

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R8-ES-2016-N231;
FXES1114080000-178-FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; San Diego Gas and Electric, San Diego, Riverside, and Orange Counties, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the San Diego Gas and Electric Company (SDG&E) for an incidental take permit for 15 animal species pursuant to the Endangered Species Act of 1973, as amended. SDG&E is also seeking assurances for 22 plant species under the Service's "No Surprises" regulation. We are requesting comments on the permit application and on the preliminary determination that the proposed habitat conservation (HCP) qualifies as a "low-effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and the associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before January 30, 2017.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760-431-9624.

Obtaining Documents: To request copies of the application, proposed HCP, and EAS, contact the Service, by telephone at 760-431-9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760-431-9440. If you use a telecommunications device for the deaf,

please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from the San Diego Gas and Electric Company (SDG&E) for a 5-year incidental take permit for 15 animal species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The application addresses the potential "take" of 15 animal species and impacts to 22 plant species associated with routine utility infrastructure operation and maintenance (O&M) activities and minor new construction within SDG&E's service territory, which covers San Diego County and portions of Orange and Riverside Counties, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented by SDG&E as described in the applicant's proposed habitat conservation plan (HCP).

The HCP is designed to support the continuation of activities covered by Endangered Species Act (ESA) Permit No. PRT-809637, which is a multi-species incidental take permit issued by the Service to SDG&E in December 1995 (1995 ESA permit). The 1995 permit is subject to SDG&E's compliance with its 1995 Subregional Natural Community Conservation Plan/Habitat Conservation Plan (1995 NCCP/HCP) and a 400-acre cap on habitat impacts. Under this new HCP, SDG&E would continue to apply all of the conservation efforts, mitigation measures, and operational protocols implemented under the 1995 NCCP/HCP. The HCP would allow a maximum of 60 acres of impact over a 5-year permit term.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a "low-effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Endangered Species Act and its implementing Federal regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16

U.S.C. 1538). "Harm" includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Take of plant species is not prohibited under the Endangered Species Act and therefore cannot be authorized under an incidental take permit. However, 22 plant species, including 16 federally listed plants, are proposed to be included on the permit in recognition of the conservation benefits provided to them under the HCP.

Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively. All species included on the incidental take permit, if issued, would receive assurances under the Service's "No Surprises" regulation (50 CFR 17.22(b)(5) and 17.32(b)(5)).

SDG&E seeks incidental take authorization for 15 animal species, including 8 federally endangered, 3 federally threatened, and 4 unlisted species, and assurances for 22 plant species, including 11 federally endangered, 5 federally threatened, and 6 unlisted species. Collectively the 37 listed and unlisted species are referred to as "Covered Species" in the HCP. The permit would provide take authorization for all 15 animal species and assurances for all 22 plant species identified in the HCP as "Covered Species" during the requested permit term of 5 years.

If we approve the permit, incidental take of the 15 animal species and impacts to 22 plant species listed in Table 2 of the HCP would occur as a result of covered species habitat removal at a rate of 5 to 12 acres annually over the course of the 5-year permit term, or up to a 60-acre maximum impact. The 60-acre habitat impact, including take of covered animal species, would be incidental to SDG&E's O&M activities on existing infrastructure and minor new construction within their service territory in San Diego, Orange, and Riverside Counties.

To minimize and mitigate impacts to covered species, including take of animal species, from O&M activities and minor new construction, SDG&E will implement all of the conservation efforts, mitigation measures, and operational protocols identified under

their 1995 NCCP/HCP. Specific measures include implementing 61 operational protocols to minimize impacts to covered species and deducting mitigation credits from existing preserved and managed lands conserved by SDG&E to benefit the covered species.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to 37 covered species. If we approve the permit, take of the 15 animal species and impacts to 22 plant species would be authorized for SDG&E to conduct O&M activities and minor new construction. In the proposed HCP, the applicant considers alternatives to the taking of covered species under the proposed action. A “No Action” alternative was considered where SDG&E would continue to conduct its activities in accordance with the applicant’s 1995 NCCP/HCP until the 400-acre cap on habitat impacts is reached. Simultaneously, SDG&E would work with the Service and the California Department of Fish and Wildlife to develop and adopt a revised NCCP/HCP. However, if this process is not completed by the time the 400-acre cap is reached, SDG&E would have to suspend its routine O&M activities until the process is complete or seek individual permits for distinct activities. Any suspension would pose significant risks to SDG&E’s ability to provide safe and reliable service to its customers and pursuing individual permits for routine activities would impose significant administrative burdens and costs and potential delays on SDG&E.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a “low-effect” plan as defined by the *Habitat Conservation Planning Handbook* (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on

other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take and assurances, as appropriate, for the 37 covered species.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Karen A. Goebel,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Guidelines for Implementing the Indian Child Welfare Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Department’s new *Guidelines for Implementing the Indian Child Welfare Act*. These guidelines are intended to assist those involved in child custody proceedings in understanding and uniformly applying the Indian Child Welfare Act (ICWA) and the Department’s regulations. All such parties—including the courts, State child welfare agencies, private adoption agencies, Tribes, and family members—have a stake in ensuring the proper implementation of this important Federal law designed to protect Indian children, their parents, and Indian tribes.

ADDRESSES: The guidelines are available at: <http://bia.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>. You can also reach this Web page by going to www.bia.gov and clicking the “Indian Child Welfare Act” icon on the right-hand side of the page.

FOR FURTHER INFORMATION CONTACT: For information on implementation of these guidelines, please contact Ms. Debra Burton, ICWA Specialist, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 513–7610; debra.burton@bia.gov. For information regarding the development of these guidelines, please contact Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680; elizabeth.appel@bia.gov.

SUPPLEMENTARY INFORMATION: The ICWA is a statute passed by Congress and codified in the United States Code (U.S.C.) at 25 U.S.C. 1901 *et seq.* The Department promulgated ICWA regulations to implement the statute; the regulations were published in the **Federal Register** at 81 FR 38778 (June 14, 2016) and will be codified in the Code of Federal Regulations (CFR) at 25 CFR part 23.

The Department is now issuing *Guidelines for Implementing the Indian Child Welfare Act* to complement the