

Examples of Covered Activities in other Texas Regional Habitat Conservation Plans

Excerpt from the **DRAFT Comal County Regional Habitat Conservation Plan** dated April 1, 2009 (from Section 3.1 – Authorized Actions):

Upon issuance of the Permit, take of Covered Species associated with the following activities occurring in the County would be authorized under and in accordance with this RHCP:

- Public or private construction and development.
- Utility installation and maintenance, including but not limited to power and cable stations, substations, and transmission lines; water, sewer, and natural gas pipelines; and plants and other facilities.
- Public infrastructure projects such as school development, road construction and maintenance, and parkland.

This RHCP is not intended to restrict or address ordinary farm and ranching practices or juniper (i.e., cedar) removal programs covered under other authorizations, such as the Natural Resource Conservation Service's brush control activities associated with implementation of the 2002 Farm Bill (USFWS 2004). Such brush control programs target the removal of immature juniper (cedar) thickets, which are not golden-cheeked warbler habitat and will not be the object of preservation under this RHCP, nor will they be considered in estimates of incidental take.

Excerpt from the **DRAFT Hays County Regional Habitat Conservation Plan** dated September 28, 2009 (from Section 5.1 – Covered Activities):

The Permit issued in conjunction with the RHCP will authorize incidental take of the covered species that is associated with otherwise lawful activities. These activities include, but are not limited to:

- The construction, use, and/or maintenance of public or private land development projects, including but not limited to single- and multi-family homes, residential subdivisions, farm and ranch improvements, commercial or industrial projects, government offices, and park infrastructure;
- The construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure;

- The installation and/or maintenance of utility infrastructure, including but not limited to transmission or distribution lines and facilities related to electric, telecommunication, water, wastewater, petroleum or natural gas, and other utility products or services;
- The construction, use, maintenance, and/or expansion of schools, hospitals, corrections or justice facilities, and community service development or improvement projects;
- The construction, use, or maintenance of other public infrastructure and improvement projects (e.g., projects by municipalities, counties, school districts); and
- Any management activities that are necessary to manage potential habitat for the covered species within the RHCP preserve system that could temporarily result in incidental take.

This RHCP is not intended to restrict or address ordinary ranching practices or juniper (i.e., "cedar") removal programs that may be covered under other authorizations, such as U.S. Department of Agriculture programs implemented by the Natural Resources Conservation Service (i.e., impacts from 2002 Farm Bill brush clearing programs were addressed by USFWS Consultation Number 2-12-05-F-021) (USFWS 2004). Not all woodland or brushy vegetation containing junipers constitutes warbler habitat.

Excerpt from the **FINAL Williamson County Regional Habitat Conservation Plan** dated April 15, 2008 (from Section 4.1 – Authorized Actions):

If the requested section 10(a)(1)(B) permit is issued, take of covered species associated with the following activities would be authorized under and in accordance with this RHCP:

- Public or private construction and development.
- Road construction, maintenance, and improvement projects.
- Utility installation and maintenance, including but not limited to power and cable lines; water, sewer, and natural gas pipelines; and plants and other facilities.
- School development or improvement projects.

As discussed previously, the County is experiencing rapid growth. Infrastructure improvements, public and private development and construction projects, and other development activities are expected to continue as the population grows. The landscape of the County will continue to change as new development activities are carried out. The activities authorized under this RHCP are expected to impact the covered species in the County. Primary impacts will be disturbance, alteration, or removal of occupied and potentially occupied habitat. Direct impacts to covered species may occur if development and construction results in destruction of occupied

habitat. Species may also be indirectly impacted by negative changes in habitat quality, which may occur due to removal of existing vegetation, alteration of drainage patterns, increased habitat fragmentation, increased populations of predatory or competitive species, and other indirect effects of proximity to development activities.

Excerpt from the **FINAL Lost Pines Habitat Conservation Plan** dated December 1, 2007 (from Section 4.0 – Activities Covered by the LPHCP):

The intent of the LPHCP is to address the impacts to the Houston toad resulting from certain human activities expected to occur in the Plan Area during the next 30 years. The LPHCP will support incidental take authorization, upon: 1) request by landowners or other interests for voluntary participation in the Plan; 2) an agreement to comply with applicable avoidance, minimization, and mitigation obligations set forth in Section 6 of this HCP and the land-use guidelines (appendices C, D, E, and F) for the activities that are described in this section. Incidental take authorization for activities not covered by the LPHCP (high density subdivision development, conversion of land to intense agricultural use, etc.) must be obtained through consultation with the Service or by participation in other approved HCPs.

The LPHCP addresses incidental take from the following activities:

- Single-family residential construction and use on legal, non-platted lots;
- Single-family residential construction within existing platted lots;
- Commercial and multi-family construction and use on up to 1 acre;
- Conservation subdivision development;
- Agricultural management;
- Forest management;
- Wildlife management;
- Bastrop County infrastructure maintenance and improvement;
- Emergency services; and
- Ongoing use of previously developed land

The increasing density of human habitation increases the chances of encountering Houston toads and increases the potential interaction between humans, their animals, and the Houston toad. The LPHCP provides that should an activity authorized under the incidental take permit result in such interactions or encounters, no additional mitigation would be required.

Excerpt from the **DRAFT Barton Springs/Edwards Aquifer Conservation District Habitat Conservation Plan and Preliminary Draft Environmental Impact Study** dated August 2007 (from Section 1.3.3 – Incidental Take Permit and Habitat Conservation Plan):

The District is applying for an ITP from the Service to allow incidental take of the previously described federally listed endangered species and one candidate species, under section 10(a)(1)(B) of the ESA. This take will be incidental to otherwise lawful activities that would occur as a result of water withdrawals within the jurisdiction of the District. These withdrawals are necessary for domestic and livestock, irrigation, municipal, industrial, and monitoring well uses, within the Barton Springs portion of the Edwards Aquifer (Figure 1.1-1).

Balcones Canyonlands Conservation Plan (per FINAL Habitat Conservation Plan and Environmental Impact Statement dated March 1996):

Covered activities are not specifically listed in the document. However, as described on page 2-11 (describing the proposed action) the document generally covers any activity resulting in incidental take of the covered species, including land development and agricultural practices.

Regional HCP Permit Applicant

Role and Responsibility of Permit Applicant (per USFWS HCP Handbook, pg 2-1):

The applicant is responsible for compliance with the take prohibition and exceptions under sections 9, 4(d), and 10(a) of the ESA. Once the decision to obtain a permit has been made, the applicant is also responsible for preparing the HCP and, if approved, for implementing it. Requesting technical assistance from FWS, NMFS, and other interests during preparation of the HCP is strongly recommended to ensure the HCP ultimately submitted for approval is biological sound and meets statutory requirements. The applicant:

- Should coordinate with FWS, NMFS, affected Federal and state agencies, tribal governments, and where appropriate, affected private interests and organizations in preparing an HCP that satisfies the requirements of section 10(a)(1)(B) of the ESA and Federal regulations
- Generally, develops a draft Environmental Assessment (EA) with technical assistance from the Services, and draft Federal Register notices for Service use during the permit processing phase. Normally, EISs are also prepared by the applicant, or through a contractor, or an HCP applicant, under certain circumstances and strict guidance from FWS or NMFS, can assist in developing an EIS. However, FWS or NMFS is ultimately responsible for the content of all section 10 NEPA documents.
- Submits a permit application (Form 3-200), a \$25 application fee (unless applicant is fee exempt), a completed HCP, draft NEPA analysis (optional) and an IA (as needed) to the appropriate FWS Field or Regional Office or NMFS Regional or Washington, D.C. Office (see Chapter 6, Section B.3). For FWS applications, note that Federal regulation [50 CFR 13.11(b)] calls for the application to be submitted to the Arlington, Virginia office; however, these regulations are being amended to reflect delegation of the permit program to the Regional Directors. NMFS regulations [50 CFR 222.22] state that applications should be sent to the Silver Spring, Maryland Office, but applications involving west coast anadromous fish should be submitted to the Southwest or Northwest Regional Directors.
- During the permit processing phase, coordinates with the appropriate FWS or NMFS Field Office to amend or correct the HCP or associated documents, as necessary. Also should provide the Field Office with additional information necessary for the Services to respond to public comments when appropriate.
- If the permit is issued, implements all measures and programs required by the HCP permit and submits all documentation, monitoring reports, etc. as required over the life of the permit.

Examples of Permit Applicants in other Texas Regional HCPs

Plan	Permit Applicant	Comments
Comal County Regional Habitat Conservation Plan (draft March 24, 2009)	Comal County	
Hays County Regional Habitat Conservation Plan (draft September 28, 2009)	Hays County	
Williamson County Regional Habitat Conservation Plan (final August 15, 2008)	Williamson County and the Williamson County Conservation Foundation, Inc.	Williamson County Conservation Foundation (WCCF) is a non-profit corporation formed by the Williamson County Commissioners' Court and overseen by an appointed Board of Directors. The WCCF was established in December 2002 to provide for conservation of endangered species in Williamson County while helping to promote responsible development.
Lost Pines Habitat Conservation Plan (final December 1, 2007)	Bastrop County	
Balcones Canyonlands Conservation Plan (final March 1996)	Travis County and City of Austin	Permit Applicants collaborate with "Managing Partners" on preserve management and monitoring. Some Managing Partners have specific agreements with the Permit Applicants; others are informal partners.

Guidance For Incidental Take Permit Duration

USFWS HCP Handbook, pg 6-25:

The Conference Report for the 1982 Section 10 amendments states, "The Secretary is vested with broad discretion in carrying out the conservation plan provision to determine the appropriate length of any section 10(a) permit issued pursuant to this provision in light of all of the facts and circumstances of each individual case" (H.R. Rep. No. 97-835, 97th Congress, Second Session).

Thus, the allowable duration of a permit is flexible but an expiration date must be specified (for FWS, in block 7 of the permit Form 3-201). The duration of planned activities, the potential positive effects to listed species provided under the permit, and the potential negative effects to the species that may result from premature permit expiration should be considered in determining permit length. Also, local government agencies may wish to tie the permit expiration date to local land use plans. Development or land use activities and the conservation program proposed in the HCP may require years to implement. The Services must assure the applicant that authorizations under the permit will be available for the life of the project, and the public that conservation measures under the permit will remain in effect for as long as necessary to implement the conservation program.

50 Code of Federal Regulations 17.22:

Duration of permits. The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

Factors to consider:

- Human population projections
- Construction and housing forecasts
- Regional transportation plans and other long-range planning horizons
- Adequacy of existing biological information

Examples from Texas RHCPs:

All Texas RHCPs in place or under development have a permit duration of 30 years.

