DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 981208299–8299–01]

RIN 1018–ZA03

Notice of Availability of a Draft Addendum to the 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; request for comments.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (the Services) are publishing for comment a Draft Addendum to the final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (5-point policy guidance), which is included entirely within this notice. The purpose of the Draft Addendum is to provide additional clarifying guidance to the Services for conducting the incidental take permit program under section 10(a)(1)(B) of the Endangered Species Act including developing habitat conservation plans (HCPs). It also provides clarifying guidance to those who are applying for an incidental take permit. We believe the draft guidance will promote efficiency and nationwide consistency within and between the Services and improve the HCP program.

DATES: The Services must receive comments on or before May 10, 1999. We must receive your comments by this date for them to be considered during preparation of a final Addendum.

ADDRESSES: Send written comments regarding this Draft Addendum to the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (facsimile 703/358–1735); or to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (facsimile 301/713–0376). Comments received will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (telephone 703/358–2171, facsimile 703/358–1735), or Kevin Collins, Chief, Endangered Species Division, National Marine Fisheries Service (telephone 301/713–1401, facsimile 301/713–0376) at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (ESA) was amended in 1982 to allow the taking of listed species incidentally to an otherwise lawful activity by non-Federal entities such as states, counties, local governments, and private landowners (section 10(a)(1)(B)). To receive a permit, the applicant submits a conservation plan (also referred to as an HCP) that meets the criteria included in the ESA and its implementing regulations (50 CFR parts 17 and 222). The Services recently amended those regulations to include ''No Surprises'' assurances (February 23, 1998, 63 FR 8859). To provide internal guidance on conducting the incidental take permit program, the Services developed the joint Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (HCP Handbook), which was made available for public review and comment on December 21, 1994 (59 FR 65782) and issued in final form on December 2, 1996 (61 FR 63854).

In just a few years, the HCP program has been transformed from a relatively little-used approach under the ESA to one of its most important and innovative conservation programs. For example, in the first ten years of the program, the Services issued only 14 incidental take permits. However, by September 30, 1998, the Services had issued 243 incidental take permits, and approximately 200 HCPs are currently under development.

The section 10 incidental take process provides the Services an opportunity to negotiate with and provide technical assistance to applicants as they develop HCPs. Also, it provides the flexibility the Services and applicants need to resolve issues between economic development and species conservation. The Services continue to learn from the HCP program which we believe has resulted in stronger HCPs that help ensure species conservation. Based on comments received from the public through a variety of ways (workshops, meetings, training sessions, scientific studies, participation in the development and implementation of HCPs, and during comment periods on various ESA regulations and policies) as well as deliberations within the Services, we announced, on February 17, 1998, our intention to provide a draft 5-point policy initiative for public review and comment. The 5-points addressed herein as the Draft Addendum are (1) biological goals and objectives, (2) adaptive management, (3) monitoring, (4) permit duration, and (5) public participation.

Addendum To the HCP Handbook

The Services intend to incorporate the 5-point policy initiative into the HCP Handbook as an addendum that will provide additional guidance on implementing the incidental take permit provisions of section 10(a)(1)(B) of the ESA. The five sections (or 5-points) of the Draft Addendum are contained entirely within this notice. Some of this guidance is derived from approaches we currently apply to the HCP process. In particular, we will use this guidance to establish overall biological goals for species covered by HCPs, to clarify and expand the use of adaptive management, monitoring, and to provide criteria to be considered by the Services in determining incidental take permit duration, and to expand the use of public participation. Nothing in this guidance is intended to supersede or alter any aspect of Federal law or regulation pertaining to the conservation of threatened or endangered species.

Biological Goals and Objectives

An approved incidental take permit and associated HCP authorizes incidental take of the covered species while meeting the issuance criteria in section 10(a)(2)(B) of the ESA. They ensure that the permittee will minimize and mitigate the effects of the authorized incidental take to the maximum extent practicable through an HCP's operating conservation program. An operating conservation program consists of the management activities undertaken when implementing an approved HCP to minimize and mitigate the effects of the activity on the covered species. The biological outcome of the operating conservation program for the covered species is the best measure of the success of an HCP. The best HCPs clearly define the desired outcome for the covered species and their habitats in terms of biological goals and objectives.

Although identifying biological goals and objectives was discussed in the HCP Handbook, the Services did not require HCPs to specifically identify biological goals and objectives. However, most HCPs had implied biological goals and objectives, and many recent HCPs include explicit biological goals and/or objectives. In the future, every HCP will include specific biological goals and objectives. Pursuant to the underlying

statutory and regulatory authorities, the Services will work with the applicant to derive the biological goals and objectives by examining the applicant's proposed action and the overall conservation needs of the covered species and/or its habitat.

Biological goals are the broad guiding principles for the operating conservation program; they are the rationale behind the minimization and mitigation strategies. Specific biological objectives are subsets of the biological goals and represent specific measurable targets for achieving the goals of the operating conservation program. Thus biological goals and objectives can be stated in a step-down approach based on the best scientific information available and reflect the conservation needs of the covered species. However, not all HCPs are likely to need complex, multi-tiered biological goals and objectives. The biological goals and objectives should be commensurate with the specific impacts and duration of the HCP applicant's proposed action. For example, low-effect HCPs generally have simple measurable biological objectives (e.g., preserving a minimum number of forage trees on the property) and include a relatively simple operating conservation program and monitoring protocol.

Determination of the biological goals and objectives is integral to the development of the operating conservation program. Conservation measures identified in an HCP, its accompanying incidental take permit, and/or IA provide the means for achieving the biological goals and objectives. For example, the overall biological goal could be to ensure population viability by maintaining habitat contiguity. The specific measurable objective to achieve this goal may be to conserve an adequate number of acres of habitat in a certain configuration, so that a viable corridor is maintained. The conservation measures could specify the number of acres and configuration. If the size and configuration were not determinable, an adaptive management strategy could be used, and the HCP, permit, and/or IA could list a series of incremental steps to be taken within an agreed upon range of management adjustments for determining and securing a viable corridor.

Available literature, State conservation strategies, candidate conservation plans, draft or final recovery plans or outlines, and other sources of relevant scientific and commercial information can serve as guides in setting biological goals and objectives. Species experts, State wildlife agencies, recovery teams, and/or scientific advisory committees may also help develop the biological goals and objectives. The biological goals and objectives may be either habitat or species based. More complex multispecies and/or regional HCPs may need an integration of habitat and species-specific goals and objectives. Although the goals and objectives may be stated in habitat terms, each covered species that falls under that goal or objective must be clearly specified. Regardless of the type of goal and objective used, the Services will ensure that the biological goals are consistent with conservation actions needed to adequately minimize and mitigate impacts to the covered species to the maximum extent practicable.

Explicit biological goals and measurable objectives provide clear guidance for both the applicant and the Service as to the purpose and direction of the HCP's operating conservation program. They create parameters and benchmarks for developing conservation measures, provide the rationale behind the HCP's terms and conditions, promote an effective monitoring program, and help determine the focus of an adaptive management strategy, if appropriate. The operating conservation program will include those measurable actions that, when implemented, are anticipated to meet the biological objectives. Implementing the operating conservation program is the extent of the permittee's obligation for meeting the biological goals and objectives.

Adaptive Management

Adaptive management strategies can assist the Services and the applicant in developing an adequate operating conservation program and improving its effectiveness. In the HCP program, adaptive management is used to examine alternative strategies for meeting measurable biological goals and objectives through research and/or monitoring, and then, if necessary, to adjust future conservation management actions according to what is learned.

Not all HCPs or all species covered in an incidental take permit need an adaptive management strategy. However, an adaptive management strategy is essential for permits that cover species that have significant biological data or information gaps that incur a significant risk to that species at the time the permit is issued. Possible significant data gaps that could lead to the development of an adaptive management strategy include, but are not limited to, significant biological uncertainty about specific information about the ecology of the species or its habitat (e.g., food preferences, relative importance of predators, territory size), habitat or species management techniques, or the degree of potential effects of the activity on the species covered in the incidental take permit. However, there may be some circumstances with such a high degree of uncertainty that a species should not receive coverage in an incidental take permit at all until additional research is conducted. If an adaptive management strategy is used, the approved HCP must outline the agreed upon future changes to the operating conservation program.

Habitat Conservation Plan assurances (No Surprises) and the use of adaptive management strategies are compatible. The assurances apply once all appropriate HCP provisions have been mutually crafted and agreed upon and approved by the Services and the applicant. Adaptive management strategies, if used, are part of those provisions, and their implementation becomes part of a properly implemented conservation plan. When an HCP, permit, and IA incorporate an adaptive management strategy, it should clearly state the agreed upon and warranted range of possible operating conservation program adjustments due to significant new information, risk, or uncertainty. During HCP negotiations, the Services and the applicant should determine the range of acceptable and anticipated management adjustments necessary to respond to new information after the permit is issued and describe this procedure in the HCP, permit, or IA. This process will enable the applicant to assess the potential economic impacts of adjustments before agreeing to the HCP.

Often, there is a direct relationship between the level of biological uncertainty for a covered species and the degree of risk that an incidental take permit could pose for that species. Therefore, the operating conservation program may need to be relatively cautious initially and adjusted later based on new information. A practical adaptive management strategy within the operating conservation program of a long-term incidental take permit will include milestones that are reviewed at scheduled intervals during the lifetime of the incidental take permit and permitted action. If there is a relatively high degree of risk, milestones and adjustments may need to occur early and often.

For an adaptive management strategy to be effective, it must be integrated into a monitoring program that is designed to ensure proper data collection and analysis that can guide appropriate adjustments in the operating conservation program. For example, a

habitat management objective may be defined as recruiting 95 percent large woody debris into streams to achieve the biological goal of maintaining properly functioning riparian habitat. The operating conservation program could include a range of possible buffers to achieve the biological objectives. The monitoring program would include measuring the amount of woody debris in streams. If the results from the monitoring program indicated that the 95-percent objective was not being achieved, then a change from one buffer to another might be warranted. However, the original agreed upon range of possible management adjustments, as identified in the HCP, incidental take permit, or IA, would need to have included the new buffer. The design of the adaptive management strategy and the monitoring program includes the type(s) of information needed and the triggers to institute changes in the width of the buffer.

If existing ecological data is insufficient to determine the method needed to achieve a biological objective, adaptive management strategies can be used to meet objectives by obtaining information on the species and its ecology through ongoing research, recovery planning, and conservation planning by Federal, State, and local agencies. For example, the Natomas Basin HCP in California has an adaptive management strategy that incorporates ongoing research. At this time, the U.S. Geological Survey's Biological Resources Division is conducting a study to determine the giant garter snake's population biology and habitat use. If additional information from the study suggests a different approach is appropriate to meet the conservation needs of the snake, the preserve location(s) could be modified and the habitat type emphasized in the restoration could be changed within the terms of the adaptive management strategy of the HCP's operating conservation program.

If the full range of effects of a proposed project is unknown at the time of HCP negotiation, a monitoring program combined with an adaptive management strategy could determine the actual extent of effects and then allow for agreed upon shifts in management strategies. A key element of adaptive management is to establish the information needs and link them to the management strategies and their objectives. For example, a study to determine the specific effects of grazing on a butterfly, based on a range of possible grazing pressures, could help establish a long-term management strategy. The HCP's adaptive management strategy could outline the potential range of grazing management regimes, but since the extent of the butterfly's tolerance of grazing may be initially unknown, the operating conservation program could start with a more cautious grazing regime and be subject to subsequent relaxation, if appropriate. The particular aspects of the grazing regime could subsequently shift or relax, depending on the results of the study.

Where specific methodologies (e.g., translocation) or strategies have not been thoroughly tested, an adaptive management strategy can investigate different management tools to determine the best approach. In Utah, the Washington County HCP includes a five-year desert tortoise translocation study. Translocation of desert tortoises from areas to be developed is an action to minimize, not mitigate, take of desert tortoises in the HCP. Depending on the recovery unit, translocation may prove to be a useful tool for desert tortoise recovery in the future. Healthy desert tortoises found within areas to be developed are translocated to designated areas. The effects of that translocation on the biology of the tortoises, including health status, weight gain, reproduction, and behavior, are being monitored. If the tortoises successfully adapt to the new location, then translocation may continue in an isolated and currently unoccupied portion of the HCP reserve area. Information gained on the efficacy of translocation as a management technique, and on habitat requirements of desert tortoises (vegetation, elevation, etc.) can subsequently be used to adjust management in this and other HCPs in the range of the species.

HCPs may be designed to provide flexibility other than through the use of adaptive management. The permittee or another responsible party may need the flexibility, under different circumstances, to employ alternative methods or strategies within the operating conservation program to achieve the biological goals and objectives. This flexibility also allows previously agreed upon management and/or mitigation actions to be implemented as needed in response to changed circumstances. The HCP, incidental take permit, and IA, if any, describes the range of management and/or mitigation actions and the process by which the management and funding decisions are made and implemented.

Monitoring

Monitoring is a mandatory element of all HCPs (See 50 CFR 17.22(b)(1), 17.32(b)(1), and 222.22). When properly designed and implemented, monitoring programs for HCPs should obtain the information necessary to assess compliance, project impacts, and to verify progress toward the agreed upon biological goals and objectives. Monitoring also provides the scientific data necessary to evaluate the success of the HCP's operating conservation programs with respect to the development of strategies in future HCPs or other programs that contribute to the conservation of species and their habitat. The HCP Handbook already provides guidance for developing monitoring measures (Chapter 3, section B.4.) and discusses reporting requirements (Chapter 6, section E.4.). The following information further clarifies and provides additional guidance for the monitoring component of an HCP, permit, and/or IA.

Scope of Monitoring

The Services and the applicant must ensure that the monitoring program provides information to: (1) evaluate compliance; (2) determine if biological goals and objectives are being met; and (3) provide feedback to an adaptive management strategy, if used. Biological objectives provide a framework for developing a monitoring program that measures progress toward meeting those biological objectives. If an HCP, permit, and/or IA has an adaptive management strategy, it is crucial to integrate the monitoring program into this strategy in order to guide any necessary changes in management.

When an applicant and the Services design a monitoring program, the scope of the monitoring measures should be commensurate with the scope and duration of the operating conservation program and project impacts. Some programs may be simple, while those for large-scale or regional planning efforts may be comprehensive and track more than one component of the HCP (e.g., habitat quality, collection of mitigation fees). The HCP, permit, and/or IA should also tier the monitoring program to reflect the structure of the biological goals and objectives. The following components are essential for most monitoring protocols (the size and scope of the HCP will dictate the actual level of detail in each item): (1) the implementation and effectiveness of the HCP terms and conditions (e.g., financial responsibilities and obligations, management responsibilities, and other aspects of the incidental take permit, HCP, and the IA, if applicable); (2) the level of incidental take of the covered species; (3) the biological conditions resulting from the operating conservation program (e.g.,

change in the species' status or a change in the habitat conditions); and (4) any informational needs of an adaptive management strategy, if utilized. An effective monitoring program is flexible enough to allow modifications, if necessary, to obtain the appropriate information.

In order to obtain meaningful information, the applicant and the Services should structure the monitoring methods and standards so that the results from one reporting period and area to another are comparable, and the monitoring protocol responds to the question(s) asked. Credible monitored units should reflect the biological objective's measurable units (e.g., if the biological objective is in terms of numbers of individuals, the monitoring program should measure the number of individuals). The monitoring program will be based on sound science and standard survey or other monitoring protocols previously established should be used. Although the specific methods used to gather necessary data may differ depending on the species and habitat types, monitoring programs should use a multispecies approach when appropriate.

HCP monitoring should consist of two types. The first is compliance monitoring, where the Services monitor the permittee's implementation of the requirements of the HCP, incidental take permit terms and conditions, and IA, if applicable. The second is effects and effectiveness monitoring where the permittee (or other designated entity) examines the impacts of the authorized incidental take (effects) and implementation of the operating conservation program to determine if the actions are producing the desired results (effectiveness). To monitor all aspects of an HCP effectively, and to ensure its ultimate success, the entire monitoring program should incorporate both types of monitoring. The monitoring program should also clearly designate who is responsible for the various aspects of monitoring.

Compliance Monitoring

Compliance monitoring is necessary for the Services to ensure that the permittee is meeting the terms and conditions of the HCP, its accompanying incidental take permit, and IA, if any. Therefore, the Services verify adherence to the terms and conditions of the incidental take permit, HCP, IA, and any other related agreements, and will ensure that incidental take of the covered species does not exceed the level authorized under the incidental take permit. FWS and NMFS regulations, 50 CFR 13.45 and 50 CFR 220.45, respectively, provide the authority for the Services to require annual compliance reports unless otherwise specified by the incidental take permit. Also, the Services will ensure that the reporting requirements are tailored to assist the Services with monitoring incidental take permit compliance (e.g., documentation of habitat acquisition, use of photographs). These reports help determine whether the permittee is properly implementing the terms and conditions of the HCP, its incidental take permit, and any IA, and will provide a long-term administrative record documenting progress made under the incidental take permit.

In addition to reviewing reports submitted by the permittee, it is important for the Services to make field visits to verify whether the report data are correct and the HCP is being implemented as negotiated. These visits allow the Services to check for information, identify unanticipated deficiencies or benefits, develop closer cooperative ties with the permittee, help prevent accidental violations of the incidental take permit's terms and conditions, and assist the permittee and Services in developing corrective actions when necessary.

The Services must track HCP implementation and the monitoring programs. The Services' National and Regional Offices will develop a database to track incidental take permit issuance and compliance. The following standard fields should be included in each database to maintain consistency throughout the Nation:

1. The permittee's name;
2. The incidental take permit number;
3. The incidental take permit duration;
4. The amount of authorized take;
5. The location of permitted action and mitigation;
6. The amount of area covered;
7. The species and habitat covered; and
8. The nature of the permitted activity.

Some suggested additional fields in the databases include:

1. A brief summary of the monitoring program;
2. The reporting frequency and the dates reports are due, received, and reviewed;
3. The nature and effect of the incidental take; and
4. A brief description of the status of the operating conservation program.

Individual Regional Offices may choose to expand the databases to add fields specific to the HCPs in their region, especially for tracking cumulative effects for future HCP analyses. For example, the database may also record and schedule periodic audits of the HCP and field visits. The databases should allow the Services to generate monthly and quarterly lists identifying the completion and due dates for operating conservation program or other HCP actions. This will help the Services initiate the required review and analysis needed for the monitoring program associated with each HCP.

For large-scale and/or regional HCPs, oversight committees, made up of representatives from significantly affected entities (e.g., State Fish and Wildlife agencies), are often used to ensure proper and periodic review of the monitoring program, and to ensure that each program complies with the terms and conditions of the incidental take permit. For example, the proponents of the Karner blue butterfly HCP in Wisconsin are proposing an auditing approach to insure incidental take permit compliance. The lead applicant, Wisconsin Department of Natural Resources, will initially conduct annual on-site audits of each partner. FWS will audit the Wisconsin Department of Natural Resources in a similar fashion. In addition, FWS will accompany the Wisconsin Department of Natural Resources on the partner audits as appropriate to understand partner compliance levels. Over time, Wisconsin Department of Natural Resources will conduct the audits less frequently, if performance levels are acceptable. Each partner will provide an annual monitoring report and will submit these along with their audit report to FWS annually.

Oversight committees should periodically evaluate the permittee's compliance with the HCP, its incidental take permit, and IA, and the success of the operating conservation program in reaching its identified biological goals and objectives. Such committees usually include species experts and representatives of the permittee, the Service, and other affected agencies and entities. It may also be beneficial to submit the committee's findings to recognized experts in pertinent fields (e.g., conservation biologists, restoration specialists, etc.) for review or to have technical experts conduct field investigations to assess implementation of the terms and conditions. Because the formation of these committees may be subject to the Federal Advisory Committee Act (FACA), the role of the participants and the purpose of the meetings must be clearly identified. FACA requirements will be adhered to,

where appropriate. Oversight committees should meet at least annually and review implementation of the monitoring program and filing of reports as defined in the HCP, permit, and/or IA.

Monitoring the Effects and Effectiveness of the HCP

Effects and effectiveness monitoring determine if the anticipated impacts from the permitted project are occurring (effects) and progress toward the biological goals and objectives of the HCP (e.g., if the conservation strategies are producing the desired habitat conditions or population numbers) (effectiveness). The Services should incorporate provisions for monitoring the effects and effectiveness of the HCP during HCP development. Effects and effectiveness monitoring may also involve assessing threats and population trends of the covered species as it relates to the permitted activities, as well as monitoring the development of targeted habitat conditions. The Services should strive to collect information that will help detect cumulative trends in covered species populations or changes in the quality and/or quantity of the habitat (e.g., restoration of the streamside riparian area).

Monitoring programs will vary based on whether they are for low-effect or for regional, multispecies HCPs; however, the general elements of each program are similar. Post-activity or post-construction monitoring, along with a single report at the end of the monitoring period, will often satisfy the monitoring requirements for low-effect HCPs. For other HCPs, monitoring programs will be more comprehensive and may include milestones, timelines, and/or trigger points for change. Effects and effectiveness monitoring will generally include, but are not limited to, the following:

1. Periodic accounting of authorized incidental take;
2. Surveys to determine species status, appropriately measured for the particular operating conservation program (e.g., presence, density, or reproductive rates);
3. Assessments of habitat condition;
4. Progress reports on fulfillment of the operating conservation program (e.g., habitat acres acquired and/or restored); and
5. Evaluations of the operating conservation program and its progress toward its intended biological goals.

The Services and the HCP permittee cooperatively develop the effects and effectiveness monitoring program and determine responsibility for its various components. In multi-party HCPs, different parties may monitor different aspects of the HCP. The Services must periodically review any monitoring program to confirm that it is conducted according to their standards.

Monitoring Reports

The Services will streamline the reporting requirements for monitoring program by requesting all reports in a single document. The HCP, permit, or IA should specifically state the level of detail and quantification needed in the monitoring report and tailor report due dates to the activities conducted under the incidental take permit (e.g., due at the end of a particular stage of the project or the anniversary date of incidental take permit issuance). Most monitoring programs require reports annually, usually due on the anniversary date of incidental take permit issuance. Wherever possible, the Services will coordinate the due dates with other reporting requirements (e.g., State reports) so the permittee can satisfy more than one reporting requirement with a single report. The following represents the minimum information frequently needed in a monitoring program and its reports:

1. Objectives for the monitoring program;
2. Effects on the covered species and/or habitat;
3. Location of sampling sites;
4. Methods for data collection and variables measured;
5. Frequency, timing, and duration of sampling for the variables;
6. Description of the data analysis and who conducted the analyses; and
7. Evaluation of progress toward achieving measurable biological goals and objectives and other terms and conditions as required by the incidental take permit and/or IA.

These elements may be simplified for periods of no activity or low-effect HCPs. If a required report is not submitted by the date specified in the HCP or incidental take permit terms and conditions, or is inadequate, the Services will notify the permittee. The Services have discretion to offer the permittee an extension of time to demonstrate compliance. The Services have examined this reporting guidance under the Paperwork Reduction Act of 1995 and found that it does not contain requests for additional information or an increase in the collection requirements other than those already approved for incidental take permits (OMB approval for FWS #1018–0094; for NMFS # 0648–0230).

Funding Monitoring Programs

The ESA and the section 10 regulations require that HCPs specify the measures the permittee will adopt to ensure adequate funding for the HCP. An HCP that does not contain an adequate funding commitment from the applicant/permittee to support an acceptable monitoring program should not be approved unless the HCP establishes alternative funding mechanisms. The Services and the applicant should work together to develop the monitoring program, and determine who will be responsible for monitoring the various components of the HCP. Specific monitoring tasks may be assigned to entities other than the permittee (e.g., State or Tribal agencies) as long as the Services and parties responsible for implementing the HCP approve of the monitoring assignment. The terms of the HCP, incidental take permit, and IA may contain funding mechanisms that provide for a public (e.g., local, State, or Federal) or a private entity to conduct all or portions of the monitoring. This funding mechanism must be agreed upon by the Services and the parties responsible for implementing the HCP.

Permit Duration

Both FWS and NMFS regulations for incidental take permits outline factors to consider when determining incidental take permit duration (50 CFR 17.32 and 222.22). These factors include duration of the applicant's proposed activities and the expected positive and negative effects on covered species associated with the proposed duration including the extent to which the operating conservation program will increase the survivability of the listed species and/or enhance its habitat. In determining the duration of an incidental take permit, the Services will also consider the extent of scientific and commercial data underlying the proposed operating conservation program for the HCP, the length of time necessary to implement and achieve the benefits of the operating conservation program, and the extent to which the program incorporates adaptive management strategies.

To date, the Services have issued more than 200 incidental take permits, varying in duration from one to 99 years. The average duration of incidental take permits issued is 25 years; pending applications for incidental take permits currently have an average requested duration of 30 years. The Services allow a range in incidental take permit duration to account for both the varying biological impacts resulting from the proposed

activity (e.g., variations in the length of timber rotations and treatments versus a real estate subdivision build out), and the nature or scope of the permitted activity and operating conservation program addressed in the HCP, permit, and/or IA (e.g., housing or commercial developments versus long-term sustainable forestry; conservation easements). Though not always applicable, small-scale HCPs are likely to have short-term incidental take permits, whereas large-scale HCPs are likely to have longer term incidental take permits because of the time required to implement their operating conservation program and the permittee's need for long-term assurances. Longer permits may also ensure long-term commitments to the operating conservation program.

Public Participation

The Services intend to expand public participation in the HCP process to provide greater opportunity for the public to assess, review, and analyze HCPs and associated documents (e.g., National Environmental Policy Act (NEPA) documents). As stated in the HCP Handbook in Chapter 6.B, the Services currently require a minimum 30-day public comment period for all HCP applications. However, the Services recognize the concern of the public regarding an inadequate time for the public comment period, especially for large-scale HCPs. Therefore, the Services propose to expand the current comment period to provide a 60-day public comment period for most HCPs. The exceptions to a 60-day comment period would be those for low-effect HCPs and large scale regional, or exceptionally complex HCPs. The Services believe the current 30-day public comment period provides enough time to review low-effect HCPs, which have a categorical exclusion from NEPA.

For large-scale, regional, or exceptionally complex HCPs, the Services intend to expand the use of informational meetings and/or advisory committees. In addition, the minimum comment period for these HCPs is proposed to be 90 days, unless significant public participation occurs during HCP development. With the extension of the public comment periods, the recommended timeline targets for processing incidental take permits are extended accordingly: The timeline to complete low effect HCPs will remain up to three months; HCPs with an Environmental Assessment (EA) will be four to six months; and HCPs with a 90-day comment period and/or an Environmental Impact Statement (EIS) may be up to 12 months.

During the public comment period, any member of the public may review and comment on the HCP and the accompanying NEPA document, if applicable. If an EIS is required, the public can also participate during the scoping process. When practicable, the Services will seek to announce the availability of HCPs in electronic format and in local newspapers of general circulation. The Services will encourage potential applicants to allow for public participation during the development of an HCP, particularly if non-Federal public agencies (e.g., State Fish and Wildlife agencies) are involved. Although the development of an HCP is the applicant's responsibility, the Services will encourage applicants for most large-scale, regional HCP efforts to provide extensive opportunities for public involvement during the planning and implementation process.

The Services recommend that applicants include Native American tribes during the development of the HCP if tribal resources may be affected. If an applicant chooses not to consult with Tribes, the Services, under the Secretarial Order on Federal-Tribal trust responsibilities and ESA, will consult with the affected Tribes to evaluate the effects of the proposed HCP on Tribal trust resources and will provide the information resulting from such consultation to the HCP applicant prior to the submission of the draft HCP for public comment, and will advocate the incorporation of measures that will restore or enhance Tribal trust resources. After consultation with the tribes and the non-federal landowner and after careful consideration of the tribe's concerns, the Services will clearly state the rationale for the recommended final decision and explain how the decision relates to the Services' trust responsibility.

Public Comments Solicited

The Services will issue a final Addendum to the HCP Handbook based upon consideration of information and recommendations received from all interested parties. Therefore, the Services are soliciting comments, recommendations, or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party about this Draft Addendum.

Authority

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

Dated: November 2, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: January 28, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indians Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

This is the current list of Designated Tribal Agents for service of notice, and includes the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

ADDRESSES: Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, MS–4603–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Edie Adams, Child Welfare Specialist, Division of Social Services, (202) 208–2536.

Indian Child Welfare Designated Agents

Aberdeen Area

Ida Ashes, ICWA Director, Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361; (605) 384–3641 Fax: (605) 384–5687

Rose Chasing Hawk-Dubray, ICWA Director, Rosebud Sioux Tribe, Child & Family Services, P.O. Box 430, Rosebud, SD 57570; (605) 747–2258 Fax: (605) 747–5096

Janet Collins, ICWA Director, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, SD 57625; (605) 964–6460 Fax: (605) 964–1200

Caroline Cuny, ICWA Administrator, Oglala Sioux Tribe—Ontrac, P.O. Box 148, Pine Ridge, SD 57770; (605) 867–5805 Fax: (605) 867–1893

Janet Gunderson, ICWA Director, Three Affiliated Tribes, HC 3, Box 2, New Town, ND 58763; (701) 627–3731 Fax: (701) 627–4225