

Historically, when a TLC was granted, DOL sent an original approved Form ETA-9142B, Application for Temporary Employment Certification, and a Final Determination letter to the employer with a copy, if applicable, to the employer's authorized attorney or agent. 20 CFR 655.52. The original paper TLC was sent by means normally ensuring next day delivery, and the employer retained a signed copy of the certified Form ETA-9142B and the original signed Appendix B, as required by 20 CFR 655.56(c)(12). The employer or its authorized attorney or agent then attached the original paper TLC, along with all other supporting documentation and appropriate fees, to the Form I-129, Petition for a Nonimmigrant Worker, and filed the Form I-129 with USCIS. On October 15, 2012, DOL implemented electronic filing in the H-2B labor certification program, but continued to issue original certified ETA-9142B TLCs on paper.³

On May 17, 2019, and in accordance with the Paperwork Reduction Act (PRA), the Office of Management and Budget (OMB) approved revisions to DOL's H-2B Foreign Labor Certification Program information collection.⁴ To promote greater efficiency in issuing TLCs and minimize delays associated with employers filing H-2B petitions with DHS, DOL received approval to issue electronic TLCs using the new Form ETA-9142B, Final Determination: H-2B Temporary Labor Certification Approval. On June 6, 2019, DOL then announced on the Office of Foreign Labor Certification's (OFLC's) website a transition schedule for employers to submit the new H-2B application forms beginning July 3, 2019, through its new FLAG system.⁵ As of July 3, 2019, employers who file the new Form ETA-9142B, including all applicable appendices, through the FLAG system and are granted a TLC will receive an ETA-9142B, Final Determination: H-2B Temporary Labor Certification Approval, and Final Determination letter electronically.⁶

In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the approved TLC documents electronically, DOL will send the ETA-9142B and Final Determination letter on paper and in a manner that ensures next day delivery.

DHS regulations refer to an approved TLC by various terms including "Department of Labor determination" at 8 CFR 214.2(h)(2)(i)(E) and "labor certification determination" at 8 CFR 214.2(h)(6)(iii)(E). Under the current instructions for Form I-129, H-2B petitioners must submit an approved TLC from DOL with the H-2B petition.⁷ Since DOL, generally, will now only provide the approved TLC to an employer electronically, USCIS announced on its website on July 26, 2019, that employers whose application for a TLC was processed in FLAG must include a printed copy of the electronic one-page ETA-9142B, Final Determination: H-2B Temporary Labor Certification Approval, with their Form I-129, and that USCIS will consider this printed copy as an original, approved TLC.⁸ USCIS is formally announcing, through this notice, that a printed copy of the ETA-9142B final determination, completed and electronically signed by DOL, must be submitted with an H-2B petition, and that this printed copy of the one-page determination satisfies the requirement that petitioners provide evidence of an approved TLC. As discussed above, this change in USCIS procedure aligns with DOL's change in its procedures, as DOL has transitioned to a new electronic filing and application processing environment through which, generally, DOL no longer provides the employer and, if applicable, the employer's authorized attorney or agent with a paper copy of a certified Form ETA-9142B. This change in process is also appropriate since in most circumstances, USCIS will no longer need to reference a paper copy of a certified Form ETA-9142B (and its appendices) because USCIS and DOL have in place an information sharing process that allows USCIS to validate substantive elements of the approved TLC based on case information supplied by DOL directly to USCIS.⁹

USCIS notes that there may be limited circumstances when an employer (or its authorized agent, if applicable) has a

paper-based final determination from DOL because, among other reasons, the employer is unable to receive the final determination electronically.¹⁰ In these limited circumstances, USCIS may accept and consider the paper-based certification documents as an original approved TLC. Additionally, USCIS notes that the submission of a printed copy of the electronic ETA-9142B final determination does not preclude USCIS from issuing a request for evidence or a notice of intent to deny in certain warranted circumstances, including but not limited to, when the electronic systems are unavailable for validation, or the final determination document is substantively inconsistent with the information provided by DOL regarding that labor certification determination. In those instances, USCIS will request that an employer (or its authorized agent, if applicable) submit documentation, including but not limited to a copy or copies of the complete certified Form ETA-9142B and its appendices. DOL has agreed that such evidence will be made available to employers (or authorized agents) in certain circumstances, for example, in the event of FLAG system outage or scheduled maintenance.

Joseph Edlow,

Deputy Director for Policy, U.S. Citizenship and Immigration Services.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2020-N028;
FXES11130100000-201-FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and

³ *Electronic Filing of H-2A and H-2B Labor Certification Applications Through the iCERT Visa Portal System*, 77 FR 59670, 69672 (Sept. 28, 2012).

⁴ See OMB's Notice of Action issued on May 17, 2019, on DOL's information collection control number 1205-0509 at <https://www.reginfo.gov>.

⁵ DOL announced that, beginning July 3, 2019, it will only accept H-2B applications submitted using the new Form ETA-9142B (i.e., forms containing an expiration date of May 31, 2022). DOL continued to accept and process H-2B applications it received through the legacy iCERT system until 11:59 p.m. Eastern Time on July 2, 2019. See <https://www.foreignlaborcert.doleta.gov/>.

⁶ Employers may obtain a copy of the final decisions from the Historical table in the My Cases tab of their FLAG account. See DOL's Frequently Asked Questions; <https://flag.dol.gov/support/>

FAQ#cases, under the question, "How can I find a copy of my issued application?"

⁷ See <https://www.uscis.gov/i-129>.

⁸ See <https://www.uscis.gov/news/alerts/h-2b-petitioners-must-include-temporary-labor-certification-final-determination-form-i-129>.

⁹ See <https://www.dhs.gov/publication/dhs-uscis-pia-044-validation-instrument-business-enterprises>.

¹⁰ See 84 FR 798, 799 (Jan. 31, 2019) ("In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the temporary labor certification documents electronically, ETA will send the certification documents printed on standard paper in a manner that ensures overnight delivery.")

Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before April 6, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (e.g., Dana Ross TE-08964A-2):

- *Email:* permitsR1ES@fws.gov.

- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232-4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231-6131 (phone); permitsR1ES@fws.gov (email). Individuals who are hearing or speech impaired may call the

Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of

propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE-739923-9 ...	Hawaii Volcanoes National Park, HI.	Hawksbill sea turtle (<i>Eretmochelys imbricata</i>).	Hawaii	Harass by capture, measure, mark, attach transmitters, and release adults; locate, monitor, screen, and excavate nests; relocate eggs; release live hatchlings; and salvage.	Renew.
TE-08598C-1 ...	The Institute for Bird Populations, Point Reyes Station, CA.	Friendly ground-dove (<i>Gallicolumba stairi</i>).	American Samoa	Harass by survey, monitor, capture, handle, band, biosample, attach transmitters, release, and salvage.	Renew.
TE-66355D-0 ...	U.S. Geological Survey, Fort Collins Science Center, Fort Collins, CO.	Slevin's skink (<i>Emoia slevini</i>).	Commonwealth of the Northern Mariana Islands, Guam.	Harass by survey, monitor, capture, handle, mark, attach transmitters, biosample, release, and salvage.	New.
TE-67157D-0 ...	Oregon State University, Corvallis, OR.	Hawaiian common gallinule (<i>Gallinula galeata sandvicensis</i>).	Kauai, Hawaii	Harass by survey, monitor, capture, handle, band, biosample, attach transmitters, float eggs, release, and salvage.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and

from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

Rolland White,

Assistant Regional Director—Ecological Services, Pacific Region.

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