



U.S. Fish & Wildlife Service

ALL ABOUT...

Habitat Conservation Planning and Incidental Take Permits

■ **what are habitat conservation plans and incidental take permits?**

Incidental take permits are required when nonfederal activities will result in the take of threatened or endangered species (as defined in the Endangered Species Act, or ESA). A conservation plan must accompany an application for an incidental take permit. These plans are often referred to as “Habitat Conservation Plans,” or HCPs. The purpose of the HCP and permit is to allow these activities by determining and minimizing the level of take and mitigating for that take to the maximum extent practicable.

■ **what is take?**

Take is defined in the ESA, making it illegal for anyone to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect any threatened or endangered species, or attempt to do so. Harm may include significant habitat modification where it actually kills or injures a listed species through impairment of essential behavior.

■ **who needs an incidental take permit?**

Anyone who believes that their “otherwise lawful activities” will result in the take of a listed species. Staff from the Service can help determine whether a proposed project or action is likely to result in take and whether an HCP is an option to consider. FWS personnel can also provide technical assistance to help design your project so as to avoid take.

■ **what is the benefit of incidental take permits and hcps to a private landowner?**

They allow a landowner to legally proceed with an activity that would otherwise result in illegal take of a listed species. In addition, an HCP and incidental take permit provide a landowner certainty about the kinds of activities that can be legally conducted on his or her land now, and in the future. An HCP also allows a landowner to determine how best to meet the agreed-upon fish and wildlife management goals.

■ **what species can be included in an hcp?**

The species in an HCP are those that the applicant chooses to include. The Service encourages inclusion of all listed species, species that are proposed and candidates for listing, and other species if enough information is available to analyze the impacts of the activity or project and determine adequate mitigation for those species.

■ **what is the process for getting an incidental take permit?**

While Service personnel provide detailed guidance throughout the process, development of an HCP is driven by the applicant. The applicant is in charge of deciding whether to pursue an incidental take permit. Personnel from the Service are there to provide technical and procedural guidance and to process applications. The necessary components of a completed permit application are: a standard application form, the HCP, an Implementation Agreement (IA), and a National Environmental Policy Act (NEPA) document. The length of time to complete the permitting process depended on the complexity of issues involved and the completeness of the documents submitted by the applicant.

ALL ABOUT...

Habitat Conservation Planning and Incidental Take Permits, cont'd.

■ **what needs to be in an hcp?**

The contents of an HCP are defined in Section 10 of the ESA and its implementing regulations. They include:

- Impacts likely to result from proposed taking of one or more federally listed species.
- Measures the permit applicant will undertake to monitor, minimize, and mitigate for such impacts; the funding that will be made available to implement such measures; and the procedures to deal with unforeseen circumstances.
- Alternative actions or the taking that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives.
- Additional measures that the Service may require as necessary or appropriate.

■ **what kinds of actions are considered mitigation?**

Mitigation measures are those actions in the HCP that benefit conservation of the listed species. Mitigation measures may take many forms, such as: preservation (via acquisition or conservation easement) of existing habitat; enhancement or restoration of degraded or former habitat; creation of new habitat; establishment of buffer areas around existing habitat; public education programs; modification of land-use practices; and restrictions on vehicular access.

■ **what is the legal commitment of an hcp?**

The elements of the HCP are made binding through the incidental take permit and the IA.

■ **what other laws besides the endangered species act are involved?**

In issuing an incidental take permit, the Service must comply with the National Environmental Policy Act (NEPA) and all other statutory and regulatory requirements, including any state or local environmental/planning laws, HCPs require either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

■ **who is responsible for nepa compliance?**

The Service is responsible for NEPA compliance. However, the Service usually does not have sufficient staff resources to prepare all appropriate NEPA documents in the time frames desired by most permit applicants. An applicant may prepare an EA, or, if necessary, an independent consultant may be hired to prepare a draft EIS. Nevertheless, the FWS will be actively involved in preparing the NEPA document, and is required to make an independent evaluation of the environmental issues, ensure the accuracy of the information presented, and take responsibility for the document's scope and content.

■ **does the public get to comment on an hcp? how do public comments affect an hcp?**

The ESA requires public comment on the application form for an incidental take permit. NEPA requires public comment on certain NEPA documents. Therefore, public comments must be considered in the permit decision.

■ **who monitors hcp compliance, and what happens if someone fails to comply?**

The Service or any party designated as responsible (state wildlife agency or local government) in the HCP and IA will monitor the project for compliance with the terms of the incidental take permit, HCP and IA. Violation of the terms of the incidental take permit would result in illegal take under Section 9 of the ESA. The penalties are prescribed by law.

for more information, contact: *HCP Program Coordinator*, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709, (208) 378-5243.