

# **FINDINGS AND RECOMMENDATIONS PURSUANT TO THE ENDANGERED SPECIES ACT AND FINDING OF NO SIGNIFICANT IMPACT PURSUANT TO THE NATIONAL ENVIRONMENTAL POLICY ACT FOR THE APPROVAL OF THE GENERAL CONSERVATION PLAN FOR NON-FEDERAL OIL AND GAS ACTIVITIES IN SANTA BARBARA COUNTY, CALIFORNIA**

The U.S. Fish and Wildlife Service (Service) prepared a Programmatic Environmental Assessment (EA) pursuant to the National Environmental Policy Act of 1969 (NEPA) to evaluate the impacts of, and the alternatives to, the proposed approval and implementation of the *General Conservation Plan (GCP) for Non-Federal Oil and Gas Activities in Santa Barbara County, California*. The Service has prepared the GCP to standardize the issuance of Incidental Take Permits (ITPs) pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA) for incidental take of the federally endangered Santa Barbara County Distinct Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*) (CTS) and the federally threatened California red-legged frog (*Rana draytonii*) (CRLF) associated with non-Federal oil and gas activities in Santa Barbara County. Over the 20-year life of the GCP, the standardized ITP process would incorporate established maximum allowable permanent and temporary habitat impacts within CTS or CRLF habitat consistent with the species' recovery plans. Similarly, the GCP would incorporate established maximum allowable permanent and temporary habitat impacts for the federally endangered Lompoc yerba santa (*Eriodictyon capitatum*) (LYS) based on recovery criteria in the species' 5-year Review: *Summary and Evaluation*.

## **I. DESCRIPTION OF PROPOSAL**

The Proposed Action (Preferred Alternative) comprises the approval and implementation of the GCP to govern subsequent issuances of ITPs for covered species within the 674,200-acre Planning Area for the proposed 20-year term of the GCP. Activities covered under the GCP that may result in the take of CTS and CRLF or impacts to LYS include, but are not limited to, geophysical exploration, development, extraction (i.e., upstream activities) and storage, transport, and distribution (i.e., midstream activities) of crude oil, natural gas, and/or other petroleum products. Some overlap may occur between these two categories and different Federal agencies may define "upstream" and "midstream" differently to the definition in the GCP. All covered activities must comply with the most current requirements and procedures administered by the California Geologic Energy Management Division (CalGEM; formerly known as the Division of Oil, Gas, and Geothermal Resources). Further, only covered activities located within the Planning Area would be eligible to receive an ITP through the GCP process. Therefore, pipelines or other infrastructure that extend beyond the Planning Area boundaries would continue to be addressed on a project-by-project basis and would require individual project-specific, Applicant-prepared Habitat Conservation Plans (HCPs).

The GCP includes defined permitted limits on take for CTS and CRLF as well as impacts to LYS to ensure that the recovery criteria for these species is not precluded. In the event that the maximum permitted take or impacts to a covered species is reached prior to the

expiration of the 20-year term of the GCP, further impacts or take authorizations would no longer be available under the GCP for that particular species.

Under the GCP, compensatory mitigation would be undertaken in a strategic way such that it contributes to meeting the species' recovery criteria. For example, within the East Santa Maria and West Santa Maria CTS metapopulations, the amount of suitable habitat available to meet the recovery criteria described in the Recovery Plan is decreasing. Under the GCP, the Service would be able to focus compensatory mitigation in these metapopulation areas to conserve existing habitats and/or restore degraded CTS habitats to help achieve recover goals.

As described in the GCP, to apply for an ITP under the GCP, an Applicant must submit a complete Permit Application Package, beginning with the completion of the *GCP Eligibility Determination Form* to determine whether the individual non-Federal oil and gas activity is eligible for the GCP permitting process. The form would require:

- Identification of the local or state Lead Agency pursuant to the California Environmental Quality Act (CEQA);
- Copy of the CEQA-compliant documentation, CEQA findings, and Mitigation Monitoring and Reporting Program (MMRP); and
- Record of consultation with appropriate Federal, state, and local agencies as well as appropriate Native American tribes.

For each application received under the GCP, the Service would conduct an appropriate level of NEPA-compliant analysis dependent upon impacts to the human and physical environment. The Service would use the project-specific CEQA document to help inform this NEPA-compliant analysis. If the CEQA-compliant document identifies significant and unavoidable impacts and requires a Statement of Overriding Considerations, the Service would carefully review the project and make careful considerations as to what level of NEPA-compliant analysis is appropriate. If the Service determines that the project is likely to have significant adverse impacts, preparation of an Environmental Impact Statement (EIS) may be required and the project would not be eligible for take coverage under the GCP.

## **II. NATIONAL ENVIRONMENTAL POLICY ACT – ANALYSIS AND FINDINGS**

The Programmatic EA provides the required NEPA-compliant documentation for the proposed Federal action (i.e., approval and implementation of the GCP), providing baseline environmental setting information and a discussion of potential impacts to the human and natural environment that may occur as a result of approval and implementation of the GCP. The scope of the Programmatic EA is limited to the evaluation of the GCP as a mechanism to standardize ITP issuance for covered activities; the Programmatic EA neither evaluates nor results in approval of oil and gas development projects or activities. Land use approval(s) for individual projects would continue to be the responsibility of the local or state agency(ies) with appropriate

jurisdiction(s) over an individual project site. Impacts to the full range of environmental resources for individual non-Federal oil and gas activities would be performed during that review and permitting process in compliance with CEQA. Individual non-Federal oil and gas activities would continue be evaluated by the Service in subsequent environmental documentation compliant with NEPA on a project-by-project basis prior to issuance of an ITP under the GCP.

An ITP is one of a suite of permits required for project approval. The GCP process neither reduces nor increases the number and types of permits required and would not affect the required agency coordination and/or consultation required by applicable laws, regulations, guidance, etc. As such, the GCP would not directly result in any ground-disturbing activities that could result in potential impacts to other environmental resource areas. Similar to the issuance of ITPs under existing conditions, issuance of ITPs under the GCP would allow for incidental take of individual CTS and CRLF in the form of mortality or injury of adults or larvae may result from crushing and collision; impacts to upland habitat; increased habitat fragmentation; and changes from one vegetation community to another. Covered activities could affect adjacent habitat that supports LYS or is otherwise suitable for LYS. Covered activities could remove individual plants or otherwise affect the habitat suitability as a result of altered surface hydrology, potentially resulting in increased erosion; changes in the period and amounts of moisture content in the soil to which the subspecies has adapted; increases in the abundance of nonnative plants species as a result of the project activities; dust that could affect reproduction; and loss or change in the abundance of pollinators.

Although the GCP does not, and cannot, place a limit on the number of non-Federal oil and gas activities, the GCP does incorporate established maximum allowable permanent and temporary impacts within CTS or CRLF habitat, consistent with the species' recovery plans. Similarly, the GCP incorporates established maximum allowable permanent and temporary impacts within LYS habitat based on recovery criteria in the species' *5-year Review: Summary and Evaluation*. The GCP would standardize avoidance and minimization measures and ensure that they are applied consistently throughout the GCP plan area. Additionally, the GCP would ensure that compensatory mitigation would be undertaken in a strategic way such that it contributes to meeting the species' recovery criteria.

Under the HCP process, the Applicant develops avoidance and minimization measures on a project-by-project basis as a part of a project-specific, Applicant-prepared HCP. The GCP would not limit or reduce the application of avoidance and minimization measures for non-Federal oil and gas activities. Rather, the GCP would standardize these avoidance and minimization measures and ensure that they are applied consistently throughout the GCP Planning Area. The measures provided under the GCP would result in larger, contiguous tracts of land being protected, with greater conservation value, than would likely be achieved if similar acreage were protected on a project-by-project basis under the No Action Alternative. A more detailed list and description of the proposed minimization and mitigation measures can be found in Section 5, *Conservation Program/Measures to Minimize and Mitigate for Impacts* of the GCP.

As such, the implementation of the GCP – which would incorporate established maximum allowable impacts consistent with the species’ Recovery Plan and standardize the approach to implementation of avoidance, minimization, and mitigation measures and– would result in minor overall beneficial impacts to the three covered species.

### **III. PUBLIC COMMENT**

A Notice of Availability (NOA) was published in the *Federal Register* on March 6, 2020 announcing the availability of the Draft Programmatic EA and GCP for review by the public, agencies, and other interested parties (85 *Federal Register* [FR] 13181). Notification was also sent to all interested stakeholders identified during the scoping process to encourage review of and comment on the Draft Programmatic EA. The Service received comment letters from the one Federal agency (i.e., U.S. Environmental Protection Agency), two state agency (i.e., California Coastal Commission and California Department of Fish and Wildlife [CDFW]), two non-governmental organizations (i.e., Center for Biological Diversity and Environmental Defense Center), two oil and gas companies (i.e., Aera Energy and Pacific Coast Energy Company), and one biological consulting firm (i.e., Hunt & Associates). The Service also received 58 form letters from concerned members of the public.

The majority of comments on the Draft Programmatic EA expressed concern that the GCP would provide blanket approval of oil and gas activities in Santa Barbara County and disregard potential impacts related to leaks, spills, fires, and greenhouse gas (GHG) emissions. Several comments also inquired about the GCP application process and individual documents and information required for the Individual Project Package application. The two non-governmental organizations and the biological consulting firm expressed concern that the mitigation measures and modeling included in the GCP was not sufficient to ensure the survival and recovery of the species in the wild. The California Coastal Commission letter inquired about the scope of the Planning Area and the activities that may occur within the coastal zone. The two oil and gas companies inquired about coordination with the CDFW to ensure that the mitigation for the Covered Species required by the GCP is consistent with the CDFW’s mitigation requirements for the species.

All comments received on the Draft Programmatic EA were reviewed, considered, and responded to in Appendix D of the Final Programmatic EA. The Final Programmatic EA has been revised to clarify that the GCP would not result in the direct approval of non-Federal oil and gas activities within Santa Barbara County. The Final Programmatic EA has also been revised to clarify that while the GCP does not, and cannot, place a limit on the number of non-Federal oil and gas activities, the GCP does incorporate established maximum allowable permanent and temporary impacts within CTS or CRLF habitat, consistent with the species’ recovery plans. Similarly, the GCP incorporates established maximum allowable permanent and temporary impacts within LYS habitat based on recovery criteria in the species’ *5-year Review: Summary and Evaluation*. In the event that the maximum permitted take or impacts to a covered species is reached prior to the

expiration of the 20-year term of the GCP, further impacts or take authorizations would no longer be available under the GCP for that particular species. The GCP would not limit or reduce the application of avoidance and minimization measures for non-Federal oil and gas activities. Rather, the GCP would standardize these avoidance and minimization measures and ensure that they are applied consistently throughout the GCP plan area. Additionally, the GCP would ensure that compensatory mitigation would be undertaken in a strategic way such that it contributes to meeting the species' recovery criteria.

#### **IV. CHANGES BETWEEN THE DRAFT AND FINAL GCP**

The Service made several minor revisions to the Draft GCP, none of which were considered to be substantive. The following sections describe these revisions.

##### **1. CRLF Conservation Strategy**

The Draft GCP included an in-depth description of the proposed conservation strategy for the CRLF. Given that species status is likely to change throughout the lifetime of the GCP, the Service decided to develop a conservation strategy for the CRLF that Applicants could refer to when seeking incidental take coverage for the CRLF. The conservation strategy would provide guidance when assessing land use and project development impacts to the CRLF and would strategically identify preferred approaches to offset unavoidable impacts through compensatory mitigation when triggered under the ESA. The conservation strategy would be a living, external document that the Service would update as needed to reflect new scientific information, species needs, or policy changes. The Service has determined this approach would better meet the needs of the CRLF, the Service, and the Applicants because it would avoid the species conservation strategy becoming outdated and irrelevant. The Final GCP provides general guidance about compensatory mitigation for the CRLF and refers the reader to the conservation strategy.

##### **2. Removal of CTS Mitigation and Conservation Account**

The Service removed the CTS Mitigation and Conservation Account as a viable mitigation option for the CTS. The CTS is both a federally and state-listed species and is governed by the Service and CDFW. The CDFW cannot accept payments into species mitigation accounts as suitable mitigation because it does not meet their fully mitigated standard, which is one of their permit issuance criteria. The Service intends to work with Applicants to ensure any ITP that is issued under the GCP meets CDFW's fully mitigated standard. Therefore, the Service removed this mitigation option for CTS from the Final GCP.

##### **3. Impacts to Aquatic and Riparian Habitats**

The Service allowed for temporary impacts to aquatic and riparian habitat under the Final GCP. Applicants may need to implement habitat maintenance activities within livestock ponds or other aquatic features that serve as suitable breeding habitat for CTS and CRLF.

Many livestock ponds have a lifespan of 30 to 50 years and require spillway/berm repair and sediment or vegetation removal during this time span. Other aquatic features such as modified ponds may also require regular sediment or vegetation removal. The Service anticipates these maintenance activities would be beneficial to the species by ensuring these features remain intact and properly functioning.

4. Update LYS Species Information

The Service updated species status information and recovery needs for the LYS. The Service is currently working to complete a species status assessment for the LYS. Through this effort, Service biologists have been compiling updated information about the species occurrences and ecological needs. This information was used to update LYS information throughout the Final GCP.

5. Removal of Critical Habitat

Like any other Federal agency, the Service may not undertake a Federal action that is likely to destroy or adversely modify designated critical habitat. The Service is required to evaluate the effects of issuing a permit – or in this case, approving the GCP – on designated critical habitat under Section 7 consultation. As part of the consultation process, the Service would analyze the effects of approving the GCP and subsequently issuing permits under the plan on affected listed species and critical habitat to determine whether that permit action is likely to jeopardize the continued existence of the listed species or to destroy or adversely modify designated critical habitat.

Aside from the added protection that may be provided under Section 7 of the ESA, the ESA does not provide other forms of protection to designated critical habitat. Because consultation under Section 7 of the ESA does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the ESA against such activities. Therefore, the Service did not include critical habitat in the Final GCP.

**V. INCIDENTAL TAKE PERMIT CRITERIA – ANALYSIS AND FINDINGS**

1. The taking will be incidental.

The Service finds that the take of the three covered species under the GCP would be incidental to otherwise lawful activities that would occur as a result of non-Federal oil and gas activities. Applicants are required to show compliance with all other applicable laws and regulations prior to applying for take coverage under the GCP. Therefore, if any project is not approved by or in compliance with any appropriate local, state, or federal laws or regulations, the project does not qualify for take coverage under the GCP.

2. The Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

The Service finds that the GCP contains standardized minimization and mitigation

measures necessary to minimize and mitigate the effects of the taking. Impacts to biological resources would continue to be assessed and mitigated on a project-by-project basis under CEQA, as applicable. Unavoidable take of the Covered Species would be mitigated through compensatory mitigation.

3. The Applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided.

Applicants under the GCP would be required to commit to full implementation of the required minimization and mitigation measures described in Section 5, *Conservation Program/Measures to Minimize and Mitigate for Impacts of the GCP*. Applicants would minimize and mitigate for all unavoidable impacts according to the identified Mitigation Strategies for the CTS, CRLF, and LYS and for anticipated impacts described in their Individual Project Package application. Funding assurances would also be provided with their Individual Project Package application.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The wording of this criterion is identical to the “*jeopardy*” definition in the Service’s Section 7 implementing regulation (50 Code of Federal Regulations [CFR] §402.02), which defines “*jeopardize the continued existence of*” as “*to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.*”

Over the 20-year life of the GCP, the standardized ITP process would incorporate established maximum allowable permanent and temporary habitat impacts within CTS or CRLF habitat consistent with the species’ recovery plans to ensure the likelihood of both the survival and recovery of these listed species. Similarly, the GCP would incorporate established maximum allowable permanent and temporary habitat impacts for LYS based on recovery criteria in the species’ *5-year Review: Summary and Evaluation*. In the event that any of the established maximum allowable permanent or temporary impacts are reached, no additional ITPs would be issued under the GCP process for non-Federal oil and gas activities in that area(s). The established recovery plans and recovery criteria would function as a backstop to future species impacts. Subsequent analysis under Section 10 of the ESA as well as subsequent NEPA-compliant documentation would be required prior to any revisions to the GCP to raise established maximum allowable impacts for a metapopulation, critical habitat unit, or subpopulation. The measures provided under the GCP would result in larger, contiguous tracts of land being protected, with greater conservation value, than would likely be achieved if similar acreage were protected on a project-by-project basis under the No Action Alternative. Therefore, the GCP would not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

5. Additional measures as required by the Director of the Service will be implemented.

The GCP has incorporated all elements necessary for issuance of an ITP pursuant to Section 10(a)(1)(B) of the ESA.

6. Alternatives

Several alternatives to the Proposed Action were identified and preliminarily evaluated during project planning and development, including differing Covered Species. These alternatives were eliminated from further consideration and are not analyzed in detail within the Programmatic EA.

The Service carried one alternative to the Proposed Action forward for detailed analysis: the No Action Alternative. Under the No Action Alternative, the Service would not implement the GCP. Applicants would be required to continue to comply with the ESA by avoiding take of federally listed species or, in the instances where take could not be avoided, Applicants would need to apply for an individual ITP and develop a project-specific, Applicant-prepared HCP in order to comply with the ESA. No defined maximum impact limits to CTS, CRLF, and LYS habitat would be established; non-Federal oil and gas activities would continue without consideration of such limits. Conservation measures, including any compensatory mitigation, would also continue to be developed by the Applicant on a project-by-project and piecemeal basis instead of collectively. Thus, the benefits of cohesive planning for species recovery efforts may not be achieved.

7. The Director of the Service has received the necessary assurances that the plan will be implemented.

Applicants would be required to commit to full implementation of the requirements in the GCP. Any permit issued in this matter would only be effective when the mitigation measures have been carried out in accordance with the special conditions of the permit. Failure to perform the obligation outlined by the conditions of the Section 10(a)(1)(B) permit may be grounds for suspension or revocation of the permit.

## **VI. GENERAL CRITERIA AND DISQUALIFYING FACTORS**

The Service has no evidence the ITP application should be denied on the basis of criteria and conditions set forth in 50 CFR §13.21(b) and (c).

## **VII. DETERMINATION AND RECOMMENDATION ON ISSUANCE OF PERMIT**

Based on information in the Final Programmatic EA and supporting data in Service files, we have determined that the establishment of the GCP for Non-Federal Oil and Gas Activities in Santa Barbara County is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of



NEPA. Accordingly, the preparation of an EIS for the Proposed Action is not warranted. Therefore, the Service has made a Finding of No Significant Impact as allowed by NEPA and supported by Council on Environmental Quality (CEQ) Regulations for Implementing NEPA.

It is my decision to approve the GCP for Non-Federal Oil and Gas Activities in Santa Barbara County and, where applicants meet all requirements in the GCP, subsequently issue section 10(a)(1)(B) permits.

<hr/> <p>Stephen P. Henry, Field Supervisor Ventura Fish and Wildlife Office</p>	<p>June 27, 2022</p> <hr/> <p>Date</p>
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