



CEHMM
Center of Excellence for Hazardous Materials Management



Texas Hornshell and other Riparian Species Candidate Conservation Agreement (CCA) and Candidate Conservation Agreements with Assurances (CCAAs) for the Black and Delaware Rivers in New Mexico and Texas

Frequently Asked Questions

THE BASICS

What action is the FWS taking?

The U.S. Fish and Wildlife Service (FWS) proposed to list the Texas hornshell in August 2016. The FWS is now publishing a notice announcing the availability of a draft Candidate Conservation Agreement (CCA) and draft Candidate Conservation Agreement with Assurances (CCAA) for the Texas hornshell and other covered species including the Rio Grande River cooter (turtle) and Pecos springsnail, and two fishes – the gray redhorse, blue sucker. In addition, the FWS is making available a draft environmental assessment and a permit application. Publication of the notice will begin a 30-day comment period. Public comments will be accepted through August 7, 2017.

What is a Texas hornshell?

The Texas hornshell is a medium-sized freshwater mussel with a dark brown to green, oblong shell that's flattened from side to side. Adults can grow to over 4.5 inches. The Texas hornshell is native to the Rio Grande drainage in Texas and New Mexico as well as along Mexican gulf coastal river systems. Currently, five known populations of Texas hornshell remain in the U.S.: the Black River of New Mexico; and the Pecos River, Devils River, Lower Canyons of the Rio Grande, and the Lower Rio Grande near Laredo, Texas. They occur in medium to large rivers, mostly along crevices, undercut riverbanks, travertine shelves, and under large boulders next to straight sections of river or creek.

Once abundant throughout rivers in southern New Mexico and the Rio Grande basin in Texas and Mexico, today it is the only native mussel remaining in New Mexico and is scarce in Texas, occupying only 15% of its historical U.S. range. River fragmentation and loss as a result of impoundments and reduced water quality and quantity are negatively impacting the Texas hornshell and other freshwater mussels across the Southwest. On August 10, 2016, the Service [proposed](#) to protect the mussel as endangered under the Endangered Species Act.

CANDIDATE CONSERVATION AGREEMENTS

What is a CCA and how may it benefit me?

Candidate Conservation Agreements (CCA) are formal agreements between the FWS and other federal agencies that address species' conservation needs. CCAs can cover proposed or candidate species, federally listed species or species likely to become candidates.

One of the primary reasons for the development of the CCA program is to address concerns by landowners/mineral lessees about the potential regulatory implications of having a listed species on their land or mineral lease.

The Texas hornshell CCA is a voluntary conservation agreement between the FWS, the Bureau of Land Management (BLM), and Center of Excellence (CEHMM) for actions (such as oil and gas

development) occurring on Federal (BLM) land or Federal minerals. Participation in the CCA provides a high level of certainty that if parties implement conservation activities, they will not be subject to additional restrictions if the hornshell becomes listed under the Endangered Species Act (ESA).

What is a CCAA and how may my participation benefit me?

Candidate Conservation Agreements with Assurances (CCAAs) are voluntary conservation agreements like the CCA, but they apply to non-Federal lands and developers. CEHMM together with private land Participants, and the New Mexico State Land Office (NMSLO) with their lessees, agree to help reduce threats to candidate species. In return, Participants receive legal assurances that they will not be subject to additional restrictions if the species becomes listed under the ESA. CEHMM will hold the ESA 10(a)1(a) "enhancement of survival permit" for private land Participants and NMSLO will hold a similar permit for Participants on State Lands.

What is the difference between a CCA and CCAA?

A CCA is the agreement needed when a federal permit is involved, likely from BLM, for activities that occur on federally managed surface or Federal minerals. A CCAA is for activities that do not have a Federal nexus (*i.e.*, private/State surface or mineral ownership).

How would the CCA/As help the Texas hornshell?

CCAs and CCAAs are intended to reduce or remove identified threats to a species. For the Texas hornshell, the agreements will be focused on activities that restore, maintain, enhance and create habitat for the species. Four other species, the Rio Grande River cooter, gray redhorse, blue sucker and Pecos springsnail, will be covered by the agreements. They share the same habitat and therefore conservation actions undertaken for the Texas hornshell will benefit them as well.

CCA/As are effective because they encourage voluntary participation from users of the land whose operations would most likely be affected if one or more of these species were to be listed for

protection under the ESA. The idea is that if proper conservation measures are being implemented prior to a listing, increased regulation for protecting the species might be unnecessary. The most significant benefit of the CCA/CCAAs is that they will guide conservation actions that improve the status of these species and their habitat within the Black and Delaware rivers. However, the FWS cannot absolutely guarantee that participation in these agreements will prevent the listing of any species.

INFORMATION FOR LANDOWNERS AND LESSEES

How will I know if I am within an area that would benefit the species and be eligible to enroll?

Lands within your area that are eligible for enrollment are illustrated in the map below. When the administrator (CEHMM or NMSLO) is working with an interested party, they will utilize geographic information system (GIS) data to determine which management zone the property or lease in question is located, and whether it contains suitable habitat for the included species.

If I do not have property along a river, can I participate?

The area identified for enrollment includes lands outside of the rivers and associated floodplains, to encompass drainages that may impact the river system. If your property or lease is located in the enrollment area, or if your lease is adjacent to suitable or occupied habitat, the species and you would benefit from a CCA or CCAA. *Enrollment may even increase the value of your property/lease.*

By enrolling in a CCAA, how do I contribute to the species' conservation?

There are three general ways to assist in conservation:

- Performing Conservation Measures on your identified conservation lands
- Modifying how you conduct activities elsewhere on your enrolled lands (water pumping or drilling) and/or
- Contributing funds for conservation priorities elsewhere

Your agreed-to conservation commitment will be clearly stated in your “Certificate of Inclusion or Participation” – the instrument by which you enroll and are eligible for regulatory assurances.

What are the practices I would agree to implement?

A standard set of conservation measures are included in the agreements. These measures are aimed at protecting water quantity and quality, establishing a minimum water flow, and preventing toxic spills and erosion. Each Certificate of Inclusion (CI) or (CP) will describe the Conservation Measures for each participant.

What other requirements are included in my Certificate?

Besides in-kind work or contributed funding, terms of individual agreements will be tailored to the specific lease(s) based on the species/habitat needs on the lease(s). For projects involving federal minerals, most of the conservation measures are already applied as lease stipulations or conditions-of-approval for the permitted activity. Examples include planning locations to avoid sensitive habitats, spill and erosion prevention, ceasing of pumping for water sales when the river is at minimum flow levels, and avoiding construction/drilling activities in certain areas. Other conservation measures can be designed to further enhance or protect habitat as necessary on a case-by-case basis.

How long do I have to complete conservation measures on my property?

The conservation measures must be completed, or progress should be made, by the date agreed upon in the Certificate of Inclusion or Participation. CEHMM will monitor and report progress on conservation measures implemented under each agreement.

What is the difference between “Enrolled Lands” and “Conservation Lands”?

Enrolled lands are *all* the lands on the property included in the agreement. Conservation lands are only the lands within the total enrolled where

Conservation Measures will be applied to benefit the species. The number of conservation acres could equal the number of enrolled acres.

What if I want to discontinue participation?

The CCA and CCAA are voluntary agreements, so landowners or lessees can choose to cancel enrollment at any time. If a landowner or lease holder chooses to cancel their agreement, the enrolled lands would no longer enjoy the assurances provided under the permit if any of the species are listed under the Endangered Species Act.

How long is a Certificate good for?

For the life of the plan. The Certificate is good for as long as the species described in the agreement are considered “candidate species” or until the participant opts out of the agreement.

What if I have property or leases on State, Federal and Private Land?

If you enroll on all three property types, you will need a Certificate of Participation for Federal lands, and a Certificate of Inclusion (CI) for private land that will be developed with CEHMM. A separate CI will be developed with NMSLO for State Trust land enrollments. CEHMM will then work with NMSLO to help ensure that the CIs in State and private lands have the same conservation measures.

Where will my contributed funds go?

Funds are sent to CEHMM. Conservation projects and priorities are set by a team consisting of the FWS, States, and BLM. CEHMM and NMSLO are responsible for implementing (contracting), monitoring, and reporting on projects. Priority projects include fixing dangerous low-water crossings, sediment and erosion control, and gauge installation.

How long do I have to sign up under a CCA/CCAA?

You can sign up a property at any time until the species becomes listed (typically 30 days following a final listing determination). After a listing decision, the species is no longer a “Candidate” for listing, so the CCA/CCAA is no longer available for new enrollment. Agreements will be processed on a first-

come-first-served basis and priority will be placed on proposed enrollments that best benefit the included species. [Note: FWS is committed to reaching a final determination for the Texas hornshell by September 30, 2017.]

What is the advantage of a “Certificate of Inclusion or Participation”?

If one of these species were listed, Participants who have a Certificate would only be delayed about 1-2 months for the Conference Opinion on the agreement to roll over into a Biological Opinion. At that time, they could continue their operations. Those that do not have a certificate would need to enter a timely process to apply to FWS for provisions allowing for permitting the “taking” of a listed species.

Why is there a Certificate of Inclusion or Certificate of Participation?

“Certificate of Inclusion” is an established term used by FWS that refers to participants who have assurances granted through a CCAA. Because CCAAs have different legal parameters (assurances) than CCAs (high-degree of certainty), a different term, “Certificate of Participation,” is being used to identify participants in a CCA.

If I have an approved Application to Drill (APD), but it has not been drilled, and the species gets listed, is my approved APD still good?

No. The APD analysis was based on the species being Candidates, and not a listed species under the Endangered Species Act. Once it is listed, consultation will be required for all new surface disturbing activities that do not have a Certificate. Only after the consultation is completed may a new permit be issued.

CONSERVATION AGREEMENT PROGRAM AND IMPLEMENTATION

Cite the exact wording in the regulations for “Assurance” under a CCAA.

Federal Register / [Vol. 64, No. 116](#) / Thursday, June 17, 1999 / Notices/ Announcement of Final Policy for CCAA: Under the policy, non-Federal property

owners, who enter into a Candidate Conservation Agreement with Assurances that commit them to implement voluntary conservation measures for proposed or candidate species, or species likely to become candidates or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. These assurances will be provided in the property owner’s Agreement and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act.

If participants get “Assurances” under a CCAA, what do we receive under a CCA?

Under the ESA, Federal agencies have a higher obligation to conserve listed species. As a result, FWS cannot provide assurances to other Federal agencies through the CCA. FWS will consult (Sec 7) on the CCA for the proposed hornshell and issue a “Conference Opinion”. If the hornshell is listed, the Conference Opinion for the CCA and associated incidental take statement may be adopted as a Biological Opinion if no significant new information is developed or no significant changes were/are made to the CCA that would alter the content or determinations of the Conference Opinion.

If the species gets listed, will it only affect activities on Federal lands or minerals?

No. If a species gets listed, it is listed and protected on all land ownerships (federal, state, private).

If I contribute funds, are the funds used for habitat improvement on my lease?

Not necessarily. The funds will be used to complete the highest priority projects that benefit the species. Projects are identified and prioritized by an interagency team. CEHMM is responsible for keeping the list of prioritized conservation projects for implementation, either through contributed funds or in-kind work. Contributions made on NMSLO lands will be directed for habitat improvement on NMSLO lands.

Who decides where the contributions are spent?

A team of biologists from the FWS, State and BLM will prioritize the projects to ensure the most important projects are completed first.

What types of projects will be completed with the contributed funds?

Projects implemented will provide a more secure situation for Texas hornshell and other river species. These activities could include direct alteration and improvement in habitat conditions through contract labor or building knowledge and awareness through research, monitoring, and public outreach/education. Specifically, projects will focus on improving water quality and quantity. Priorities for funding include improving low water crossings, reducing erosion, and spill prevention. A high priority is to determine the minimum flow necessary to sustain populations of these species within the Black and Delaware rivers.

What are CEHMM and NMSLO's role?

CEHMM and NMSLO will:

- Implement and administer the agreements;
- Determine the conservation commitment and enroll participants in the program
- Provide technical assistance to participants
- Conduct compliance reviews of projects being implemented by participants
- Utilize contributed funds to contract and inspect projects
- Monitor projects using existing FWS, BLM, and NMDGF monitoring protocols in order to determine success and adaptations needed
- Conduct outreach and public education efforts to promote the conservation of the species
- Secure permission to complete projects on private and State lands, where appropriate
- Lead annual meetings with the FWS, BLM, New Mexico Department of Game and Fish, and interested participants to review progress, seek potential solutions for factors that hamper conservation, and preview future projects

- Track expenditure of funds and prepare an annual report; Hold and distribute the Certificates for each enrolled property, with copies to all parties (i.e., Participants, FWS, and BLM, as applicable).

If I acquire a certificate and I sell my lease, does the certificate transfer to the new owner?

Yes. Certificates are tied to the land but you would need to contact CEHMM/NMSLO to transfer the enrollment. However, the new owner of the lease can still opt out at any time.

Could an enrolled lease increase its value if I choose to sell the lease?

Yes, because the new lessee/operator will retain the benefits of the agreement and continue to operate if the species is listed under the Endangered Species Act.

How can I get more information?

CEHMM

(For CCA or Private lands CCAA)

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FWS

(for CCA or CCAA)

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Frank Weaver
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New Mexico State Land Office

(for State Lands CCAA)

Laura Riley
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(505) 827-5760

Bureau of Land Management

(For CCA)

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We can set up a meeting to assist you in evaluating your lands.

For more information visit our websites:

<http://www.cehmm.org>
<http://www.fws.gov/southwest/es/NewMexico/>
<https://www.blm.gov/new-mexico>