations within Texas. They own and operate 5,500 circuit miles of electric transmission lines and maintain and operate equipment at approximately 430 electric substations across the state. The requested EOS permit, if approved, would authorize incidental take of four proposed freshwater mussel species, Texas pimpleback, Texas fawnsfoot, Texas fatmucket, and Balcones spike resulting from activities covered by the CCAA, including freshwater mussel conservation actions, operations, inspections, repairs, construction, and maintenance activities in the Colorado River basin in Texas. We have made a preliminary determination that the CCAA is eligible for categorical exclusion under the National Environmental Policy Act (NEPA). The basis for this determination is contained in a draft NEPA screening form to support the use of a categorical exclusion under NEPA, which evaluates the impacts of EOS permit issuance and implementation of the proposed CCAA. The documents available for comment include the NEPA screening form, the CCAA, and the EOS permit application.

DATES: We will accept comments received on or before July 23, 2023.

ADDRESSES: *Accessing Documents:*

Internet: The NEPA screening form, CCAA, and EOS permit application:

You may obtain electronic copies of these documents on the Service's

website at <https://www.fws.gov/office/austin-ecological-services/news>.

U.S. Mail: You may obtain the documents at the following addresses. In your request for documents, please reference Lower Colorado River Authority CCAA.

- **NEPA screening form and CCAA:** A limited number of CD-ROM and printed copies of the NEPA screening form and CCAA are available, by request, from Karen Myers, Field Supervisor, Austin Ecological Services Field Office, Austin, TX, 78754, telephone 512-937-7371.
- **EOS permit application:** The EOS permit application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103, Attention: Environmental Review Branch.

Submitting Comments: Regarding any of the documents available for review, you may submit written comments by one of the following methods. In your comments, please reference the Lower Colorado River Authority CCAA.

- **Email:** Submit comments to karen_myers@fws.gov.
- **U.S. mail:** Karen Myers, Field Supervisor, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, TX 78754.

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

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, by mail at U.S. Fish and Wildlife Service, 1505 Ferguson Lane, Austin, TX 78754; via

phone at 512–937-7371. 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, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft screening form supporting a categorical exclusion, under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), that evaluates the impacts of implementation of the proposed *Candidate Conservation Agreement with Assurances for the Texas pimpleback (Cyclonaias petrina)*, *Texas fawnsfoot (Truncilla macrodon)*, *Texas fatmucket (Lampsilis bracteata)*, and *Balcones spike (Fusconaia iheringi)* in the Lower Colorado River Basin below O.H. Ivie Reservoir (CCAA) and issuance of an associated enhancement of survival (EOS) permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) to the Lower Colorado River Authority (LCRA) and Lower Colorado River Authority Transmission Services Corporation (LCRA TSC).

This notice advises the public that we, the Service, have gathered the information necessary to determine effects of the proposed CCAA and the associated EOS permit on the four Texas mussels. We are accepting comments on the proposed CCAA, NEPA screening form, and the EOS permit application.

Background

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, in accordance with our CCAA policy (81 FR 95164) we may issue permits for the enhancement of survival (EOS) of candidate species. “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 such take of endangered and threatened, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32, and would cover candidates should they become listed.

Proposed Action

The LCRA and LCRA TSC applied to the Service for an EOS permit under section 10(a)(1)(A) of the ESA. Such EOS permits authorize take that is incidental to otherwise lawful activities (50 CFR 17.3). The requested EOS permit would authorize incidental take of the Texas pimpleback, Texas fawnsfoot, Texas fatmucket, and Balcones spike (Covered Species), should they become listed under the ESA. The proposed incidental take would result from activities associated with otherwise lawful activities associated with implementation of the proposed CCAA including the conservation measures, and ongoing and continuing operations, inspections, repairs, construction, and maintenance activities.

The LCRA and LCRA TSC would implement a voluntary conservation strategy for freshwater mussels in the CCAA, supporting the EOS permit, which was informed by the National Strategy for the Conservation of Native Freshwater Mussels developed by the Freshwater Mollusk Conservation Society. The conservation strategy includes

conservation measures to minimize and avoid direct and indirect impacts to proposed mussels and their habitats; a comprehensive monitoring and adaptive management program; compliance with existing environmental flow standards; conducting routine water quality monitoring of sites near existing mussel populations; conducting invasive species monitoring and spread prevention programs; conducting applied research on mussel physiological tolerances, survivability in the Colorado River downstream of Austin, and assess restoration potential in the Colorado River basin for Texas fatmucket and Texas pimpleback; support for development of short-term refugia and propagation methods; public outreach and education about the resource needs affecting freshwater mussels; and, leading a conservation workgroup for Texas fatmucket in the Onion Creek basin. The expected result of the implementation of the conservation strategy and conservation measures is a net conservation benefit to the Covered Species.

The CCAA and associated EOS permit would provide the LCRA and LCRA TSC with the opportunity to voluntarily conserve freshwater mussel species and their habitat, while carrying out their existing and ongoing water supply and water delivery operations and providing a net conservation benefit to the species. If approved, the EOS permit would be for a 20-year period following the signature of the CCAA, and would authorize incidental take of the Covered Species if the species come to be listed under the ESA during the life of the CCAA and EOS permit. The terms of the CCAA and EOS permit would also ensure that the proposed action will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Alternatives

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 either not implement the CCAA for the conservation strategy of freshwater mussels or implement the CCAA without regulatory assurances and future take authorization, should the species be listed, for on-going operations, inspections, repairs, construction, and maintenance activities of their infrastructure, or conduct those activities in a manner that avoids incidental take. Therefore, the applicant would not implement the conservation measures described in the CCAA.

Next Steps

We will evaluate the permit application, CCAA, NEPA screening form, and comments we receive to determine whether the application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we may approve the CCAA and issue the EOS permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et seq.) to the applicant in accordance with the terms of the CCAA and specific terms and conditions of the authorizing EOS permit. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

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. 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 section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,
Regional Director, Southwest Region,
U.S. Fish and Wildlife Service.