

Habitat Conservation Planning

The Endangered Species Act

The purpose of the Endangered Species Act (ESA) is to conserve endangered and threatened species and the ecosystems upon which they depend. The authority for the administration of the ESA has been delegated to the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).

Section 7 of the ESA requires federal agencies to insure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of listed species or adversely modify their critical habitat.

Section 9 of the ESA makes it unlawful for anyone (private person, corporation, local governments, or federal agencies) to “take” a listed animal, and this includes adversely modifying its habitat.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm may include significant habitat modification where it actually kills or injures a listed species through impairment of essential behavior (e.g., nesting or reproduction).

Section 10 of the ESA authorizes incidental take of a listed species through a variety of voluntary agreements to conserve or minimize and mitigate impacts upon fish and wildlife, including: (1) Candidate Conservation Agreements, (2) Safe Harbor Agreements, and (3) Habitat Conservation Plans (HCPs).

There are currently 12 species listed as threatened or endangered in Clark County:

Threatened

- Desert tortoise (*Gopherus agassizii*)
- Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*)

Endangered

- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)
- Pahrump poolfish (*Empetrichthys latos*)
- Humpback chub (*Gila cypha*)
- Bonytail chub (*Gila elegans*)
- Virgin River chub (*Gila seminuda*)
- Moapa dace (*Moapa coriacea*)
- Woundfin (*Plagopterus argentissimus*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Razorback sucker (*Xyrauchen texanus*)

What is a Habitat Conservation Plan?

An HCP is a planning document required as part of an application for an Incidental Take Permit by a non-federal agency or individual. HCPs describe the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, and how the HCP is to be funded. HCPs can include both listed and non-listed species, including those that are candidates or have been proposed for listing. Conserving species before they are in danger of extinction or are likely to become threatened or endangered can also provide early benefits and prevent the need for listing.

What is an Incidental Take Permit?

The ESA protects endangered and threatened species of wildlife and plants. An Incidental Take Permit is required when non-Federal activities will result in take of threatened or endangered wildlife and plants. Without a permit, it is unlawful to take listed wildlife species.

In return for an Incidental Take Permit, the property owner agrees to a plan to minimize the effects of the permitted action on endangered and threatened species, and mitigate for such effects, usually by conserving appropriate habitat.

To obtain a permit, the applicant needs to develop an HCP, which is designed to offset, to the maximum extent practicable, any harmful effects that the proposed activity might have on listed species. The HCP must state clear and measurable biological goals and objectives and it should provide estimates of the amount of habitat to be preserved or maintained.

Purpose

The purpose of the Incidental Take Permit is to authorize the incidental take of a listed species, not to authorize the activities that result in take. The HCP is required to ensure that the incidental take authorized by the issuance of an Incidental Take Permit does not appreciably reduce the likelihood of the survival and recovery of the species in the wild by avoiding, minimizing, and mitigating the effects of the proposed incidental take. An HCP provides a framework to balance economic development with protection and conservation of sensitive and threatened and endangered species. An HCP is a mechanism for integrating development and land-use activities with conservation through cooperation.

Benefits of Habitat Conservation Plans for Wildlife, Landowners, and Communities

HCPs can help communities plan economic development while ensuring the future of endangered and threatened species. Through large-scale HCPs, stakeholders chart landscape-level strategies and conserve biological diversity. By protecting habitat and preventing the decline of sensitive species, HCPs can help preclude the need for listings under the ESA. Early conservation measures help maintain healthy ecosystems - valuable open space that states and counties are increasingly seeking to protect - while they provide for new residents and businesses. For HCPs that cross jurisdictional boundaries, a regional approach streamlines the permit process, saves time and money and increases effectiveness of mitigation efforts.

Finally, HCPs protect people from legal liability. The ESA protects endangered and threatened species of wildlife and plants. Without a permit, it is unlawful to take listed wildlife species. That means that people may not harm or kill listed species, or attempt to do so. The need for HCPs arises from the fact that listed species live wherever they find suitable habitat, without regard to who owns it. Before HCPs became a reality, people who were interested in developing private land that was home to endangered or threatened species risked breaking the law. Congress recognized this dilemma and amended the ESA to allow the USFWS to issue Incidental Take Permits to landowners who develop HCPs.

HCPs provide a framework for creative partnerships with the goal of reducing conflicts between listed species and economic development. By creating HCPs, Congress recognized that economic development can occur alongside endangered species conservation. The challenge is to make the process work—to ensure that development activities do not appreciably reduce the likelihood of the survival and recovery of at-risk species. HCPs provide solutions that may prevent legal battles by changing litigation to collaboration.

Authorities and Responsibilities

The USFWS is responsible for the administration of the ESA. The ESA requires the USFWS to maintain lists of threatened and endangered species and affords substantial protection to listed species. Section 9 of the ESA prohibits the take of any fish or wildlife species listed under the ESA as endangered and most species listed as threatened. Section 10(a)(1)(B) of the ESA authorizes the USFWS to issue permits for the incidental take of federally listed fish and wildlife species that is incidental to, but not the purpose of, otherwise lawful activities.

Who approves a HCP?

The USFWS Regional Director decides whether to issue a HCP permit based on findings that:

- The taking will be incidental to an otherwise lawful activity;
- The impacts will be minimized and mitigated to the maximum extent practicable;
- Adequate funding will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species; and
- Any other necessary measures are met.

If the HCP addresses all of these requirements and those of other applicable laws, the permit is issued.

What other laws besides the Endangered Species Act are involved?

In issuing an Incidental Take Permit, the USFWS must comply with the National Environmental Policy Act (NEPA) (42 United States Code (USC) 4321 et seq.) and all other statutory and regulatory requirements, including any state or local environmental/planning laws. The NEPA requires federal agencies to consider the environmental consequences of proposed actions in their decision-making process. HCPs may be categorically excluded from NEPA or may require either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) be prepared.

Purpose of a National Environmental Policy Act Document

The primary purpose of a NEPA document is to serve as a decision-making tool to ensure that the policies and goals defined in NEPA are incorporated into the ongoing programs and actions of the federal government. A NEPA document will provide full and fair discussion of significant environmental impacts. In addition, it will inform decision makers and the public of the reasonable and feasible alternatives that were considered in an effort to avoid or minimize adverse impacts, or enhance the quality of the human environment. An EIS is prepared for actions with a federal nexus if there is a “potential to significantly affect the quality of the human environment”.

Amending the Clark County Multiple Species Habitat Conservation Plan

The purpose of the amendment process is to evaluate alternatives and develop recommendations for revising the Clark County MSHCP, Incidental Take Permit, and Implementing Agreement to more effectively balance the needs of sustainable growth and conservation in Clark County, Nevada.

Why are the permittees proposing to amend the MSHCP?

The MSHCP needs to be amended for the following reasons:

1. *To obtain coverage for acres not currently permitted for take in Clark County.*

There are approximately 215,000 acres of undeveloped land within the existing disposal boundaries that are not covered for take under the existing permit. Absent a permit amendment, individual landowners will be required to develop individual HCPs.

2. *To refocus the MSHCP to better protect those species most at risk.*

During the amendment process, the permittees will re-evaluate the list of covered species to refocus attention on those species most at risk and most directly impacted by take.

3. *To revise the conservation strategy to improve mitigation effectiveness and accountability.*

A revision of the conservation strategy is needed to provide greater transparency and accountability for mitigation accomplishments. Additionally, the permittees will review options for reducing dependence on federal land for mitigation.

4. *To restructure the MSHCP to improve efficiency and reduce bureaucracy.*

In an independent review of MSHCP program management, potential conflict of interest issues and other management inefficiencies were identified. To address these issues, the structure of program management will be re-evaluated during the permit amendment process.

Who is involved?

- Permittees (applicant)
 - Clark County
 - City of Las Vegas
 - City of North Las Vegas
 - City of Henderson
 - City of Boulder City
 - City of Mesquite
 - Nevada Department of Transportation
- U.S. Fish and Wildlife Service (regulator)
- Community Advisory Committee (stakeholders)
- Bureau of Land Management
- Consultants
 - Nicholson Facilitation & Associates, LLC (facilitation)
 - Ebbin Moser + Skaggs, LLP (outside counsel)
 - PBS&J (biological/environmental analysis)
 - Jones & Stokes (biological)