



FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES

16 USC 1539(a)

REGULATIONS (Attached)

50 CFR §§ 13 & 17

3. NUMBER

TE- 073684-0

4. RENEWABLE

YES

NO

5. MAY COPY

YES

NO

6. EFFECTIVE

4/30/2004

7. EXPIRES

4/30/2054

1. PERMITTEE

Malpai Borderlands Group
6226 Geronimo Trail Road
P.O. Drawer 3536
Douglas, AZ 85608

8. NAME AND TITLE OF PRINCIPAL OFFICER (if # 1 is a business)

WILLIAM MCDONALD – EXECUTIVE DIRECTOR

9. TYPE OF PERMIT

ENDANGERED SPECIES INCIDENTAL TAKE /
ENHANCEMENT OF SURVIVAL

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

The approximately one million acres (404,700 hectares) of ranch lands in Cochise County, Arizona and Hidalgo County, New Mexico known as the Malpai Borderlands.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (copy enclosed).

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON ATTACHED ALSO APPLY

12. REPORTING REQUIREMENTS

ANNUAL REPORT DUE: FEBRUARY 15.

ISSUED BY:

TITLE

ACTING

REGIONAL DIRECTOR

DATE

4/20/04

E. The authorization granted by this permit is subject to:

1. Full and complete compliance with, and implementation of, the terms and conditions of the Safe Harbor Agreement (Agreement), Biological Opinion, and all specific terms and conditions contained in this permit. These permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the Agreement or other documents associated with the section 10(a)(1)(A) enhancement of survival permit.
2. Full and complete compliance with any applicable local, state, or Federal law, regulation, or restriction governing the site and those conservation practices (as described within the Agreement) pertaining to, but not limited to, wildlife, land use, water quality, air quality, local economy, and cultural resources.
3. Compliance with all necessary and required permits and licenses applicable to fulfillment of the Agreement.

F. This permit shall be issued for a period of fifty (50) years, and only provides for incidental take of Chiricahua leopard frogs as specified in the Agreement. Incidental take for any other listed species is not authorized. The permit may be renewed at the end of the permit period, should the Permittee and the FWS agree.

G. The FWS's current Safe Harbor policy provides that additional land, water, or resource restrictions or financial obligations shall not be required of the Permittee or their successors or assigns for the Chiricahua leopard frog on the specified portions of the property to be enrolled under the Agreement beyond the level of conservation measures provided for in this permit and the Agreement, if the permit and Agreement are fully and completely complied with and implemented, above baseline conditions.

H. By February 15 of each year that the permit is valid, the Permittee will submit an annual report to the FWS's offices appearing in conditions P and Q, below. The Permittee will provide:

1. A narrative explanation describing the amount of potential Chiricahua leopard frog habitat created, enhanced, or restored as a result of the specific management activities performed.
2. All data and observations from all studies, burn plans, and/or experimental designs conducted that year.
3. A summary of the location(s) and circumstance(s) where incidental take of Chiricahua leopard frogs was anticipated or occurred. Identify the amount of habitat and/or number of leopard frogs taken, when the take occurred, and whether it was the result of ongoing conservation activities, or a return to baseline due to a completed Agreement or early Agreement termination. The Permittees will provide an explanation of any early termination.

4. A narrative explanation and results of all compliance, impact, and monitoring activities.

I. Permittee may incidentally take Chiricahua leopard frogs and return to baseline by ceasing management activities benefiting the Chiricahua leopard frog and/or undoing improvements to enrolled habitat, as further described in the Agreement, but only in accordance with the Agreement. Incidental take is allowed during early termination in accordance with section 3.2 of the Agreement.

J. If during the tenure of this permit the project design and/or extent of habitat impact described in the Agreement and/or permit is altered, such that there may be an increase in the anticipated take of the Chiricahua leopard frog, the Permittee is required to contact the FWS and obtain authorization and/or amendment of the permit before commencing any activities that might result in take beyond that described in the Agreement and/or permit.

K. This permit authorizes incidental take on enrolled properties of up to all Chiricahua leopard frogs in populations not included in the baseline for a Participating Landowner, Neighbor, or State Agency that has enrolled in the Permittee's Agreement and is implementing all required minimization measures in the Agreement and any Conservation Enhancement Measures agreed to in a certificate of inclusion. This take can occur through the following specific landowner activities: 1) "routine" stock tank repair and maintenance or "emergency" stock tank repair and maintenance; 2) construction of any stock tank improvement projects or facilities needed for frog management purposes and specifically described in the landowner's Certificate of Inclusion, including fences, pipelines, or road segments immediately associated with such projects; 3) capture, translocation, and/or temporary holding of leopard frogs during tank maintenance and improvement activities, if necessary to minimize mortality or injury to frogs, or to implement the Agreement's conservation program; 4) livestock grazing and use either in the immediate vicinity of any stock tanks that support leopard frogs (e.g., resulting in destruction of egg masses or tadpoles) or at other ranch locations (e.g., resulting in take of migrating frogs); 5) livestock grazing and use where such use results in take of leopard frogs as a result of inadvertent disease transmission, provided that the landowner has undertaken necessary measures to minimize such take as described in the Agreement; 6) take associated with the retirement or removal of a stock tank, if such eventuality is needed for ranch management purposes; 7) any normal day-to-day ranch management activity, such as operation of cars and trucks, if such activities result in occasional and inadvertent takings of frogs moving across roads or other ranch properties; and 8) returning of an enrolled property to baseline conditions. These take authorizations are contingent on adequate implementation of all commitments required by the Agreement.

The Agreement, if approved, and associated permit does not authorize take of leopard frogs that might occur as a result of prescribed burns, construction of roads or other ranch facilities not associated with specific leopard frog conservation projects or actions, and activities resulting in a change to a leopard frog population site from a customary ranching use to a non-ranching use (e.g., development of the site for non-ranching, commercial purposes), except as provided for Participating Neighbors (section 2.6.5).

The Agreement does not authorize take below the established baseline for any activity, except for take incidental to otherwise lawful conservation activities identified within the Agreement. These activities include translocation of individuals to establish new population sites or repopulate extirpated sites, salvage and holding of individuals to minimize impacts of stock tank maintenance activities, and habitat enhancement at sites with populations that are part of the established baseline.

L. This permit and each of its terms and conditions shall be binding on, and for the benefit of, the Permittees and all landowners that enroll in the Agreement through certificates of inclusion. All transfer rights of the permit and the Agreement, and transfer of ownership of enrolled properties will be subject to provisions for transfer of obligations and rights to a new Permit holder and new landowners, if the new permit holder and landowner become party to the original agreement and enhancement of survival permit.

M. If at any time during the duration of the permit the FWS determines that the status of the species has declined to the point where the continuation of the permitted activity would be likely to result in jeopardy to the Chiricahua leopard frog, the FWS may revoke the Permittee's Section 10(a)(1)(A) permit. However, the FWS will do everything possible to avoid this situation.

N. Acceptance of the permit serves as evidence that the Permittee understands and agrees to abide by the terms and conditions of the permit and all applicable sections of 50 CFR 13, 17, and 21 pertinent to issued permits.

O. Upon locating a dead, injured, or sick Chiricahua leopard frog, or any other endangered, threatened, or candidate species, the Permittee is required to contact the FWS's Law Enforcement Office in Mesa, Arizona (480) 967-7900, 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 their contractor(s)/subcontractor(s) have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

P. For purposes of monitoring compliance and administration of the terms and conditions of this permit, the contact office for the FWS is:

U.S. Fish and Wildlife Service
Arizona Ecological Services Field Office
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210
Facsimile: (602) 242-2513

Q. Annual reports, and any correspondence generated from implementation, modification, or administration of the permit, shall be provided by the Permittee to the contact office in Condition P above and:

U.S. Fish and Wildlife Service
Endangered Species Division
500 Gold Avenue SW, Room 4012
Albuquerque, New Mexico 87102
Telephone: (505) 248-6920
Facsimile: (505) 248-6922

— End Permit # TE-073684-0 —