

APPENDIX A

Scoping Materials

Dated: May 12, 2008.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. E8-10994 Filed 5-15-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2008-N0086; 20124-11120000-F2]

Regional Habitat Conservation Plan, Hays County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; announcement of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare an Environmental Impact Statement (EIS) to evaluate the impacts of, and alternatives to, the proposed issuance of an Incidental Take Permit (ITP) under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) to Hays County, Texas (Applicant). We also announce a public scoping meeting and public comment period.

DATES: We must receive written comments on alternatives and issues to be addressed in the EIS by July 18, 2008. We will hold a public scoping meeting on June 18, 2008, from 5:30 p.m. to 8:30 p.m. at the San Marcos Activity Center, 501 E. Hopkins Road, San Marcos, TX 78666.

ADDRESSES: Send your comments or request for information by any one of the following methods:

- *U.S. mail:* Field Supervisor, Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.
- *Facsimile:* 512-490-0974.
- *E-mail:* info@hayscountyhcp.com.

FOR FURTHER INFORMATION CONTACT:

- *EIS Information:* Ms. Allison Arnold, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; 512-490-0057 (phone); 512-490-0974 (fax); or Allison_Arnold@fws.gov (e-mail).
- *Hays County RHCP Information:* County Judge Liz Sumter, 111 E. San Antonio St., Suite 300, San Marcos, TX 78666; 512-393-2205 (phone); or 512-393-2282 (fax).

• *Other Information:* You may obtain additional information on the Hays County RHCP on the Internet at <http://www.hayscountyhcp.com>.

SUPPLEMENTARY INFORMATION: We intend to prepare an EIS to evaluate the impacts of, and alternatives to, the proposed issuance of an ITP under the Act, to the Applicant. We also announce a public scoping meeting and public comment period. The Applicant proposes to apply for an ITP supported by development and implementation of the Hays County Regional Habitat Conservation Plan (RHCP). The Hays County RHCP will include measures necessary to minimize and mitigate the impacts of the proposed taking on the federally-listed species. We furnish this notice in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1500-1508), in order to: (1) Advise other Federal and state agencies, affected tribes, and the public of our intent to prepare an EIS; (2) announce the initiation of a public scoping period; and (3) obtain suggestions and information on the scope of issues and alternatives we will consider in our EIS. We intend to gather the information necessary to determine impacts and alternatives for an EIS regarding our potential issuance of an ITP to the Applicant, and the implementation of the Hays County RHCP.

Purpose and Need for Action

Section 9 of the Act and its implementing regulations prohibit take of species listed under the Act as endangered or threatened. The definition of "take" under the Act includes the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in any such conduct (16 U.S.C. 1538). Regulations define "harm" as significant habitat modification or degradation that results in actual death or injury to the listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Section 10(a)(1)(B) of the Act requires us to issue ITPs to non-Federal entities for take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will develop a habitat conservation plan and ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that we may require as being necessary or

appropriate for the purposes of the habitat conservation plan.

We anticipate that under the ITP, the Applicant will request coverage for a period of 30 years from the date of the RHCP approval. Implementation of the Hays County RHCP would result in the establishment of preserves intended to provide for the conservation of the covered species occupying those preserves. Research, monitoring, and adaptive management would be used to facilitate accomplishment of these goals.

Proposed Action

The proposed action is the issuance of an ITP for the covered species in Hays County. The Applicant would develop and implement the Hays County RHCP, which must meet the requirements in section 10(a)(2)(A) of the Act by providing measures necessary to minimize and mitigate the impacts of the proposed taking on the covered species.

Activities proposed for coverage under the ITP include otherwise lawful activities that would occur consistent with the Hays County RHCP and include, but are not limited to, construction and maintenance of public projects and infrastructure as well as residential, commercial, and industrial development.

Species the Applicant has recommended for inclusion as covered species in the Hays County RHCP include the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). For these covered species, Hays County would seek incidental take authorization. The Hays County RHCP would also address 40 "evaluation species" (39 terrestrial or aquatic karst species and the Cagle's map turtle (*Graptemys caglei*)) and 15 "additional species" (6 listed aquatic species, 3 unlisted plants, and 6 unlisted surface aquatic species). Incidental take authorization for the evaluation species may become necessary to include in the proposed ITP over the term of the Hays County RHCP; however, these species will not be initially included as "covered" species. Evaluation species may be currently unlisted, but could become listed in the foreseeable future. The Hays County RHCP may include conservation measures to benefit evaluation species, where practicable, and support research to help fill data gaps regarding the biology, habitat, distribution, or management of these species. The research supported by the RHCP may aid in the conservation of these species or facilitate obtaining incidental take coverage, if these species become listed in the future. For the 15

“additional species,” Hays County would not seek incidental take authorization because these species either are not currently listed as threatened or endangered, or are not likely to experience take from covered activities, or insufficient information is available to adequately evaluate take and mitigation.

Alternatives

The proposed action and alternatives that will be developed in the EIS will be assessed against the No Action/No Project Alternative, which assumes that some or all of the current and future take of covered species in Hays County would be implemented individually, one at a time, and be in compliance with the Act. The No Action/No Project alternative implies that the impacts from these potential activities on the covered species would be evaluated and mitigated on a project-by-project basis, as is currently the case. For any activities involving take of listed species due to non-Federal actions, individual Section 10(a)(1)(B) permits would be required. Without a coordinated, comprehensive conservation approach for Hays County, listed species may not be adequately addressed by individual project-specific mitigation requirements, unlisted candidate and other rare species would not receive proactive conservation actions, and mitigation would be less cost effective in helping Federal and non-Federal agencies work toward recovery of listed species. Current independent conservation actions would continue, although some of these are not yet funded. A reasonable range of alternatives would also be considered, along with the associated impacts of the various alternatives.

Scoping Meeting

A primary purpose of the scoping process is to receive suggestions and information on the scope of issues and alternatives to consider when drafting the EIS, and to identify, rather than debate, significant issues related to the proposed action. In order to ensure that we identify a range of issues and alternatives related to the proposed action, we invite comments and suggestions from all interested parties. We will accept oral and written comments at this meeting. You may also submit your comments to the address listed in **ADDRESSES**. Once the draft EIS RHCP are completed, additional opportunity for public comment on the content of these documents and an additional public meeting will be provided.

We will conduct a review of this project according to the requirements of NEPA and its regulations; other appropriate Federal laws, regulations, policies, and guidance; and Service procedures for compliance with those regulations.

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact the Service at the address below no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Public Availability of Comments

All comments we receive become part of the public record. Requests for comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, e-mail 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 ask us to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Environmental Review

The EIS will be prepared in accordance with the requirements of NEPA, its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and the Service’s procedures for compliance with those regulations. The EIS will analyze the proposed action, as well as a range of reasonable alternatives and the associated impacts of each. The EIS will be the basis for our evaluation of impacts to the covered species and the range of alternatives to be addressed. We expect the EIS to provide biological descriptions of the affected species and habitats, as well as the effects of the proposed action on resources such as: vegetation, wetlands, wildlife, threatened or endangered species and rare species, geology and soils, air quality, water resources, flood control, water quality, cultural resources (prehistoric, historic, and traditional cultural properties), land use, recreation, water use, local economy, and environmental justice.

After the environmental review is complete, we will publish a notice of availability along with a request for comment on the draft EIS and the applicant’s permit application, which will include the Hays County RHCP.

The draft EIS and RHCP are expected to be completed and available to the public by January 2009.

Thomas L. Bauer,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E8–10941 Filed 5–15–08; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0024]; [20124–1113–0000–F2]

Williamson County Regional Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft environmental impact statement, draft habitat conservation plan, and permit application; announcement of a public hearing.

SUMMARY: Williamson County, Texas (Applicant), has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (TE–181840–0) under section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The requested permit, which would be in effect for a period of 30 years, if granted, would authorize incidental take of the following federally listed species: Golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), Bone Cave harvestman (*Texella reyesi*), and Coffin Cave mold beetle (*Batrissodes texanus*). The proposed take would occur in Williamson County, Texas, as a result of activities including, but not limited to, road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing. Such actions cause effects to upland (bird) and underground (karst) habitats. Williamson County has completed a draft Habitat Conservation Plan (dHCP) as part of the application package. We have issued a draft environmental impact statement (dEIS) that evaluates the impacts of, and alternatives to, possible issuance of an incidental take permit (ITP).

DATES: To ensure consideration, we must receive written comments on or before close of business (4:30 p.m. CST) July 15, 2008. We will also accept oral and written comments at a public hearing to be held on June 16, 2008, 5 p.m. to 8 p.m., Williamson County

NOTICE OF PUBLIC SCOPING MEETING

The US Fish and Wildlife Service (USFWS) in cooperation with Hays County will conduct a Public Scoping Meeting for the preparation of an Environmental Impact Statement (EIS) related to the development of the Hays County Regional Habitat Conservation Plan. The EIS will support a proposed application by Hays County to the USFWS for an Incidental Take Permit (ITP) under the Endangered Species Act of 1973. The Public Scoping Meeting will be held on Wednesday, June 18, 2008 from 5:30 p.m. to 8:30 p.m. at the San Marcos Activity Center, 501 East Hopkins Road, San Marcos, Texas 78666. The purpose of the Public Scoping Meeting is to receive comments and suggestions pertaining to the scope of issues and alternatives to consider when preparing the EIS, and any other significant issues related to the proposed issuance of an ITP to Hays County.

ITPs are required when non-federal activities will result in a "take" of federally listed threatened or endangered species. Take is defined as activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect federally-listed (i.e., threatened and endangered) species. Furthermore, the term "harm" has been defined by USFWS regulations to include activities that result in significant habitat modification or degradation resulting in actual death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Federally-listed species proposed for coverage under the ITP are the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). Activities that could cause take of these species and that would be covered by the ITP include otherwise lawful construction and maintenance of public projects and infrastructure and residential, commercial, and industrial development.

In addition to the EIS, a Habitat Conservation Plan must accompany the application for an ITP. The purpose of this plan is to describe the actions proposed to minimize and mitigate the effects of the incidental take that would be authorized under the ITP. Development of the Hays County Regional Habitat Conservation Plan is ongoing and the plan will include measures to minimize and mitigate the impacts of the proposed take on the two federally-listed species covered by the ITP to the maximum extent practicable.

All interested persons are invited to attend this Public Scoping Meeting. Persons interested in attending who have special communication or accommodation needs are encouraged to contact the USFWS (512) 490-0057 no later than a week prior to the Public Scoping Meeting. USFWS will make every reasonable effort to accommodate these needs. Information regarding this proposed action is available in alternative formats upon request.

Verbal and written comments from the public regarding the alternatives and issues of the EIS may be presented at the Public Scoping Meeting. Written comments submitted by mail should be sent to the following:

Field Supervisor
USFWS
10711 Burnet Road, Suite 200
Austin, Texas, 78758

Written comments submitted after the Public Scoping Meeting must be postmarked on or before Friday, July 18, 2008. For additional information on the EIS please contact Ms. Allison Arnold, USFWS, (512) 490-0057, and for additional information on the Hays County Regional Habitat Conservation Plan please visit the project website (www.hayscountyhcp.com) or contact County Judge Liz Sumter (512) 393-2205. (6/4-1X)

Hays Free Press

June 4, 2008



United States Department of the Interior

FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200

Austin, Texas 78758

512 490-0057

FAX 490-0974

JUN 12 2008



Dear Interested Party:

The U.S. Fish & Wildlife Service (Service) intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), as amended, and support a proposed application by Hays County, Texas for an Incidental Take Permit (ITP) under the Endangered Species Act of 1973. Due to this project involving the preparation of an EIS, the Service published a Notice of Intent (NOI) in the Federal Register on May 16, 2008. This notice is intended to advise interested agencies that a scoping meeting will be held on Wednesday, June 18, 2008, from 5:30 p.m. to 8:30 p.m. at the San Marcos Activity Center, 501 East Hopkins Road, San Marcos, Texas 78666.

ITPs are required when non-Federal activities will result in a "take" of federally-listed threatened or endangered species. Take is defined as activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect federally-listed (i.e., threatened and endangered) species. Furthermore, the term "harm" has been defined by Service regulations to include activities that result in significant habitat modification or degradation resulting in actual death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Federally-listed species proposed for coverage under the ITP are the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). Activities that could cause take of these species and that would be covered by the ITP include otherwise lawful construction and maintenance of public or private land development projects (including but not limited to single homes, residential subdivisions, farm and ranch improvements, commercial or industrial projects, government offices, and park infrastructure) and public projects and infrastructure (including roads, bridges, other transportation infrastructure, and electric, telecommunication, water, wastewater, petroleum or natural gas and other utilities).

In addition to the EIS, a Regional Habitat Conservation Plan (RHCP) must accompany the application for an ITP. The purpose of this plan is to describe the actions proposed to minimize and mitigate the effects of the incidental take that would be authorized under the ITP. Development of the Hays County RHCP is ongoing and the plan will include measures to minimize and mitigate the impacts of the proposed take on the two federally-listed species covered by the ITP to the maximum extent practicable.

The Service is inviting all Federal, State, and local agencies with a possible interest in the proposed project to the scoping meeting to provide comments and suggestions pertaining to the scope of issues and alternatives to consider when preparing the EIS. A copy of the current draft RHCP will be available for viewing at the scoping meeting. Please feel free to contact Allison Arnold at (512) 490-0057, extension 242, if you have questions or would like more information. I look forward to seeing you at the meeting.

Sincerely,

Adam Zerrenner
Field Supervisor

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IN AMERICA** 

Amanda Aurora

From: Amanda Aurora
Sent: Thursday, May 29, 2008 8:30 AM
To: Amanda Aurora
Subject: Hays County Habitat Conservation Plan -- Upcoming Meetings

Please mark your calendars with the three upcoming meetings related to the Hays County Regional HCP....

1) Biological Advisory Team Meeting

Date: June 3, 2008

Location: Texas Rivers Center, Room 107 (951 Aquarena Springs Drive, San Marcos, TX 78666)

Time: 9:00am

Meeting agenda and materials will be posted on the HCP website in advance of the meeting
(http://www.hayscountyhcp.com/team_bat.html)

2) Citizens Advisory Committee Meeting

Date: June 12, 2008

Location: Wimberley Community Center, Blanco Room (14068 Ranch Road 12, Wimberley, Texas 78676)

Time: 6:00pm

Meeting agenda and materials will be posted on the HCP website in advance of the meeting
(http://www.hayscountyhcp.com/team_cac.html)

3) Notice of Public Scoping Meeting and Comment Period The U.S. Fish and Wildlife Service published a "Notice of Intent" in the Federal Register to prepare and Environmental Impact Statement for the Hays County Regional HCP. A public scoping meeting will be held on June 18, 2008 in San Marcos. The public comment period to provide input on the scope of the Environmental Impact Statement closes July 18, 2008. The complete Notice of Intent is posted on the "Documents" page of the project website (www.hayscountyhcp.com/documents).

Date: June 18, 2008

Location: San Marcos Activity Center (501 E. Hopkins Road, San Marcos, Texas 78666)

Time: 5:30pm to 8:30pm

Hays County Habitat Conservation Plan
Project Team

Change address / Leave mailing list: http://ymlp68.com/u.php?HaysCo_HCP_Public_Notice+aurora@loomisaustin.com
Hosting by YourMailingListProvider

Subscribers to the Hays County RHCP Email List (as of May 29, 2008) Notified of Public Scoping Meeting.							
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Environmental Impact Statement (EIS)
Public Scoping Meeting
San Marcos Activity Center
June 18, 2008
5:30 – 8:30pm

AGENDA

- 5:30 Doors Open
- 6:00 Welcome and Introductions
Judge Liz Sumter, Hays County Judge
- 6:15 Overview of the National Environmental Policy Act and EIS Scoping Process
Allison Arnold, U.S. Fish and Wildlife Service
- 6:30 Open House
- 8:30 Adjourn

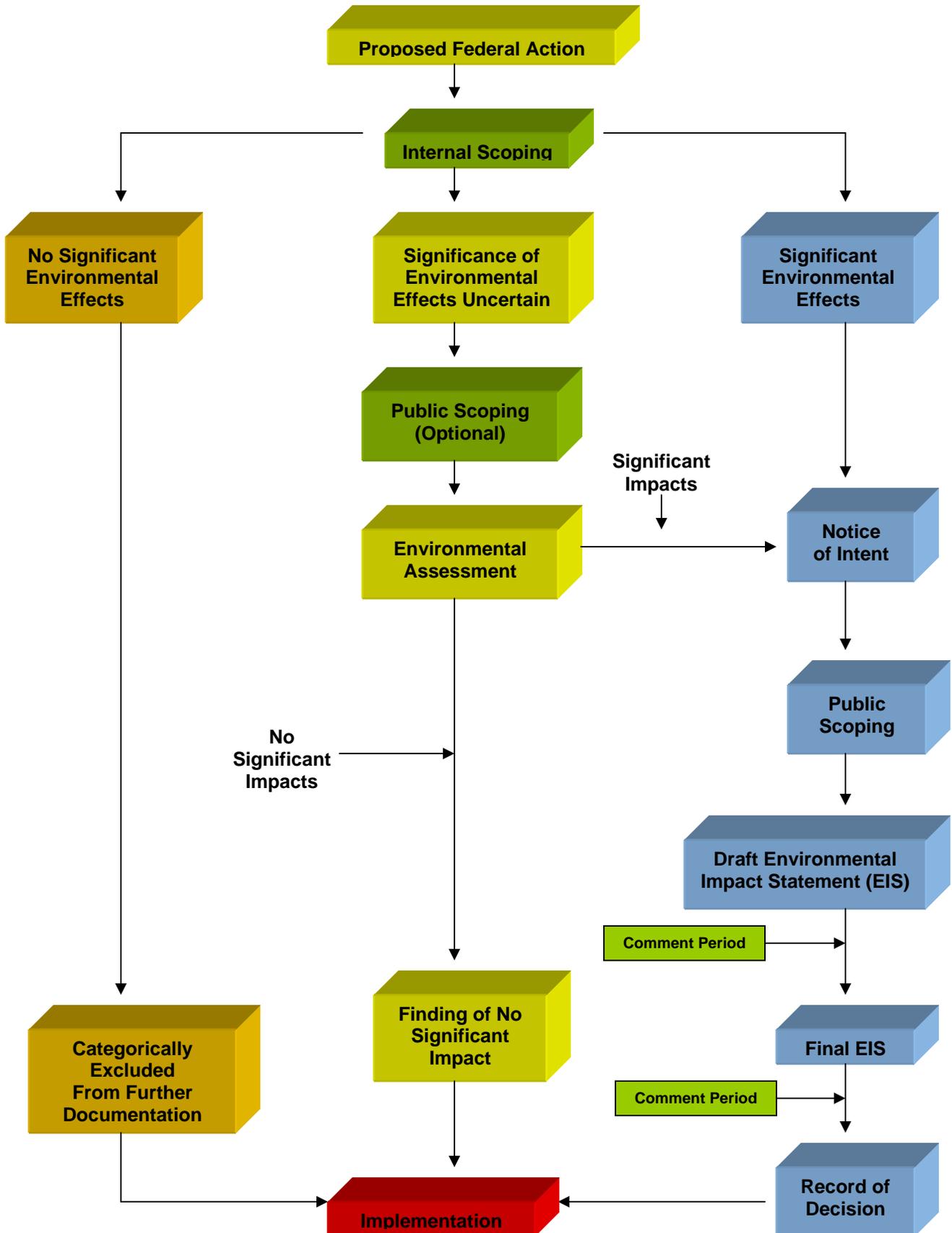
Public Comment Period Ends July 18, 2008

You May Submit Verbal Comments to the Court Reporter or Written Comments via the Comment Forms or to the U.S. Fish and Wildlife Service care of Allison Arnold at

Allison_Arnold@fws.gov.

<http://www.hayscountyhcp.com>

NEPA DECISION MAKING





U.S. Fish & Wildlife Service

Habitat Conservation Plans

Section 10 of the Endangered Species Act

What is a Habitat Conservation Plan and Incidental Take Permit?

An incidental take permit is required when non-Federal activities will result in “take” of threatened or endangered wildlife. A habitat conservation plan (HCP) must accompany an application for an incidental take permit. The purpose of the habitat conservation planning process associated with the permit is to ensure there is adequate minimizing and mitigating of the effects of the authorized incidental take. The purpose of the incidental take permit is to authorize the incidental take of a listed species, not to authorize the activities that result in take.

What is take?

“Take” is defined in the Endangered Species Act (ESA) as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species. Harm may include significant habitat modification where it actually kills or injures a listed species through impairment of essential behavior (e.g., nesting or reproduction).

How many HCPs have been developed and what size areas do they cover?

Both the number of HCPs and the size and complexity of the areas they cover have increased. More than 430 HCPs have been approved, with many more in the planning stage. Most of the earlier HCPs approved were for planning areas of less than 1,000 acres; now 10 exceed 500,000 acres, with several larger than 1,000,000 acres. In some cases, there are more than one incidental take permit associated with a HCP. For example, the Central Coastal Orange County HCP was developed as an overall plan under which each individual participating entity received a separate incidental take permit. This suggests that HCPs are evolving from a process adopted primarily to address single projects to broad-based, landscape-level planning, utilized to achieve long-term biological and regulatory goals.



The Wisconsin Statewide HCP was developed for the conservation of the endangered Karner blue butterfly. Photo by Joel Trick.

Who needs an incidental take permit?

Anyone who believes that their otherwise-lawful activities will result in the “incidental take” of a listed wildlife species needs a permit. The U.S. Fish and Wildlife Service (FWS) can help you determine whether your proposed project or action is likely to result in “take” and whether a HCP is an option to consider. FWS personnel can also provide technical assistance to help you design your project so as to avoid take. For example, the project could be designed with seasonal restrictions on construction to minimize disturbance during nesting.

What is the benefit of an incidental take permit and Habitat Conservation Plan to a private landowner?

The permit allows a landowner to legally proceed with an activity that would otherwise result in the illegal take of a listed species. The FWS also developed a regulation to address the problem of maintaining regulatory assurances and

providing certainty to landowners through the HCP process, called the “No Surprises” regulation.

What are No Surprises assurances?

No Surprises assurances are provided by the government through the section 10(a)(1)(B) process to non-Federal landowners. Essentially, private landowners are assured that if “unforeseen circumstances” arise, the FWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permittee. The government will honor these assurances as long as a permittee is implementing the terms and conditions of the HCP permit, and other associated documents in good faith. In effect, this regulation states that the government will honor its commitment as long as the HCP permittees honor theirs.

Are incidental take permits needed for listed plants?

There are no Federal prohibitions under the ESA for the take of listed plants on non-Federal lands, unless taking of those plants is in violation of State law. However, before the FWS issues a permit, the effects of the permit on listed plants must be analyzed because section 7 of the ESA requires that issuance of a HCP permit must not jeopardize any listed species, including plants.

What is the process for getting an incidental take permit?

The applicant is in charge of deciding whether to pursue an incidental take permit. While FWS personnel provide detailed guidance and technical assistance throughout the process, the development of a HCP is driven by the applicant. The applicant is responsible for submitting a completed permit application. The necessary components of a completed permit application are a standard application form, a HCP, an Implementation Agreement (if required), and, if appropriate, a draft National Environmental Policy Act (NEPA) analysis.

While processing the permit application, the FWS will prepare the incidental take permit, write a biological opinion under section 7 of the ESA, and finalize the NEPA analysis documents. Consequently, incidental take permits have a number of associated documents besides the HCP.

How long will it take to process our application?

The length of time to complete the permitting process depends on the complexity of issues involved (e.g., the number of species) and the completeness of the documents submitted by the applicant. The FWS will work to complete all steps, such as the public comment process, as expeditiously as possible. The most variable factor in permit processing requirements is the level of analysis required for the proposed HCP under NEPA, in other words, whether an Environmental Impact Statement (EIS), Environmental Assessment (EA), or a categorical exclusion is required. Other factors such as public controversy can also affect permit processing times.

“Low Effect” HCPs are those involving minor effects on federally listed, proposed, or candidate species and their habitats covered under the HCP and minor effects on other environmental values or resources. These HCPs do not require a NEPA

document, and the target permit processing time is 3 months.

HCPs that do not fall into the “Low Effect” category require either an EA or an EIS, depending on their complexity. For those requiring an EA as part of the permit application, the target permit processing time is 4 to 6 months. For those requiring an EIS, the target permit processing time may be up to 12 months.

How do we know if we have listed species on our project site?

Check with the appropriate State fish and wildlife agency, the nearest FWS field office, or the National Oceanic and Atmospheric Administration (NOAA) – Fisheries (for anadromous fish). You can arrange for a biologist from one of these agencies to visit your property to determine whether a listed species may be on your project site.

What needs to be in a HCP?

The contents of a HCP are defined in section 10 of the ESA and its implementing regulations. They include:

- an assessment of impacts likely to result from the proposed taking of one or more federally listed species.
- measures the permit applicant will undertake to monitor, minimize, and mitigate for such impacts; the funding that will be made available to implement such measures; and the procedures to deal with unforeseen or extraordinary circumstances.
- alternative actions to the taking that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives.
- additional measures that the FWS may require as necessary or appropriate.

What kind of actions are considered mitigation?

Mitigation measures are actions that reduce or address potential adverse effects of a proposed activity on species covered by a HCP. They should address specific needs of the species involved and be manageable and enforceable. Mitigation measures may take many forms, such as preservation (via acquisition or conservation easement) of existing habitat; enhancement or restoration of degraded or a former habitat; creation of new habitats; establishment of buffer areas around existing habitats; modifications of land use practices, and restrictions on access.

What is the legal commitment of a HCP?

The elements of a HCP are made binding through the incidental take permit. While incidental take permits contain an expiration date, the mitigation identified in the HCP

can be in perpetuity in certain cases. Violation of the terms of an incidental take permit would result in illegal take under section 9 of the ESA. If the violation is deemed technical or inadvertent in nature, the FWS may send the permittee a notice of noncompliance by certified mail or may recommend alternative actions to the permittee so that they may regain compliance with the terms of the permit.

Who approves a HCP?

The FWS Regional Director decides whether to issue a HCP permit based on findings that:

- the taking will be incidental to an otherwise lawful activity;
- the impacts will be minimized, and mitigated to the maximum extent practicable;
- adequate funding will be provided;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species; and
- any other necessary measures are met.

If the HCP addresses all of these requirements and those of other applicable laws, the permit is issued.

What other laws besides the Endangered Species Act are involved?

In issuing an incidental take permit, the FWS must comply with the NEPA and all other statutory and regulatory requirements, including any State or local environmental/planning laws. HCPs may be categorically excluded from NEPA or may require either an EA or, rarely, an EIS.

Who is responsible for NEPA compliance during the HCP process?

The FWS is responsible for ensuring NEPA compliance during the HCP process. However, if the Service does not have sufficient staff resources to prepare the appropriate NEPA analysis in a timely fashion, an applicant may, within certain limitations, prepare draft Environmental Assessment analyses. This can benefit the applicant and the government by expediting the application process and issuance of the permit. When this is done, the FWS will provide the preparer with appropriate guidance concerning document preparation; and review the document within 30 days and take responsibility ultimately for its scope, adequacy, and content.

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

The ESA requires a 30-day period for public comment on the application for an incidental take permit. However, we have recognized the concerns of the public regarding inadequate time for the public comment period, and have extended the minimum comment period to 60 days. Additionally, NEPA requires public comment on certain NEPA documents, and the FWS runs these two comment periods concurrently. Therefore, public comments must be considered in the permit decision.

What kind of monitoring is required for a HCP and who performs it?

The ESA or any party we designate as responsible (e.g., State wildlife agency, local government) in the HCP will monitor the project for compliance with the terms of the incidental take permit or HCP. If another party is responsible for monitoring compliance with the permit, the FWS will require periodic reporting from such party in order to maintain overall oversight responsibility for the implementation of the HCP's terms and conditions. For regional and other large-scale or long-term HCPs, monitoring programs must provide long-term assurances that the HCP will be implemented correctly, that actions will be monitored, and that such actions will work as expected. This should include periodic accountings of take, surveys to determine species status in project areas or mitigation habitats, and progress reports on fulfillment of mitigation requirements (e.g., habitat acres acquired). Monitoring plans for HCPs should establish target milestones, to the extent practicable, or reporting requirements throughout the life of the HCP and should address actions to be taken in case of unforeseen or extraordinary circumstances.

The FWS must monitor the applicant's implementation of the HCP and the permit terms and conditions. In addition to compliance monitoring, the biological conditions associated with the HCP should be monitored to determine if the species needs are being met. This includes determining if the biological goals that are expected as part of the HCP mitigation and minimization strategy are being met. The effectiveness monitoring will help the FWS determine if the conservation strategy is functioning as intended and the anticipated benefits to the species are being realized.

Are efforts made to accommodate the needs of HCP participants who are not professionally involved in the issues?

Because development of a HCP is done by the applicant, it is considered a private action and, therefore, not subject to public participation or review until the FWS receives an official application. The FWS is committed to working with HCP applicants and providing technical assistance as required throughout the HCP development process to accommodate their needs. The FWS believes that HCPs under development are restricted by privacy regulations unless waived by the applicant. However, the FWS does encourage the applicant to involve all appropriate parties. This is especially true for complex and controversial projects, and applicants for most large-scale, regional HCP efforts choose to provide extensive opportunities for public involvement during the planning process. The issuance of a permit is, however, a Federal action that is subject to public review and comment. There is time for public review during the period when the FWS reviews the information and decides to grant or deny a permit based on the completed HCP. A 30-day public comment period is required for all completed HCP applications. During this period, any member of the public may review and comment on the HCP and the accompanying NEPA document (if applicable). Additionally, the FWS solicits public involvement and review, as well as requests for additional information during the scoping process for an EIS.

Are the views of independent scientists used or sought, before and during development of a HCP?

The views of independent scientists are important in the development of mitigation and minimization measures in nearly all HCPs. In many cases, these individuals are contacted by the applicant and are directly involved in discussions on the adequacy of possible mitigation and minimization measures. In other cases, the views of independent scientists are incorporated indirectly through their participation in other documents, such as listing documents, recovery plans, and conservation agreements, that are referenced by applicants as they develop their HCP.

How does the FWS ensure that species are adequately covered in HCPs?

The FWS has strengthened the HCP process by incorporating adaptive management into the plans when there are species covered for which additional scientific information may be useful during the implementation of the HCP. These

provisions allow FWS and NOAA–Fisheries to work with the landowner to reach mutual agreement upon changes in the mitigation strategies within the HCP area, if new information about the species indicates this is needed. Any changes in strategy that may occur are discussed up front with the landowner during the development of the HCP. In this manner, the permittees are fully aware of any future uncertainty in the management strategies, and have concurred with the adaptive approaches outlined in the HCP.

What will the FWS do in the event of unforeseen circumstances that may jeopardize the species?

The FWS will use its authority to manage any unforeseen circumstances that may arise to ensure that species are not jeopardized as a result of approved HCPs. The FWS will work with all other Federal and State agencies to help ensure the continued survival and recovery of the species in the wild.

How can I obtain information on numbers and types of HCPs?

Our national HCP database displaying basic statistics on HCPs is available online from our Habitat Conservation Planning page at <http://www.fws.gov/endangered/hcp/>. The contact information regarding an individual HCP that is available for public comment is listed in the notice of availability for that HCP, published in the *Federal Register* by the appropriate Regional office. Regional office contact information can be found at <http://www.fws.gov>.

**U.S. Fish & Wildlife Service
Endangered Species Program
4401 N. Fairfax Drive, Room 420
Arlington, VA 22203
703/358-2106
<http://www.fws.gov/endangered/hcp/>
December 2005**

STATION 1

Welcome and Sign-in

Please fill in the sign-in form and pick up a comment form and folder for handouts.

Agenda

5:30 pm – Doors Open

6:00 pm – Introductions and Presentations by:

- Judge Liz Sumter (Hays County Judge)
- Allison Arnold (U.S. Fish and Wildlife Service)

6:30 pm to 8:30 pm – Open House

The U.S. Fish and Wildlife Service is interested in your comments and suggestions pertaining to the scope of issues and alternatives to consider when preparing the Environmental Impact Statement for the proposed issuance of an Endangered Species Act Incidental Take Permit to Hays County.

Written comments on alternatives and issues to be addressed in the EIS must be received by the Service by **July 18, 2008.**

Comment forms are available and may be placed in the box at Station 6 or mailed to the following:

Field Supervisor
USFWS
10711 Burnet Road, Suite 200
Austin, Texas 78758

A court reporter is also available at Station 6 to take verbal comments.

STATION 2

Overview of *Endangered Species Act* and *National Environmental Policy Act*

Endangered Species Act (ESA) and Incidental Take Permits (ITPs)

- Federally threatened or endangered species are protected from “take” by the ESA.

Take is defined by the ESA as activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect federally-listed species.

The term “harm” has been defined by USFWS regulations to include activities that result in significant habitat modification or degradation resulting in actual death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

- The ESA allows for take of listed species that is incidental to otherwise lawful activities by issuance of an incidental take permit (ITP).

Habitat Conservation Plans (HCPs)

- Application to the Service for an ITP requires the development of a HCP.

HCPs describe the actions proposed to minimize and mitigate to the maximum extent practicable the effects of the incidental take that would be authorized under the ITP.

National Environmental Policy Act (NEPA)

- Approval of the HCP and issuance of an ITP by the Service is a federal action that is subject to review under NEPA

NEPA requires analysis and detailed review of environmental impact of any proposed project that significantly affects the quality of the human environment.

- U.S. Fish and Wildlife Service is responsible for NEPA compliance during a regional HCP process by preparation of an Environmental Impact Statement (EIS)

STATION 3

Typical Components of a Habitat Conservation Plan

The ESA states that HCPs must:

- Describe the *impact to the covered species* that will likely result from the taking;
- Identify the steps the applicant will implement to *minimize and mitigate the impacts* to the maximum extent practicable *and the funding available* to implement those steps;
- Describe what *alternative actions* to taking were considered and the reasons the alternatives were not chosen; and
- Include other measures that the Service may require as necessary or appropriate for purposes of the conservation plan.

Range of Alternatives for HCPs

- **Plan Area:** can vary from individual project sites to entire states
- **Plan Duration:** can vary from the span of an individual project to multiple decades with opportunities to renew
- **Covered Species:** plans can address single species or multiple species or ecological communities
- **Conservation Strategies:** existing regional plans have used dedicated preserve systems, conservation banking strategies, and regulatory approaches (or a combination of approaches) to mitigate for impacts
- **Funding Mechanisms:** local governments may collect mitigation fees, use tax benefit financing, or issue bonds to fund the conservation program; supplemental funds from grants and donations may also be available

STATION 3

Hays County Regional Habitat Conservation Plan

Purpose and Need for a Hays County Regional HCP

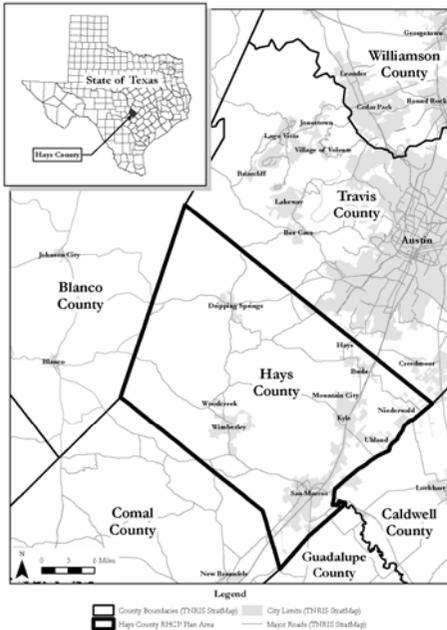
- Public and private land development activities in Hays County are likely to result in *habitat loss for listed species*, particularly the *golden-cheeked warbler* and *black-capped vireo*.
- Loss of habitat from otherwise lawful activities could result in take of listed species and create a *need for an incidental take permit* under the ESA.
- Hays County has decided to pursue a *locally developed, regional approach* for compliance with the ESA. Hays County Regional HCP needed to support an application for an incidental take permit under the ESA.

Project History and Team

- Service awarded a grant to Hays County in September 2005 for \$753,750 to develop a regional HCP. Grant funds released through the Texas Parks and Wildlife Department beginning in May 2006.
- Hays County Commissioners' Court approved a detailed work plan to complete the regional HCP in October 2006.
- Hays County Commissioners (lead by Commissioners Conley and Ford) assembled a group of County staff, scientific advisors, citizen and stakeholder interests, and consultants to help prepare the regional HCP.
- Initial recommendations from advisory committees on the scope and strategy for the regional HCP were collected during Winter 2007 and Spring 2008. A Preliminary Draft Hays County RHCP and Funding Plan were prepared in May 2008.

STATION 4

Species and Habitats of Concern in Hays County



Golden-cheeked Warbler



Photo: Jennifer Blair (2008)

Endangered songbird that only nests in the dense, mature, juniper-oak woodlands of central Texas.



Photo: Potential Golden-cheeked Warbler Habitat along the Blanco River (Clifton Ladd 2008).

Black-capped Vireo

Threatened songbird that nests in short, scrubby patches of deciduous shrubs.



Photo: Texas Parks and Wildlife Department



Photo: Typical black-capped vireo habitat with short, dense oak shrubs (Amanda Aurora 2003).

Karst and Aquifer Species

Local aquifers and cave-forming (karst) geologic formations provide habitat for a number of possibly rare or endemic species.



Photo: Edwards Aquifer as seen from inside Ezell's Cave in Hays County (J. Krejca).



Photo: Cave beetle (*Rhadinia austriaca*) known from two sites in Hays County (J. Krejca).



Photo: Balcones cave shrimp (*Palaeomonetes* anthurus) from Ezell's Cave in Hays County (J. Krejca).



Photo: Cave-obligate harvestman (*Texella reyes*) similar in appearance to related species found in Hays County (J. Krejca).



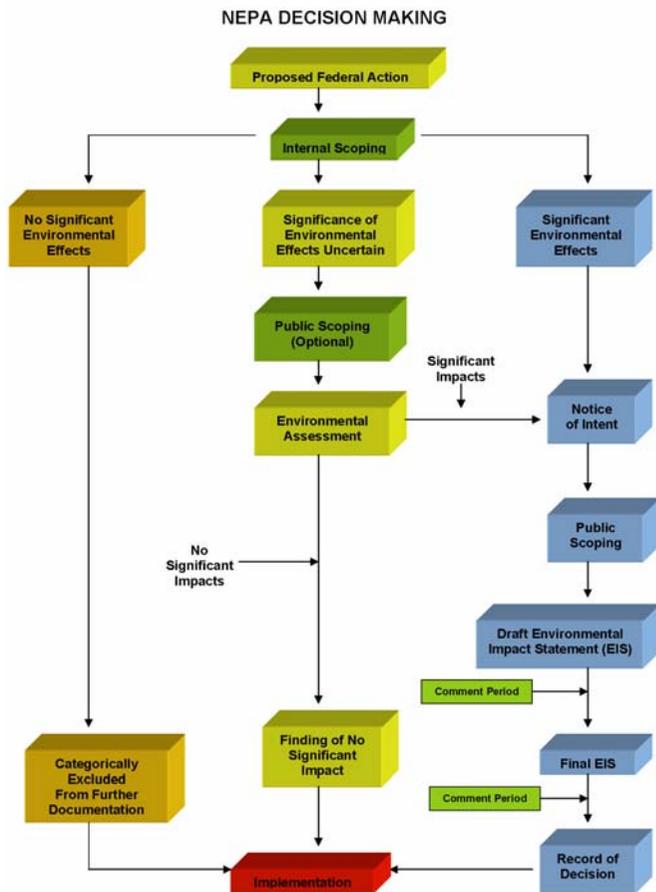
Photo: *Eurycea* salamander from Stuart Springs in Hays County (D. Chamberlain).



Photo: Fern Bank Springs in Hays County (Clifton Ladd).

STATION 5

NEPA Process and Schedule



NEPA Process for the Hays County Regional HCP

- **Proposed Federal Action:** issuance of an ITP by the Service to Hays County for take of the golden-cheeked warbler and black-capped vireo
- **Internal Scoping:** due to their typical size and scope, regional HCPs are generally considered actions with potential for significant environmental impacts; internal decision to prepare an EIS

- **Notice of Intent:** published in the Federal Register on May 16, 2008
- **Public Scoping Meeting and Comment Period:** comment period closes July 18, 2008
- **Draft EIS:** project team will prepare a Preliminary Draft EIS that incorporates the collected public scoping comments
- **Public Comment Period:** public review and comment on Preliminary Draft EIS and Final Draft HCP; expected early Spring 2009
- **Final EIS and HCP:** revised final documents and public comment period expected late Spring 2009
- **Record of Decision and Implementation:** target for ITP issuance June 2009

STATION 6

Comments

The U.S. Fish and Wildlife Service is interested in your comments and suggestions pertaining to the scope of issues and alternatives to consider when preparing the Environmental Impact Statement for the proposed issuance of an Endangered Species Act Incidental Take Permit to Hays County.

PLEASE SEND US YOUR COMMENTS AND SUGGESTIONS

Written comments on alternatives and issues to be addressed in the EIS must be received by the Service by **July 18, 2008.**

Comment forms are available and may be placed in the box at Station 6 or mailed to the following:

Field Supervisor
USFWS
10711 Burnet Road, Suite 200
Austin, Texas 78758

A court reporter is also available at Station 6 to take verbal comments.

For more information about the Hays County Regional HCP, please visit the project website at www.hayscountyhcp.com or contact the project team.

Hays County Commissioner's Court
attn: County Judge Liz Sumter
111 E. San Antonio St., Ste. 300
San Marcos, Texas 78666
Fax number: (512) 393-2282
lizsumter@co.hays.tx.us

Hays County HCP Consultant Team
attn: Mr. Clifton Ladd, Loomis Austin, Inc.
3101 Bee Cave Road, Suite 100
Austin, Texas 78746
Fax number: (512) 327-4062
info@hayscountyhcp.com



Public Participation in the Hays County Regional Habitat Conservation Plan

What is the Hays County Regional Habitat Conservation Plan?

Hays County has begun a countywide planning effort to balance the needs of rare plants and animals and the demand for growth and development. The Hays County Regional Habitat Conservation Plan will support a permit from the U.S. Fish and Wildlife Service that will establish a simplified process for complying with the Endangered Species Act. The Plan will also lay the framework of a coordinated conservation program to protect sensitive natural resources in the County.

Why develop a Habitat Conservation Plan for Hays County?

Hays County is located in a region known for its spectacular, diverse, and often rare natural resources. Threatened and endangered species, numerous springs and streams, caves, and aquifers are some of the most fragile natural features in the County. These sensitive resources are threatened by the rapid pace of population growth and land development. The Hays County Regional Habitat Conservation Plan will provide a local option for Endangered Species Act compliance, help achieve the County's goals for protecting open space, provide a framework to attract grant funds for County conservation efforts, and help protect vital water resources.

How is the Hays County Regional Habitat Conservation Plan being formulated?

The Hays County Commissioners Court and County staff are working with a team of environmental, legal, and economic experts to develop the Habitat Conservation Plan. The Commissioners' Court has also assembled a committee of Hays County stakeholder representatives and landowners (the "Citizens Advisory Committee" or "CAC") and a group of local experts on endangered species and conservation biology (the "Biological Advisory Team" or "BAT"). The CAC and the BAT will provide input and guidance to the County and the consultant team throughout the development of the Plan.

How can the public participate in the plan's development?

The Hays County Regional Habitat Conservation Plan is being developed for the benefit of the citizens of Hays County to conserve the County's special natural resources for future

generations and to facilitate compliance with the Endangered Species Act. Public input is an essential part of the planning process.

Opportunities for public participation include:

- Visiting the project's website at www.hayscountyhcp.com to obtain the latest news and notices about the Plan. Submit comments or questions about the Plan through the "Contact Us" page on the website.
- Attending meetings of the CAC and the BAT. All meetings are open to the public, and will include an opportunity for public comment. Meeting times, places, agendas, and minutes will be posted on the project's website.
- Attending meetings of the Hays County Commissioners Court. All Court meetings, including Plan work sessions and Plan-related agenda items requiring Court approval, are open to the public and include opportunities for public comment. Notices for Commissioners Court sessions with agenda items related to the Plan will be posted on the project's website.
- Participating in public hearings and responding to public drafts published in the Federal Register. The National Environmental Policy Act prescribes a detailed process to solicit public input on a proposed habitat conservation plan. The process involves several opportunities for the public to comment. The first public hearing on the scope of environmental issues to address when evaluating the plan is scheduled to occur in on June 18, 2008. A second formal public hearing will be scheduled after the final draft plan is submitted to the U.S. Fish and Wildlife Service (the target date for submittal is January 2009).
- Submitting written comments throughout the planning process via regular mail, email, or fax to:

Hays County Commissioner's Court

attn: County Judge Liz Sumter

111 E. San Antonio St., Ste. 300

San Marcos, Texas 78666

Fax number: (512) 393-2282

lizsumter@co.hays.tx.us

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