

**Billing Code: 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R2–ES–2020–N119; FXES111602C0000–201–FF02ENEH00]**

**Candidate Conservation Agreement with Assurances for the False Spike and Texas  
Fawnsfoot in the Brazos River Basin**

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

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from the Brazos River Authority, a special district of the State of Texas responsible for development and management of the water resources of the Brazos River Basin in Texas. The application is for an enhancement of survival permit under the Endangered Species Act that would authorize incidental take of two candidate mussel species, false spike and Texas fawnsfoot. The application includes a candidate conservation agreement with assurances (CCAA) for freshwater mussel conservation and surface water supply and delivery operations and maintenance activities in the Brazos 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 low-effect screening form for a categorical exclusion (dCatEx form), which evaluates the impacts of implementation of the proposed CCAA. The documents available for comment include the low-effect screening form that supports a categorical exclusion under NEPA, the CCAA, and an enhancement of survival permit application.

**DATES:** To ensure consideration, written comments must be received or postmarked on or before 11:59 p.m. eastern time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. We may not consider any comments we receive after the closing date in the final decision on this action.

**ADDRESSES: *Accessing Documents:***

**Internet:** The dCatEx form, CCAA, and permit application: You may obtain electronic copies of these documents on the Service's website at <https://www.fws.gov/southwest/es/AustinTexas/>.

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

- dCatEx form and CCAA: A limited number of CD-ROM and printed copies of the dCatEx form and CCAA are available, by request, from Mr. Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, Austin, TX, 78758, telephone 512-490-0057.

- 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 Brazos River Authority CCAA.

- **Email:** Submit comments to [FW2\\_HCP\\_Permits@fws.gov](mailto:FW2_HCP_Permits@fws.gov).
- **U.S. mail:** Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758.

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

**FOR FURTHER INFORMATION CONTACT:** Adam Zerrenner, Field Supervisor, by mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; via phone at 512-490-0057; 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 may issue permits to authorize 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/candidate species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

## **Background**

The Brazos River Authority (BRA) has applied to the U.S. Fish and Wildlife Service (Service) for an EOS under section 10(a)(1)(A) of the ESA. The requested EOS permit, which would become effective on the date the species may be listed in the future. If the EOS is issued, it would authorize incidental take of the false spike (*Fusconaia mitchelli*) and Texas fawnsfoot (*Truncilla macrodon*), two mussels species listed as candidates under the ESA. The permit would be in effect from the effective date of a listing for the remainder of the 20-year duration of the CCAA. The proposed incidental take would result from activities associated with otherwise lawful activities resulting from implementation of the measures in the CCAA’s conservation strategy, and ongoing and continuing water supply development activities. The CCAA and associated permit would implement a voluntary conservation strategy for freshwater mussels developed by the BRA informed by the National Strategy for the Conservation of Native Freshwater Mussels developed by the National Freshwater Mollusk Conservation Society. The conservation strategy includes avoidance and minimization measures to reduce impacts to candidate mussels and their habitats, a monitoring and adaptive management program, environmental flow standards, and a public outreach and education program about threats affecting the candidate mussels. In addition, it

includes development of revised flow standards specific to candidate mussels, in conjunction with development of hydrologic modeling to inform adaptive management. There is also support for development of short-term refugia and research into propagation methods. The expected result of the implementation of the conservation strategy is likely a net conservation benefit to the candidate false spike and candidate Texas fawnsfoot.

The intent of the CCAA and associated permit is to provide the BRA with the opportunity to voluntarily conserve both 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 would be for a 20-year period following the signature of the CCAA and would authorize incidental take of the false spike and Texas fawnsfoot, if the species come to be listed under the ESA.

### **Proposed Action**

The proposed action involves the issuance of an EOS by the Service for the covered activities in the permit area, under section 10(a)(1)(A) of the ESA. The EOS would cover “take” of the covered species associated with implementation of a conservation strategy for freshwater mussels and the operation and maintenance of BRA’s water supply and distribution system within the permit area. An application for an EOS 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.

## **Next Steps**

We will evaluate the CCAA and comments we receive to determine whether the EOS application meets the requirements of section 10(a)(1)(A) of the ESA. 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 also evaluate the comments received to determine if the CCAA is eligible for categorical exclusion under the National Environmental Policy Act (NEPA). We will use the results of the combination of the above findings, in our final analysis to determine whether to issue an EOS. If all necessary requirements are met, we may issue the EOS 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. 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  
Albuquerque, New Mexico*