

## RECORD OF DECISION

### Issuance of an Incidental Take Permit for 11 Federally Listed Threatened or Endangered Species in Texas.

#### Introduction

Oncor Electric LLC (Oncor, Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to §10(a) of the Endangered Species Act of 1973, as amended (Act)(16 USC §1531-1544). The requested permit, which is for a period of 30 years, would authorize incidental take of, and impacts to, the Louisiana black bear (*Ursus americanus luteolus*), golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), red-cockaded woodpecker (*Picoides borealis*), whooping crane (*Grus americana*), Houston toad (*Bufo houstonensis*), American burying beetle (*Nicrophorus americanus*), large-fruited sand-verbena (*Abronia macrocarpa*), Texas poppy-mallow (*Callirhoe scabriuscula*), Navasota ladies'-tresses (*Spiranthes parksii*), and Pecos sunflower (*Helianthus paradoxus*) (covered species) from construction, operation, and maintenance of various facilities (e.g., electric transmission and distribution lines), as well as emergency response work (covered activities).

NOTE: Take of listed plant species is not defined in the Act. The Act does identify several prohibitions. However, because Covered Species in this HCP include both plants and animals, in the following discussion we use the term “incidental take” when discussing impacts to covered plants, as well as, actual incidental take of covered animals.

The issuance of a permit under section 10(a)(1)(B) of the Act is to authorize incidental take of the covered species during covered activities. The proposed plan area is 100 of Oncor’s 102-county service area, excluding Travis and Williamson counties where impacts to listed species will be authorized under existing permits (see map 1-1 in the Habitat Conservation Plan, HCP). The proposed area to be covered by the ITP is any area within Oncor’s service area where HCP implementation is expected to take listed species.

We prepared this Record of Decision (ROD) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 40 CFR 1505.2). The purpose of this ROD is to document the Service’s decision regarding the selection of the preferred alternative as evaluated in Oncor’s final HCP and our final Environmental Impact Statement (EIS). This ROD provides (1) the Service’s decision; (2) the proposed action; (3) alternatives considered in the EIS, including the preferred alternative; (4) key issues; (5) associated impacts, mitigation, and findings, providing all practicable means to avoid and minimize environmental harm; (6) public involvement; and (7) the conclusion. The Service will not issue an ITP until at least 30 days after publication of the notice for the final EIS.

#### The Decision

We intend to issue an ITP allowing Oncor to implement the preferred alternative (Alternative 1) based on a thorough review of the alternatives and their environmental consequences as described in the final

EIS. This alternative has been determined to be economically feasible. Implementation of this decision entails issuance of the ITP, including all terms and conditions governing the permit, and requires adherence to all of the avoidance, minimization, and mitigation measures specified in Oncor's HCP to offset impacts to the 11 covered species to the maximum extent practicable, including the described monitoring and adaptive management measures. The HCP meets all issuance criteria for an ITP. Since implementation of Alternative 1 would result in authorization for incidental take and the resulting impacts, we prepared a Biological Opinion prior to making a permit decision in accordance with Section 7 of the Act.

## **Alternatives Considered**

Three alternatives, including the No Action Alternative, and their environmental consequences were evaluated in the draft EIS released July 15, 2011. Publication of a Notice of Availability of the draft HCP and draft EIS, and a request for comments, initiated a 90-day public comment period (76 FR 41808). Several elements were common to all action alternatives and included interagency coordination, National Environmental Policy Act (NEPA) compliance, and protection of threatened and endangered species and cultural resources. The following is a brief summary of the alternatives considered. A longer summary and complete description is included in the final EIS.

No Action Alternative: Under the No-Action Alternative, Oncor would not request and the Service would not issue an incidental take permit covering all of Oncor's activities over the next 30 years. Instead, Oncor would seek an individual section 10(a)(1)(B) ITP or coverage under a section 7 consultation where a Federal nexus (authorized by a federal agency [e.g., section 404 permit under the Clean Water Act]) exists, on a project-by-project basis over the next 30-year period, if activities might result in incidental take of a federally listed species within the proposed permit area.

Alternative 1 (Proposed Action): Our selected alternative is the proposed HCP with a 30-year term, the preferred alternative (Alternative 1) as described in the final EIS, which provides for the issuance of an ITP to Oncor for incidental take of the covered species that is anticipated to occur as a result of covered activities. This alternative includes implementation of measures to avoid, minimize, and mitigate for impacts of the potential incidental take to the maximum extent practicable. This alternative also provides conservation measures for covered species and the mechanism for streamlined compliance with the Act.

Alternative 2 (50-year permit duration): Under this alternative the permit duration would be 50 years, rather than 30. The covered activities, proposed permit area, and the species covered would be the same as Alternative 1. The avoidance and minimization measures under Alternative 1 would be the same, but the duration over which such incidental take would occur would be much longer, thus the amount of take requested would be greater.

## **Rationale for Decision**

We intend to select the preferred alternative (Alternative 1) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitat, the extent and effectiveness of minimization and mitigation measures, and social and economic considerations. We did not choose the No Action Alternative because a project-by-project approach for

complying with the Act would be more time-consuming, less efficient, and would result in piecemeal mitigation for each covered species, incapable of providing comprehensive or comparable net benefits with respect to the preferred alternative. While Alternative 2 would result in a greater amount of mitigation, it was not chosen because of the uncertainties associated with planning and implementation over the extended duration, which would likely result in the need to modify or amend the permit resulting in inefficiencies and limiting the effectiveness of the HCP.

In order for us to issue an ITP, we must ascertain that the HCP meets the criteria set forth in 16 U.S.C. §1539(a)(2)(A) and (B). We have made that determination. These criteria, and how the HCP satisfies these criteria, are summarized below:

- 1. The taking will be incidental.** We find that the take will be incidental to otherwise lawful activities, including the proposed construction, operation, and maintenance of various facilities (e.g., electric transmission and distribution lines), as well as emergency response work. The take of individuals of the covered species will be primarily due to the indirect impacts of habitat destruction and/or alteration.
- 2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.** Oncor has committed to a wide variety of conservation measures and other strategies designed to avoid and minimize harm to the covered species, including monitoring and adaptive management, and will mitigate for any unavoidable loss through purchase of conservation credits and/or land acquisition. The mitigation will be commensurate with the actual level of take. Oncor will ensure compliance with the avoidance, minimization, and conservation measures, and species-specific restrictions through on-the-ground habitat assessment surveys or presence/absence surveys for covered species; inclusion of these measures in restrictions with liabilities for noncompliance in construction contracts; performance of compliance inspections by the Applicant for covered activities; and provision of an environmental monitor or contractor training to educate on federally listed species potentially encountered and to provide an incident response plan should federally listed species be encountered. In addition, Oncor has included provisions for changed circumstances that are reasonably foreseeable during the term of the permit. These strategies will ensure that impacts from the proposed taking are minimized and mitigated to the maximum extent practicable. Mitigation will be in place prior to occurrence of the take or impacts (i.e., construction through habitat).
- 3. The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided.** Oncor has developed and will implement their HCP. Section 6 of the HCP describes avoidance and minimization measures, including pre-project surveys, conservation measures, and best management practices that will be written into project descriptions and budgets. These are standard practices and expenses that Oncor funds on all of their existing projects. It also describes the mitigation Oncor has agreed to undertake for unavoidable impacts that will be provided prior to occurrence of anticipated take or impacts (i.e., construction through habitat).

The Service's no surprises assurances are discussed in the HCP and measures to address changed circumstances have been identified. Adaptive management will be used to direct changes to conservation, mitigation, or management measures and monitoring when needed. Unforeseen circumstances would be addressed through the Service's close coordination with Oncor in the implementation of the HCP, and Oncor has committed to a coordination process to address such circumstances. We have, therefore, determined that Oncor's financial commitment and plan, along

with their willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

In addition, if needed, Oncor will arrange for an unconditional irrevocable stand-by letter of credit to be issued to the Service that will be issued by a nationally recognized banking institution acceptable to the Service with an expiration date that extends through the expected completion date of the project. The amount will cover the expected mitigation cost, which includes avoidance and minimization measures, as calculated in Section 6 of the HCP, biological monitoring and reporting, actions to respond to Changed Circumstances, and the Adaptive Management program.

**The taking will not appreciably reduce the likelihood of the survival and recovery of any listed species in the wild.** As the Federal action agency considering whether to issue an ITP to Oncor, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated January 5, 2012, concluded that issuance of the ITP will not jeopardize the continued existence of the covered species in the wild. No critical habitats for the Houston toad or whooping crane are expected to be affected. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effect of the issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of other listed species or adverse modification of any designated critical habitat within the permit area.

- 4. The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP.** We assisted Oncor in the development of their HCP. We commented on draft documents, participated in numerous meetings and conference calls, and worked closely with Oncor during every step of plan and document preparation, so that conservation of the covered species would be assured and recovery would not be precluded by the covered activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (adaptive management) or impacts exceed estimates (changed circumstances). It is our position that no additional measures are required to implement the intent and purpose of the HCP to those detailed in the HCP and its associated ITP.

We have determined that the preferred alternative best balances the protection and management of habitat for covered species, while allowing and providing a streamlined process for compliance with the Act for continued construction, operation, and maintenance of electric facilities within Oncor's service area. Considerations used in this decision include: (1) mitigation will benefit the covered species, 2) mitigation lands will be managed for the species in perpetuity, 3) other conservation measures will protect and enhance habitat, 4) mitigation measures for the Covered Species will fully offset anticipated impacts to the species and provide recovery opportunities, and 5) the HCP is consistent with the covered species' recovery plans.

Section 9 of the Act and its implementing regulations prohibit the "taking" of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities. To minimize impacts, Oncor must comply with the following terms and conditions:

- A. Acceptance of this permit serves as evidence that the Permittee (Oncor) agrees to abide by all conditions stated. Terms and conditions of this permit are inclusive. Any activity not

specifically permitted is prohibited. Please read through these conditions carefully as violations of permit terms and conditions could result in your permit being suspended or revoked. Violations of your permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA or Act) could also subject the Permittee to criminal or civil penalties.

- B. This permit only authorizes incidental take of animal species, or impacts to plant species of the following 11 covered species: the endangered large-fruited sand-verbena, Texas poppy-mallow, Navasota ladies'-tresses, American burying beetle, Houston toad, whooping crane, golden-cheeked warbler, black-capped vireo, and red-cockaded woodpecker; and the threatened Pecos sunflower, and Louisiana black bear (covered species) within the 100-county covered area (Oncor's 102-county service area, excluding Travis and Williamson counties) (covered area).
- C. The covered area includes the following 100 counties: Anderson, Andrews, Angelina, Archer, Bastrop, Baylor, Bell, Borden, Bosque, Brown, Burnet, Cherokee, Clay, Coke, Coleman, Collin, Comanche, Cooke, Coryell, Crane, Culberson, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Franklin, Freestone, Gaines, Glasscock, Grayson, Haskell, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, Lamar, Lampasas, Lee, Leon, Limestone, Loving, Lynn, Martin, McLennan, Midland, Milam, Mills, Mitchell, Montague, Nacogdoches, Navarro, Nolan, Palo Pinto, Parker, Pecos, Rains, Reagan, Red River, Reeves, Robertson, Rockwall, Runnels, Rusk, Scurry, Shackelford, Smith, Somervell, Stephens, Sterling, Tarrant, Taylor, Terry, Titus, Throckmorton, Tom Green, Trinity, Upton, Van Zandt, Ward, Wichita, Winkler, Wilbarger, Wise, Wood, and Young (see Figure 1-1 of the HCP).
- D. Upon locating a dead, injured, or sick individual of the covered species, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office in Austin, Texas, (512) 490-0948 for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and any contractor/subcontractor has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- E. Conditions of this permit shall be binding on, and for the benefit of, the Permittee and any successors and assigns. If this permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. The construction activities proposed or in progress under the original permit may not be interrupted provided the conditions of this permit are being followed, except as identified in Condition J.
- F. If, during the tenure of the permit, the project design and/or the extent of the habitat impacts is altered, such that there may be an increase in the anticipated take of the covered species, the Permittee is required to contact the Service's Austin Ecological Services Office (ESFO) and

obtain authorization and/or amendment of this permit before commencing any construction or other activities that might result in take beyond that authorized by the permit.

- G. If actions associated with implementation of the Oncor Habitat Conservation Plan (HCP) are shown to result in incidental take of listed species not covered by the permit, those activities that are shown to cause take must immediately cease and any take that has occurred shall be reported to the Austin Ecological Services Field Office (505/490-0057) within 48 hours.
- H. If a project schedule allows, protocol presence/absence surveys and/or field habitat assessment surveys will be conducted in potential habitat for covered species. Surveys will be:
1. conducted by qualified, federally permitted, species-specific biologists;
  2. conducted on proposed and existing rights-of-way in areas of potential habitat prior to clearing and construction;
  3. follow the most current Service protocols for conducting those surveys; and
  4. comply with the Texas Parks and Wildlife's and/or Service's definition of potential habitat. If the potential habitat meets the description of habitat, but is determined not to be habitat, the Service will be provided with copies of the assessment survey for review and concurrence/approval.
- I. If no presence/absence surveys are conducted in potential habitat, presence will be assumed and measures will be taken to avoid or minimize take, such as spanning potential habitat. Habitat that is assumed to be occupied will be fully mitigated.
- J. Within potential habitat for all species, only appropriate herbicides and/or pesticides will be used with application methods that limit impacts to nontarget species (e.g., low-volume basal and foliar applications, narrow-spectrum herbicides, and herbicides with low environmental persistence) and are in accordance with EPA label directions and Service guidelines for pesticide application (Recommended protection measures for pesticide applications in Region 2 of the U.S. Fish and Wildlife Service, April, 2007).
- K. If reseeded the rights-of-way is necessary, a local native plant mixture will be used, unless specifically prohibited by the landowner, to reduce the introduction of exotic species. Ryegrass may be planted in cool weather as temporary cover to help stabilize the rights-of-way and to reduce runoff where cool season native grasses would not equally do so. Subsequent monitoring and re-planting, if necessary, will ensure revegetation by native species.
- L. Taller trees adjacent to the rights-of-way will be topped or trimmed to the minimum amount necessary to comply with National Safety Codes, but will not be entirely removed unless they qualify as danger trees.
- M. Oncor will follow the Texas Forest Service's or professional arborists' guidelines for preventing the spread of oak wilt when clearing or trimming trees within those counties where oak wilt is known to occur. These guidelines include, but are not limited to, sterilizing pruning or cutting equipment with bleach between trees, and immediately painting all wounds on oak trees that are larger than 0.5 inch (1.3 centimeters) in diameter.

- N. Vegetation will be cleared by aboveground means when practical (e.g., mowing or manual cutting) to minimize impacts to soil resources (relative to belowground clearing methods, such as disking).
- O. Qualified environmental personnel will monitor the use of nonstormwater Best Management Practices on project sites and document their success/failure. Noncompliance will be identified and corrected.
- P. Oncor will monitor and report on the effectiveness of their avoidance, minimization, and conservation measures and will adaptively manage according to monitoring results and the best available science, technology, and industry information in coordination with the Service's Austin ESFO.
- Q. Oncor will implement a stormwater pollution prevention plan, when required to comply with applicable state regulations. Variations or state-of-the-art stormwater Best Management Practice equivalents or better may be substituted. For projects anticipated to encounter a covered species, Oncor will adhere to appropriate stormwater Best Management Practices, even when a written stormwater pollution prevention plan is not required by the state. Erosion and siltation management during construction will meet all local and Texas Commission on Environmental Quality requirements and protocols for storage, use and spill containment, and will include countermeasures for construction-related chemical and petroleum products. Stormwater Best Management Practices will be monitored and reported on in the annual report.
- R. In an emergency response, such as an electric facility outage, information on take, if it occurred, will be provided to the Austin ESFO within 10 days of emergency repair activities, unless extenuating circumstances exist, as determined by the Applicant and the Service. A determination of impacts and incidental take above that described below and in the HCP for each species will be addressed as a changed circumstance.
- S. The HCP (section 11) identifies the following changed circumstances: emergency repair; oak wilt; exceedance of whooping crane take due to ineffectual minimization and mitigation measures; clearing of habitat for the black-capped vireo and golden-cheeked warbler during the breeding season; Louisiana black bear repatriation; development of covered species habitat in newly created rights-of-way; new species become federally listed; covered species become delisted; covered species become extinct; and optional use of mitigation funds for management actions. To qualify for No Surprises assurances, the Permittee must implement all provisions included in the HCP and the incidental take permit that addresses such circumstances. If a changed circumstance has not been addressed by the HCP and/or incidental take permit, the Service will not require additional conservation or mitigation measures of the Permittee, provided that the terms of the HCP and incidental take permit are being fully implemented.
- T. To fully implement the HCP, the following species-specific avoidance, minimization, and mitigation measures are required:

## LOUISIANA BLACK BEAR

- U. Oncor (Permittee) is authorized to impact up to 194 acres of Louisiana black bear (*Ursus americanus luteolus*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid Louisiana black bear habitat where possible, particularly preserves or parks containing this species.
  2. If Oncor cannot avoid Louisiana black bear habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. Within Louisiana black bear habitat, Oncor will:
    - a. avoid damaging den trees, den sites, or candidate den trees;
    - b. avoid dissecting contiguous forest, wherever practical;
    - c. reduce rights-of-way widths, if practical;
    - d. limit human disturbance through the installation of gates or permanent road closures at access points; and
    - e. bush-hog rights-of-way to promote the production of soft mast.
  4. If Oncor cannot avoid or minimize impacts to Louisiana black bear habitat, Oncor will mitigate for unavoidable impacts at a 1:1 ratio (1 acre of conservation for each acre of impact).
  5. Mitigation will follow the Mitigation Strategies described below.
  6. Send annual reports to the Austin ESFO and the Arlington ESFO.

## BLACK-CAPPED VIREO

- V. Oncor (Permittee) is authorized to impact up to 5,714 acres of black-capped vireo (*Vireo atricapilla*) habitat within the covered area, during the permit term. The following conditions also apply:
1. Construction activities within 300 feet of black-capped vireo habitat will occur between September 1 and February 29, avoiding the breeding season.
    - a. If Oncor must conduct activities in black-capped vireo habitat during the breeding season, a protocol survey will be completed prior to activities. If an active black-capped vireo nest is located, no construction activities may be conducted within 300 feet of the nest until the nest is verified to be abandoned and any fledged young have developed sufficient flight-ability to avoid clearing activities
  2. When routing new transmission lines Oncor will avoid black-capped vireo habitat where possible, particularly preserves or parks containing this species.
  3. If Oncor cannot avoid black-capped vireo habitat, Oncor will minimize impacts by following existing rights-of-way.
  4. If Oncor cannot minimize impacts to black-capped vireo habitat, mitigation for direct impacts will be at a 2:1 ratio (2 acres of conservation for each acre of impact) and at a 1:1 ratio for indirect impacts.
  5. Mitigation will follow the Mitigation Strategies described below.
  6. Send annual reports to the Austin ESFO and the Arlington ESFO.

## GOLDEN-CHEEKED WARBLER

- W. Oncor (Permittee) is authorized to impact up to 2,997 acres of golden-cheeked warbler (*Dendroica chrysoparia*) habitat within the covered area, during the permit term. The following conditions also apply:
1. Construction activities within 300 feet of golden-cheeked warbler habitat will occur between September 1 and February 29, avoiding the breeding season.
    - a. If Oncor must conduct activities in golden-cheeked warbler habitat during the breeding season, a protocol survey will be completed prior to activities. If an active golden-cheeked warbler nest is located, no construction activities may be conducted within 300 feet of the nest until the nest is verified to be abandoned and any fledged young have developed sufficient flight-ability to avoid clearing activities.
  2. When routing new transmission lines Oncor will avoid golden-cheeked warbler habitat where possible, particularly preserves or parks containing this species.
  3. If Oncor cannot avoid golden-cheeked warbler habitat, Oncor will minimize impacts by following existing rights-of-way.
  4. In golden-cheeked warbler habitat, access road clearing will be less than 16 wide and Oncor will avoid canopy disturbance, where possible. Canopy disturbance greater than 16 feet wide will be mitigated as described here.
  5. If Oncor cannot minimize impacts to golden-cheeked warbler habitat, mitigation for direct impacts will be at a 3:1 ratio (3 acres of conservation for each acre of impact) and at a 1.5:1 ratio for indirect impacts.
  7. Mitigation will follow the Mitigation Strategies described below.
  8. Send annual reports to the Austin ESFO.

## RED-COCKADED WOODPECKER

- X. Oncor (Permittee) is authorized to impact up to 514 acres of red-cockaded woodpecker (*Picoides borealis*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid red-cockaded woodpecker habitat where possible, particularly preserves or parks containing this species
  2. If Oncor cannot avoid red-cockaded woodpecker habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. No take of active clusters or active nest trees is authorized by the Permit.
  4. Within red-cockaded woodpecker foraging habitat or adjacent to breeding habitat:
    - a. construction activities will be conducted during daylight hours, avoiding activities within one to two hours of dawn or dusk; and will be outside of the breeding/nesting season (March through July);
    - b. routes will be chosen that avoid the removal of potential or known cavity trees, and that avoid or minimize tree removal in cluster sites and foraging habitat; and
    - c. buffer zones of at least 300 feet, but up to 0.25 mile, will be maintained from cluster sites to avoid isolating them from foraging areas.
  5. If Oncor cannot minimize impacts to red-cockaded woodpecker habitat, mitigation ratios will be as follows:

- a. poor quality red-cockaded woodpecker foraging habitat more than 0.25 but less than 0.50 mile from an active colony will be mitigated at a 0.5:1 ratio (1/2 acre of conservation for each acre of impact);
  - b. good quality red-cockaded woodpecker foraging habitat more than 0.25 but less than 0.50 mile from an active colony will be mitigated at a 1:1 ratio;
  - c. poor quality red-cockaded woodpecker foraging habitat less than 0.25 mile from an active colony will be mitigated at a 1.5:1 ratio; and
  - d. good quality red-cockaded woodpecker foraging habitat less than 0.25 mile from an active colony will be mitigated at a 2:1 ratio.
6. Mitigation will follow the Mitigation Strategies described below.
  7. Send annual reports to the Austin ESFO and the East Texas ESFO Sub-office.

## WHOOPING CRANE

- Y. Oncor (Permittee) is authorized to incidentally take one (1) whooping crane (*Grus americana*) within the covered area, during the 30-year permit term. The following conditions also apply:
  1. When routing new transmission lines Oncor will avoid potentially suitable stopover habitat where possible, particularly preserves or parks that whooping cranes are likely to use for foraging or roosting.
  2. Minimization and mitigation will consist of the following actions within one mile of confirmed or potentially suitable stopover habitat:
    - a. mark all new transmission lines with bird flight diverters in accordance with the Avian Power Line Interaction Committee's (APLIC) "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994" (APLIC 1994), or the latest industry standards for preventing avian/powerline interactions and/or,
    - b. place transmission or distribution lines underground, and/or
    - c. relocate or remove transmission or distribution lines, and
    - d. mark existing transmission or distribution lines (when these lines are temporarily out of service) at a 1:1 ratio (e.g., marking 1 mile of existing transmission or distribution lines for 1 mile of newly constructed lines within 1 mile of potentially suitable stopover habitat) within 5-years of new construction.
  3. Existing transmission lines and facilities with the highest probability for whooping crane collisions within a one-mile radius of potential stopover habitat will be given priority for marking.
  4. Send annual reports to the Austin ESFO and Aransas National Wildlife Refuge.

## HOUSTON TOAD

- Z. Oncor (Permittee) is authorized to impact up to 100 acres of Houston toad (*Bufo houstonensis*) habitat within the covered area, during the permit term. The following conditions also apply:
  1. Covered activities are not authorized within designated critical habitat for Houston toad.
  2. When routing new transmission lines Oncor will avoid Houston toad habitat where possible, particularly preserves or parks containing this species.
  3. Oncor will coordinate with the Service early in the planning phase of all projects occurring within the Houston toad's range so Oncor will have the most current information on ongoing recovery and reintroduction actions and project impacts can be best minimized.

4. For projects that traverse or are adjacent to Houston toad habitat:
  - a. Except in emergency situations, no clearing or ground-disturbing activities will occur within 150 feet of wetlands, creeks, drainages, ditches, ponds, stock tanks, or other water bodies in potential or known Houston toad habitat during the breeding season (January 1– June 30).
  - b. Outside of the breeding season, water management zones (or streamside management zones) as described in the HCP will be in effect. These zones will consist of a minimum width of 50 feet from all edges of water features such as stream channels (areas at least 3 feet wide where a sufficient amount of water has scoured away the vegetation) or other water bodies such as ponds, wetlands, springs, or seeps. Within these zones, any activities that could result in the pollution of a potential breeding site are prohibited. Water management zones are not within or adjacent to treed areas.
  - c. A federally permitted biologist will survey potential breeding sites immediately prior to any clearing/construction activity. If any anuran eggs/tadpoles are encountered, these water bodies will be avoided. Time for surveying for eggs/tadpoles will be built into the project schedule for every clearing/construction activity within potential habitat.
  - d. If it is not practical to drive around creeks during construction of new facilities or operation/maintenance of existing facilities, Oncor will procure all other required permits (e.g., 404 Clean Water Act). Thereafter, modifications to facilitate creek crossings will be acceptable under the following conditions – providing that the crossings take place outside of the breeding season:
    - i. stones may be placed on a creek bed and its banks providing that the natural hydrologic flow remains unimpeded and all state and Federal protection criteria for stormwater and jurisdictional waters of the U.S. (including wetlands) are met;
    - ii. steep, nonvegetated, stream banks may be graded if the creek does not have wooded riparian vegetation; and
    - iii. use of temporary culverts and fill.
  - e. All state/Federal protection criteria for stormwater and jurisdictional waters of the U.S. will be met, and bare, graded stream banks will be re-vegetated with native species.
  - f. Prior to construction of new facilities or ground-disturbing activities, silt fences and berms, or equivalent measures, will be used to protect potential breeding sites from runoff from construction areas. These silt fences and berms will be inspected, and repaired if necessary, on a daily basis to ensure that no holes, structural damage, or any other issues exist that could prevent these devices from performing their intended function.
  - g. If feasible, clearing/construction will be completed outside the breeding season (January 1 through June 30). If clearing/construction occurs during the breeding season, a qualified, federally permitted biologist will survey the area for toads no more than 10 minutes ahead of the clearing/construction activities.
  - h. Each morning before work begins, excavations left open overnight will be inspected for the presence of Houston toads. All Houston toads will be immediately placed, unharmed, in a protected area outside of the activity zone by a qualified, federally permitted biologist.
  - i. Mowing equipment will be set at a height of 5 inches (13 centimeters) above the ground to minimize the potential for striking Houston toads. If leaving 5-inch stumps of woody vegetation would likely result in damaging equipment, these areas will be mowed to

- lower than 5 inches (13 centimeters) after the area has been surveyed for toads by a qualified, federally permitted biologist no more than 10 minutes ahead of the mowing.
- j. To avoid potential breeding sites, heavy machinery will be operated within existing/proposed rights-of-way or approved temporary work areas only and will not operate within the water management zones.
  - k. Oncor will maintain the natural topography of the area, impacts to the vegetation community will be minimized, and soil compaction will be avoided to preserve the friability of the soils.
  - l. To prevent the introduction of red imported fire ants to the project site, Oncor will minimize soil disturbance, use local native soils for backfill, and limit habitat fragmentation to the minimum amount necessary for operations and maintenance. Soils and plants brought in for fill and re-vegetation activities will be inspected to make sure they are not infested with fire ants before they are used in Houston toad habitat.
  - m. Herbicides and pesticides will not be used in the water management zones around potential breeding sites.
5. If Oncor cannot avoid habitat or minimize impacts to the Houston toad, Oncor will mitigate for unavoidable impacts at a 3:1 ratio (3 acres of conservation for each acre of impact).
  6. Mitigation will follow the Mitigation Strategies described below.
  7. Send annual reports to the Austin ESFO and the Clear Lake ESFO.

#### AMERICAN BURYING BEETLE

- AA. Oncor (Permittee) is authorized to impact up to 3,972 acres of American burying beetle (*Nicrophorus americanus*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid American burying beetle habitat where possible, particularly preserves or parks containing this species.
  2. If Oncor cannot avoid American burying beetle habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. If Oncor cannot avoid habitat or minimize impacts to the American burying beetle, Oncor will mitigate for unavoidable impacts at a 1:1 ratio (1 acre of conservation for each acre of impact).
  4. Mitigation will follow the Mitigation Strategies described below.
  5. Send annual reports to the Austin ESFO and the Arlington ESFO.

#### LARGE-FRUITED SAND VERBENA

- BB. Oncor (Permittee) is authorized to impact up to 5.5 acres of large-fruited sand-verbena (*Abronia macrocarpa*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid large-fruited sand-verbena habitat where possible, by going around or spanning it.
  2. If Oncor cannot avoid large-fruited sand-verbena habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. If Oncor cannot minimize impacts to large-fruited sand-verbena habitat, Oncor will mitigate for unavoidable impacts at a 2:1 ratio (2 acres of conservation for each acre of impact).

4. If large-fruited sand verbena are found within existing or new rights-of-way, then those plants will be temporarily fenced off with chain-link fencing during construction, and clearing will be avoided or minimized around the plants.
5. Mitigation will follow the Mitigation Strategies described below.
6. Send annual reports to the Austin ESFO and the Clear Lake EFSO.

#### NAVASOTA LADIES'-TRESSES

- CC. Oncor (Permittee) is authorized to impact up to 943 acres of Navasota ladies'-tresses (*Spiranthes parksii*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid Navasota ladies'-tresses habitat where possible, by going around or spanning it.
  2. If Oncor cannot avoid Navasota ladies'-tresses habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. If Oncor cannot minimize impacts to Navasota ladies'-tresses habitat, Oncor will mitigate for unavoidable impacts at a 2:1 ratio (2 acres of conservation for each acre of impact).
  4. If Navasota ladies'-tresses are found within existing or new rights-of-way, then those plants will be temporarily fenced off with chain-link fencing during construction, and clearing will be avoided or minimized around the plants.
  5. Mechanical clearing (e.g., mowing) within Navasota ladies'-tresses habitat is not authorized during the months of October and November to reduce damaging flower stalks. Unavoidable disturbance to potential habitat outside of October and November will be returned to preconstruction contours following construction.
  6. Mitigation will follow the Mitigation Strategies described below.
  7. Send annual reports to the Austin ESFO and the Clear Lake ESFO.

#### PECOS SUNFLOWER

- DD. Oncor (Permittee) is authorized to impact up to 9 acres of Pecos sunflower (*Helianthus paradoxus*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid Pecos sunflower habitat where possible, by going around or spanning it.
  2. If Oncor cannot avoid Pecos sunflower habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. If Oncor cannot minimize impacts to Pecos sunflower habitat, Oncor will mitigate for unavoidable impacts at a 2:1 ratio (2 acres of conservation for each acre of impact).
  4. Pecos sunflowers are found within existing or new rights-of-way, then those plants will be temporarily fenced off with chain-link fencing during construction, and clearing will be avoided or minimized around the plants.
  5. Within Pecos sunflower habitat:
    - a. aerial electric lines will span known spring habitats;
    - b. the placement of fill dirt in cienegas will be avoided;
    - c. to preserve soil salinity in project rights-of-way (outside of cienegas), local soils will be used as fill when possible, rather than importing soils from offsite;

- d. clearing will be done prior to August, the primary growth period; and
- e. natural hydrologic regimes will be preserved by avoiding or spanning water bodies and returning disturbed land to preconstruction contours following construction.
6. Mitigation will follow the Mitigation Strategies described below.
7. Send annual reports to the Austin ESFO and the New Mexico ESFO.

## TEXAS POPPY MALLOW

- EE. Oncor (Permittee) is authorized to impact up to 64 acres of Texas poppy-mallow (*Callirhoe scabriuscula*) habitat within the covered area, during the permit term. The following conditions also apply:
1. When routing new transmission lines Oncor will avoid Texas poppy-mallow habitat where possible, by going around or spanning it.
  2. If Oncor cannot avoid Texas poppy-mallow habitat, Oncor will minimize impacts by following existing rights-of-way.
  3. If Texas poppy mallows are found within existing or new rights-of-way, then those plants will be temporarily fenced off with chain-link fencing during construction, and clearing will be avoided or minimized around the plants.
  4. Mechanical clearing (e.g., mowing) within Texas poppy-mallow habitat will be deferred until after July when the fruit has matured.
  5. If Oncor cannot minimize impacts to Texas poppy-mallow habitat, Oncor will mitigate for unavoidable impacts at a 2:1 ratio (2 acres of conservation for each acre of impact).
  6. Mitigation will follow the Mitigation Strategies described below.
  7. Send annual reports to the Austin ESFO.

## MITIGATION STRATEGIES

- FF. The preferred mitigation strategy is to purchase conservation credits from a Service-approved conservation bank. Credits to be acquired will be determined based on the number of acres of potential and/or occupied habitat impacted for the covered species and the agreed-upon mitigation ratio. The number of credits allowed for each preserve will be based on, and commensurate with, Service policy and guidelines regarding mitigation (such as, but not limited to, the *Guidance for the Establishment, Use, and Operation of Conservation Banks*) in order to ensure that the quality of the mitigation is equal to or greater than the quality of the habitat impacted.
- GG. If a species-specific, Service-approved Conservation Bank is not available or sufficient credits in such a bank are not available, Oncor may coordinate directly with a conservation organization and the Service to discuss potential mitigation options. Priority would be given to purchase of conservation lands (conservation easement or fee title) with management costs in perpetuity included in the purchase agreement. The conservation organization must be responsible for managing the land in perpetuity and as appropriate for the specific species for which mitigation is being provided. When a viable option has been identified it will be officially submitted to the Austin ESFO for approval. Upon Service approval, the appropriate amount of funding will then be transferred from Oncor to the conservation organization to implement mitigation. Mitigation will be in place prior to occurrence of the take or impact (i.e., construction through habitat).

- HH. If purchase of land is not a viable mitigation option (i.e., mitigation necessary to offset impacts does not generate sufficient funds to purchase a reasonable amount of land to support the conservation of the species), additional options will be explored (e.g., provide funding for enhancement of an existing management area that was not put in place as mitigation for any previous impact). Potential mitigation options will be species-specific and final determinations must be approved by the Service. Mitigation will be in place prior to occurrence of the take or impact (i.e., construction through habitat).
- II. If the mitigation strategies above are not viable, Oncor may develop or form a species-specific committee to include representatives from the Applicant, the Service, and Texas Parks and Wildlife Department, as well as a private- or academic-based species expert, as necessary, to explore other options based on species-specific conservation needs. The final committee must be approved by the Service. Mitigation will be in place prior to occurrence of the take or impact (i.e., construction through habitat).

## REPORTING REQUIREMENTS

- JJ. Annual reporting:
1. Oncor will provide an annual report, due on January 1 of each year, to:
    - a. U.S. Fish and Wildlife Service  
Austin Ecological Services Field Office  
10711 Burnet Road, Suite 200  
Austin, Texas 78758
    - b. U.S. Fish and Wildlife Service  
Arlington Ecological Services Field Office  
2005 NE Green Oaks Blvd, Suite 140  
Arlington, Texas 76006
    - c. U.S. Fish and Wildlife Service  
Clear Lake Ecological Services Field Office  
17629 El Camino Real, Suite 211  
Houston, Texas 77058
    - d. U.S. Fish and Wildlife Service  
East Texas Ecological Services Sub-Office  
2221 North Raguel Street  
Lufkin, Texas 75904
    - e. U.S. Fish and Wildlife Service  
Aransas National Wildlife Refuge  
P.O. Box 100  
Austwell, Texas 77950
    - f. U.S. Fish and Wildlife Service  
New Mexico Ecological Services Field Office  
2105 Osuna NE  
Albuquerque, New Mexico 87113

- g. U.S. Fish and Wildlife Service  
Oklahoma Ecological Services Field Office  
9014 East 21<sup>st</sup> Street  
Tulsa, Oklahoma 74129
  - h. U.S. Fish and Wildlife Service, Region 2  
Habitat Conservation Plans and Research Permits  
P.O. Box 1306, Room 4102  
Albuquerque, New Mexico 87103
2. The report will document the activities and Applicant's permit compliance for the previous year, thus documenting progress toward the goals and objectives of the HCP and demonstrating compliance with the terms and conditions of the incidental take permit. The annual report will include:
- a. descriptions of the covered activities undertaken for installation of new facilities and repair/maintenance of existing facilities;
  - b. a description, including acreage, of occupied habitat impacted;
  - c. a description, including acreage of potential habitat impacted;
  - d. any additional observance of take;
  - e. a county-by-county tally (and for the golden-cheeked warbler and black-capped vireo a tally by recovery region) of the amount of habitat directly or indirectly impacted to ensure that the authorized level of take is not exceeded;
  - f. results of any presence/absence or habitat assessment surveys;
  - g. fees assessed;
  - h. an account of all mitigation credits purchased and mitigation fees paid and receipts received, identified by activity, project, species impacted, and county;
  - i. an evaluation of the effectiveness of the avoidance, minimization and conservation measures and BMPs;
  - j. an evaluation of the implementation and effectiveness of the terms of the Permit, including financial obligations;
  - k. recommendations for improvement; and
  - l. any other appropriate information to document Applicant's compliance with the Permit.

KK. Information provided in the annual report will be used to determine what, if any, adaptive management strategies should be implemented to most effectively implement the conservation program outlined in the HCP and to ensure that management changes in response to new, appropriate data are implemented in a timely fashion.

### **Public Comments on the EIS**

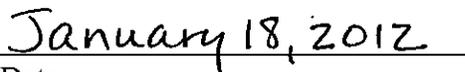
The Service prepared an EIS for Oncor's ITP application. A Notice of Availability was published in the *Federal Register* notifying the public of the availability of the draft EIS and HCP from July 15, 2011, through October 13, 2011, for a 90-day period (76 FR 41808). Three public hearings were held between August 23 through August 25, 2011, in the cities of Arlington, Sweetwater, and Waco, Texas. The public comment period closed on October 13, 2011.

Responses to our request for comments were received from three Federal agencies and one state agency. The National Park Service had no comment, the Environmental Protection Agency had “no objections” to the proposed project, and the Federal Aviation Administration encouraged Oncor to coordinate with them on any projects that would affect navigable airspace. Texas Parks and Wildlife Department had more substantial comments, including a request to clarify how mitigation would be implemented, a request to be included on any committees formed to determine mitigation strategies, the control of invasive species, covering additional rare species within the action area, and obtaining any necessary permits from them on state listed species. The Service believes these comments are addressed and reasonably accommodated in the final documents.

**For More Information**

The Final EIS is available at the Service’s Albuquerque Regional Office or Austin, Texas Field Office. A copy of this Record of Decision will be made available on the website or at the offices listed above. For additional information, call Mr. Marty Tuegel at (505) 248-6651.

  
Joy E. Nicholopoulos  
Deputy Regional Director  
U.S. Fish and Wildlife Service  
Southwest Region  
Albuquerque, New Mexico

  
Date