

Habitat Conservation Plan FAQ's

What is the process for getting an incidental take permit?

Because seeking an Endangered Species Act (ESA) section 10(a)(1)(B) incidental take permit (ITP or Permit) with an associated Habitat Conservation Plan (HCP) is voluntary, the applicant first decides whether to seek such a Permit. U.S. Fish and Wildlife Service (Service) staff members are available to provide detailed guidance and technical assistance throughout the process. The components of a completed ITP application are a standard application form through our [ePermits](#) program, an HCP, the application fee, and a draft National Environmental Policy Act (NEPA) analysis. A [NEPA](#) analysis may result in a categorical exclusion, an environmental assessment, or an environmental impact statement. While processing the ITP application, the Service prepares a biological opinion under section 7 of the ESA and finalizes the NEPA analysis. Consequently, such Permits have a number of associated documents.

What do HCPs do?

In developing HCPs, individuals applying for ITPs describe measures designed to minimize and mitigate the effects of their actions— to ensure that species will be conserved and to contribute to their recovery.

Habitat conservation plans are required to meet the permit issuance criteria of section 10(a)(2)(B) of the ESA:

1. taking will be incidental to and not the purpose of the activity;
2. the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking;
3. the applicant will ensure that adequate funding for the plan will be provided;
4. taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. other measures, as required by the Secretary, will be met.

What necessary elements do HCPs require?

Section 10 of the ESA and its implementing regulations define the contents of HCPs. They include:

1. An assessment of impacts likely to result from the proposed taking of one or more federally listed species.
2. Measures that the Permit applicant will undertake to monitor, minimize, and mitigate for such impacts; the funding available to implement such measures; and the procedures to deal with unforeseen or extraordinary circumstances.
3. Alternative actions to the taking that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives.
4. Additional measures that the Service may require, as appropriate.

On June 1, 2000, the Services published the Five-Point Policy (65 FR 35242) (see the [HCP Handbook Toolbox](#)) as an addendum to the 1996 Habitat Conservation Planning Handbook. The policy focused on the expanded use and integration of five components of the HCP program, namely (1) biological goals and objectives, (2) adaptive management, (3) monitoring, (4) permit

duration, and (5) public participation. The principles and specifics of this policy have been integrated into the 2016 Handbook in Chapters 9.1, 10.5, 10.1, 12.9, and 13.4, respectively. As such, the 2016 Handbook supersedes the policy. Thus, HCPs are also required to comply with the Five Points Policy by including:

1. biological goals and objectives, which define the expected biological outcome for each species covered by the HCP;
2. adaptive management, which includes methods for addressing uncertainty and also monitoring and feedback to biological goals and objectives;
3. monitoring for compliance, effectiveness, and effects;
4. permit duration, which is determined by the time-span of the project and designed to provide the time needed to achieve biological goals and address biological uncertainty; and
5. public participation according to the NEPA.

What kinds of actions are considered mitigation?

Mitigation measures are actions that reduce or offset potential adverse effects of a proposed activity on species included in an HCP. They should address specific conservation needs of the species and be manageable, trackable, and enforceable. Mitigation measures may take many forms, including, but not limited to: payment into an established conservation fund or bank; preservation (via acquisition or conservation easement) of existing habitat; enhancement or restoration of degraded or former habitat; establishment of buffer areas around existing habitats; modifications of land use practices; and restrictions on access. Mitigation measures for a specific HCP are determined on a case-by-case basis and are based upon the needs of the species and types of impacts anticipated. Please see the 2023 Service mitigation policies for further guidance: <https://www.fws.gov/sites/default/files/policy/pdfs/FWS-Mitigation-Policy.pdf>
https://www.fws.gov/sites/default/files/policy/pdfs/FWS-ESA-Compensatory-Mitigation-Policy-amend_1.pdf

What is the legal commitment of an HCP?

Incidental take permits describe the legally binding elements of HCPs. While ITPs have expiration dates, the identified mitigation may be in perpetuity. Violating the terms of an ITP may constitute unlawful take under section 9 of the ESA.

What other laws besides the Endangered Species Act are involved?

In issuing incidental take permits, the Service complies with the requirements of NEPA and the National Historic Preservation Act. However, it is the applicant's responsibility to comply with all other statutes and regulations, including State and local environmental/planning laws.

Who is responsible for compliance with NEPA during the habitat conservation planning process?

The Service is responsible for ensuring NEPA compliance during the habitat conservation planning process. This will be either a categorical exclusion, environmental assessment, or an environmental impact statement. Frequently the Service does not have sufficient staff resources to conduct NEPA analysis in a timely manner. Therefore, an applicant may, within certain limitations, prepare the draft NEPA analysis. Doing so can benefit the applicant and the

government by expediting the application process and Permit issuance. In cases like this, the Service provides guidance, reviews the document, and takes responsibility for its scope, adequacy, and content.

Does the Service try to accommodate the needs of individuals or groups who are not professionally involved in an HCP during pre-application?

Because applicants develop their HCPs, the actions are considered private and, therefore, not required to involve public participation or review until the Service is ready to publish the official application and associated documents. The Service is committed to working with people applying for ITPs and providing technical assistance throughout the process to accommodate their needs. The Service also encourages applicants to involve a range of stakeholders, a practice that is especially valuable for complex and controversial projects. Applicants for most large-scale, regional HCPs choose to provide extensive opportunities for public involvement during the planning process. Issuing Permits is, however, a Federal action that requires public review and comment. As such, the Service solicits public involvement and review, as well as requests for additional information during scoping or public comment periods. When stakeholders have been involved early in the process, the HCP may be able to address comments in advance that would have taken additional time in the public comment process.

Does the public get to comment on an HCP? How do public comments affect an HCP?

The ESA requires public comments on applications for ITPs. In addition, the NEPA analysis requires public comment. For efficiency, the Service operates the two comment periods concurrently. The Service and the applicant review and consider public comments in permit decisions and typically edit/update the relevant documents to address the comments. In rare circumstances substantial changes to one or more of the documents could result from the public comments or information received. In those cases, it may be necessary to publish the revised documents for additional public review and comment.