Bioethics Advisory Commission (NBAC) by Executive Order 12975, October 3, 1995. The purpose of NBAC is to provide advice and make recommendations to the National Science and Technology Council and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Friday, December 13, 1996

Morning Session

7:30–11:30 a.m. Discussion of issues by subcommittee members regarding the use of genetic information and technology.

11:30–12:30 p.m. Lunch.

Afternoon Session

12:30–3:00 p.m. Continuation of discussion by subcommittee members of issues regarding the use of genetic information and technology.

3:00–3:30 p.m. Public comment.

3:30 p.m. Adjourn.

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT: Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax 301–480–6900.

Dated: November 22, 1996.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 96–30540 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–17–M

Notice of Meeting of the Human Subjects Subcommittee of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), this notice is hereby given to announce an open meeting of the Human Subjects Subcommittee of the National Bioethics Advisory Commission (NBAC). The purpose is to discuss issues regarding the protection of human research subjects.

DATES: Monday, December 16, 1996, 7:30 a.m. to 3:30 p.m.

PLACE: National Institutes of Health, Building 31 C wing, 6th Floor, Conference Room 8, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (MBAC) by Executive Order 12975, October 3, 1995. The purpose of NBAC is to provide advice and make recommendations to the National Science and Technology Council and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Monday, December 16, 1996.

Morning Session

7:30–11:30 a.m. Discussion of human subjects protections issues by subcommittee members.

11:30–12:30 p.m. Lunch.

Afternoon Session

12:30–3:00 p.m. Continuation of discussion of human subjects protections issues by subcommittee members.

3:00–3:30 p.m. Public comment.

3:30 p.m. Adjourn.

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT: Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax 301–480–6900.

Dated: November 22, 1996.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 96–30541 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as the Services) announce the availability of their final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process. This final guidance document provides internal guidance for conducting the incidental take permit program under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for section 10(a)(1)(B) procedures to promote efficiency and nationwide consistency within and between the Services. Although intended primarily as internal agency guidance, this Handbook is fully available for public evaluation, and use, as appropriate.

ADDRESSES: Persons wishing to receive a copy of the final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process should contact the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203, or the Endangered Species Division, National Marine Fisheries Service, 1335 East-

West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358-2171), or Robert Ziobro, Acting Chief, Endangered Species Division, National Marine Fisheries Service at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

Section 9(a)(1)(B) makes it unlawful for any person to ''take'' an endangered species. Take of threatened species is prohibited by regulations issued by the Services under the authority of Sections 4(d) and 9(a)(1)(G) of the Act. See, e.g., 50 CFR 17.31, 17.21, and 17.40–.48 for FWS and 50 CFR 222 and 227 for NMFS. ''Take'' is defined by the Act as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' Section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)) allows the Services, under certain circumstances, to issue permits to non-Federal entities to allow ''incidental take'' of federally listed fish and wildlife species. (Federal agencies may obtain similar authority for take under section 7 of the Act). The Act defines ''incidental take'' as take that is ''incidental to, and not the purpose of, carrying out an otherwise lawful activity.'' Any applicant for an incidental take permit must submit to the Services a ''conservation plan'' or ''Habitat Conservation Plan (HCP)'' that specifies, among other things, the impacts to affected species likely to result from such taking and the steps the applicant will take to minimize and mitigate such impacts.

This final Handbook provides consistent procedures for Service compliance with the incidental take permit provisions of section 10(a)(1)(B) of the Act. Consistency in the section 10(a)(1)(B) program will be achieved by:

(1) providing national procedural and policy guidance;

(2) providing standardized guidance to Service offices and personnel who participate in conservation planning programs under section 10(a)(1)(B) and review and process incidental take permit applications;

(3) providing assistance to applicants in the non-Federal sector who wish to apply for incidental take permits; and

(4) providing for conservation of federally listed, proposed, and candidate species.

Public Comments Addressed

The Services considered all information and recommendations from earlier comments submitted on the Handbook. The major issues advanced by commenters have been combined, paraphrased, and responded to below.

Issues: Several commenters stated that a process should be incorporated into the HCP planning process so that proposed, candidates, and unlisted species can be included on a permit.

Response: The Services revised the Handbook to allow the names of unlisted species that are adequately addressed in an HCP to be listed on a permit with a delayed effective date tied to the date of any future listing. Unlisted species as used here includes candidates, proposed, and any other species mutually agreed to by the applicant and Services that are adequately addressed in the HCP as though they were listed. The Services recognize that the primary jurisdiction over candidate and unlisted species generally rests with the affected State fish and wildlife agencies, thereby prompting the need for close coordination and active cooperation with State agencies in the HCP process.

Issue: Commenters stated that the HCP categories unnecessarily complicate the HCP process. In addition, specific instructions are needed for assigning projects to categories.

Response: The Services decided to eliminate the high-effect and medium-effect categories and link the target processing times to the NEPA analysis required rather than to HCP category. The rationale for this is that there is little to distinguish the high-effect and medium-effect categories other than NEPA requirements. The expedited low-effect category would remain in place. The Handbook also establishes target permit processing timelines for HCPs based on the level of NEPA analysis required. Although not mandated by law or regulation, these targets are adopted as FWS and NMFS policy, and all offices are expected to meet these targets to the maximum extent practicable.

Issue: Commenters stated that Implementing Agreements should not be required for single-project, low-to medium-effect projects.

Response: The Handbook has been revised by the Services so that an Implementing Agreement is no longer mandatory for all HCPs. Implementing Agreements would not be required for low-effect HCPs, and would be prepared in such situations only when one is requested by the permit applicant. In other HCPs, the development of the Implementing Agreement will depend on the size and scope of the HCP and is left to the discretion of the FWS's Regional Director or NMFS's Regional Administrator and the applicant. Implementing Agreements are recommended for regional or other large-scale HCPs that address significant portions of a species' range or involve numerous activities or landowners, or for HCPs with long-term mitigation and monitoring programs.

Issue: Commenters stated that more guidance was needed for mitigation issues, such as the suitability of research for mitigation or standardizing mitigation strategies.

Response: The Services have revised the Handbook to restate that, first and foremost, mitigation strategies should compensate for habitat lost through the permitted activities of the HCP by establishing suitable habitat for the species that will be conserved and held in perpetuity, if possible. For example, the mitigation requirement for low-effect HCPs or for HCPs that have a negligible effect on habitat could be to restore or enhance existing habitat so that it better meets the species' requirements. Research by itself is not considered a preferred mitigation strategy, since the type of mitigation is usually related directly to correcting the effect of the action. However, research may be an integral part of a mitigation strategy.

In addition, the Handbook reiterates that mitigation measures required by individual FWS or NMFS offices should be as consistent as possible for the same species. This can be challenging when a species encompasses multiple offices or regions, but is essential. Also, mitigation standards should also be developed in coordination with the appropriate state wildlife agencies. The Service should not apply inconsistent mitigation policies for the same species, unless differences are based on biological or other valid reasons and are clearly explained. Consistent mitigation strategies help streamline the HCP development process—especially for smaller HCPs—by providing readily available standards which applicants can adopt in their HCPs.

Issue: Commenters suggested that the NEPA analysis should be limited to the impacts of the Federal action (i.e., issuance of the incidental take permit) and that some of the NEPA analysis is duplicative to the HCP planning process.

Response: The scope of the NEPA analysis covers the direct, indirect, and cumulative effects of the proposed incidental take permit, including the mitigation and minimization measures proposed for implementation in the HCP. However, the scope of the NEPA analysis will vary depending on the

nature of the scope of activities described in the HCP. In some cases, the anticipated environmental effects in the NEPA document that addresses the HCP may be confined to effects on endangered species and other wildlife and plants, simply because there are no other important effects. In many cases, the NEPA analysis will focus on the effects of the minimization and mitigation actions on other wildlife and plants and will examine any alternatives or conservation strategies that might not otherwise have been considered. In other cases, the minimization and mitigation activities proposed in the HCP may affect a wider range of impacts analyzed under NEPA, such as cultural resources or water use. It is important to keep in mind, however, that, as required by the White House Council of Environmental Quality (CEQ) regulations, the NEPA analysis for an HCP should be directed toward analyzing direct, indirect, and cumulative impacts that would be caused by the approval of the HCP, that are reasonably foreseeable, and that are potentially significant. These impacts may extend beyond the direct impacts of the permit itself.

In addition, because the CEQ regulations specifically permit NEPA documents to be combined with other agency documents to reduce duplication and paperwork (40 CFR 1506.4), the Services revised the Handbook regarding the NEPA analysis to encourage the Service's offices to combine the HCP and NEPA analysis into a single document. This technique should not be viewed as preparation of two separate documents that are then published under the same cover, but rather one integrated analysis that meets the requirements of both NEPA and ESA. For example, the discussion of effects should include analysis of both the impacts of the proposed HCP and the alternatives to the listed plants and the wildlife as well as other environmental effects that should be analyzed under NEPA.

Issue: Commenters stated that the section 7 process was overly burdensome to the applicant, and recommended that HCP permit should be exempted from section 7 requirements.

Response: Issuance of an incidental take permit is a Federal action subject to section 7 of the ESA. Section 7(a)(2) requires all Federal agencies, in consultation with the Services, to ensure that any action ''authorized, funded, or carried out'' by any such agency ''is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification'' of critical habitat. Because issuance of a section 10 permit involves an authorization, it is subject to this provision.

The provisions of section 7 and section 10 are similar. Indeed, one of the statutory criteria for determining whether to issue an incidental take permit—whether ''the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild''—is based on the regulatory definition of the section 7(a)(2) jeopardy standard. *See* section 10(a)(2)(B)(iv) of the ESA and 50 CFR section 402.02 (definition of ''jeopardize the continued existence of''). However, section 7 and its regulations introduce several considerations into the HCP process that are not explicitly required by section 10—specifically, indirect effects, effects on federally listed plants, and effects on critical habitat. The Services have revised the Handbook so that the section 7 requirements are discussed earlier in the HCP planning process to help resolve any conflicts and to expedite the process.

Issue: Comments were received regarding the inconsistencies between 50 CFR Part 13 and incidental take permits.

Response: On September 5, 1995, the Fish and Wildlife Service published a proposed rule in the Federal Register amending the general regulations for its permit program (50 CFR Part 13 and Part 17). The Service is currently drafting additional language to further clarify the relationship between Part 13 and various endangered species permits issued under Part 17, and an amended rule will be published in the near future.

Issue: Several issues were raised regarding the ''No Surprises'' policy included in the draft HCP Handbook. These include: a request to clarify the fact that net benefit to the species is not required to obtain ''No Surprises'' assurances; the suggestion that the ''extraordinary circumstances'' provision in the policy is not consistent with the promise of long-term certainty under HCPs; and the conflicting suggestions that the ''No Surprises'' policy should be codified as a regulation and that the ''No Surprises'' policy exceeds FWS and NMFS authority under the ESA.

Response: The first issue pertains to the assurances provided to an applicant with an HCP that does not provide a net benefit to the species covered in the HCP. The HCP Handbook describes the differing assurances provided applicants depending upon whether the HCP is designed to provide a net benefit to the species. The following two assurances are provided regardless of whether an HCP provides an overall net benefit to a species:

1. If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning HCP, the obligation for such measures shall not rest with the HCP permittee.

2. If extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee who is in compliance with the HCP's obligations, such mitigation shall maintain the original terms of the HCP to the maximum extent possible. Further, any such changes shall be limited to modifications within any Conserved Habitat areas which might be established under the HCP or to the HCP's operating conservation program for the affected species. In all cases, additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels of land available for development or land management under the original terms of the HCP without the consent of the HCP permittee.

In addition, even in the event of unforeseen circumstances, the FWS and NMFS will not seek additional mitigation from an HCP permittee where the terms of a properly functioning HCP agreement were designed to provide an overall net benefit for that species and contained measurable criteria for the biological success of the HCP which have been or are being met. This means that the Services will not attempt to impose additional mitigation measures of any type under the terms stated. It is intended to encourage HCP applicants to develop HCPs that provide an overall net benefit to affected species. It does not mean that any HCP must in fact have already achieved a net benefit before the ''No Surprises'' policy applies, but instead that the HCP must have been designed to achieve an overall net benefit and is being implemented fully by the HCP permittee.

The second issue, which pertains to the promise of long-term certainty under HCPs and the ''extraordinary circumstances'' provision in the policy, has been clarified in the final Handbook. The ''No Surprises'' policy provides certainty for private landowners in HCPs through the following assurances: In negotiating ''unforeseen circumstances'' provisions for HCPs, the Services will not require the commitment of additional land or financial compensation beyond the level

of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, the Services will not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances. Thus, the long-term certainty that is provided is the assurance that under no circumstances, including extraordinary circumstances, shall an HCP permittee who is abiding by the terms of their HCP be required to provide a greater financial commitment or accept additional land use restrictions on property available for economic use or development.

The third issue pertains to the codification of the ''No Surprises'' policy into a regulation. The Services do not believe it is necessary to codify the ''No Surprises'' policy as a specific regulation, because it is simply a statement of policy. Nevertheless, the policy has been subjected to procedures similar to those used to codify regulations. The policy was incorporated into the draft Handbook for Habitat Conservation Planning and Incidental Take Permitting Process to help address the problem of maintaining regulatory assurances for applicants applying for incidental take permits through the HCP process. This policy was subjected to a public review process when a notice of availability was published in the Federal Register for the draft Handbook for Habitat Conservation Planning and Incidental Take Permitting Process on December 21, 1994 and the FWS solicited comments through this availability announcement.

The final issue concerns the fact that commenters objected to the ''No Surprises'' policy because it is seen as exceeding FWS and NMFS authority under the ESA. The Services believe this policy is fully consistent with their authority under the ESA and is based on legislative history. Congress recognized in enacting the habitat conservation plan/incidental take provision in section 10 of the ESA that ''. . . the Secretary may utilize this provision [on HCPs] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act'' (H.R. Rep. No. 835, 97th Cong., 2d Sess. 30–31 (1982)). Accordingly, Federal regulation requires such procedures to be detailed in the HCP [50 CFR 17.22(b)(1)(iii)(C)].

Moreover, as the discussion of the ''No Surprises'' policy in the final Handbook makes clear, the commitment by the Services in the policy is a commitment ''to the extent consistent with the requirements of the Endangered Species Act and other Federal laws,'' like the Anti-Deficiency Act. However, the policy also makes clear that ''methods of responding to the needs of affected species [other than exacting additional mitigation from the permittees], such as government action and voluntary conservation measures by the permittee, remain available to assure the requirements of the ESA are satisfied.''

Issue: Commenters stated that the Handbook does little to streamline the HCP process.

Response: A summary of the streamlining measures and other improvements introduced in the revised HCP Handbook are identified in the following section of this notice.

Summary of Streamlining Measures

The following is a summary of the streamlining measures and other improvements introduced in the revised HCP Handbook as a result of this review process. The final Handbook includes numerous reforms that are designed to:

1. Provide clear guidance and standards for all aspects of the HCP program.

2. Encourage flexibility in many procedural decisions to combine the HCP process, NEPA, and the ESA section 7 documents to the extent possible.

3. Establish joint policies and procedures for FWS and NMFS.

4. Establish a low-effect HCP category with expedited permit approval procedures for small-landowner and other low-impact projects. The new streamlined procedure would:

a. Categorically exclude low-effect HCPs from NEPA requirements,

b. Eliminate the requirement for Implementation Agreements for low-effect HCPs, and

c. Eliminate Solicitor review of low-effect permit applications.

5. Establish specific time-frame targets for processing incidental take permit applications once the application is submitted for public comment and approval (less than 3 months for low-effect HCPs, 3–5 months for HCPs with an Environmental Assessment, and less than 10 months for HCPs with an Environmental Impact Statement).

6. Encourage the integration of the HCP with the NEPA analysis and provide an example of a combined HCP/EA document.

7. Make use of Implementing Agreements subject to Regional Director discretion for HCPs other than low-effect HCPs.

8. Allow unlisted species to be named on the HCP permit (with a delayed effective date tied to date of any future listing) if adequately addressed in the HCP, eliminating the need for further paperwork processing to amend the permit if such a species is subsequently listed.

9. Allow mitigation/monitoring activities resulting in take to be authorized under the HCP permit rather than a separate section 10(a)(1)(A) scientific research permit.

10. Require the integration of section 7/section 10 requirements early in the HCP process, and

11. Increase coordination requirements between a Field Office and Regional Office during HCP negotiation and permit processing phases.

Author/Editor: The editors of this document were Cindy Dohner, U.S. Fish and Wildlife Service, Division of Endangered Species, and Margaret Lorenz, Endangered Species, National Marine Fisheries Service (See **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 1996.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

Dated: November 22, 1996.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–30610 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–55–P
BILLING CODE 3510–22–P

Bureau of Land Management

[NM–030–1430–01; NMNM96514]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has