

# CAPITOL -TO- CAPITOL

SACRAMENTO, CA WASHINGTON, D.C.

## LAND USE AND NATURAL RESOURCES (LUNR)

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## ENDANGERED SPECIES ACT AND STREAMLINED PERMITTING

### Requested Action:

Direct the U.S. Fish and Wildlife Service (USFWS) to explore the feasibility of developing a General Conservation Plan (GCP) for geographic areas in California's Capital Region that are not already governed by an existing habitat conservation plan (HCP) to streamline Incidental Take Permitting under Section 10 of the Federal ESA.

### Business Nexus

Construction of housing, transportation and utility infrastructure, critical flood protection facilities, and commercial land use will continue throughout the Capital Region. Preparation of a general conservation plan would provide certainty and uniformity for successful compliance with the Federal Endangered Species Act (ESA) and allow projects to be approved and proceed in a timely manner.

### Background

The Capital Region is home to many plant and animal species that are protected by the Endangered Species Act. Non-Federal entities that are planning activities that may harm (generally referred to as "take") endangered or threatened wildlife or fish species are required to obtain a Biological Opinion containing an Incidental Take Statement or Incidental Take Permit (ITP) from the U.S. Fish and Wildlife Service (USFWS). A Biological Opinion or ITP may be acquired under two different sections of the ESA: Section 7 and Section 10.

A Section 7 Consultation process is used when a federal agency is undertaking an action that may result in take of a species or its habitat.

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These federal actions, also referred to as “federal handles,” may include the undertaking occurring on Federal lands (e.g. timber harvest on U.S. Forest Service property or energy development on Bureau of Land Management property) the issuance of a permit (e.g. Clean Water Act Section 404 permit to fill federal wetlands or waters), or the applications of Federal funds (e.g. Federal Highway Association funding of a road widening or trail improvement). The federal agency initiates formal consultation with a federal wildlife agency (USFWS or the National Marine Fisheries Service) under Section 7 to ensure that its proposed action does not adversely harm endangered and threatened species and their habitats. This process follows rigorous procedures and timelines during the consultation process that culminates in an agency Biological Opinion that assesses the action’s threat to the continued existence of a listed species and an Incidental Take Statement that describes the limit of take allowed under the action.

A Section 10 process is used where there is no federal handle. This process allows a non-federal entity to obtain “incidental take” coverage through the development of a Habitat Conservation Plan (HCP). Habitat Conservation Plans and General Conservation Plans (GCPs) provide a framework and a path to balance wildlife conservation with the needs of the community and local economies. The primary objective of the HCP and GCP programs is to take a strategic approach to conserve species and the ecosystems they depend on while improving efficiencies in permitting processes. Under Section 10, the federal wildlife agencies are not required to follow the rigorous timelines required under the Section 7 process. This means the Section 10 process may take more time than the Section 7 process.

The differences between Section 7 and Section 10 have become more important to our region in the recent past. The Supreme Court holding in the *Sackett* case and resulting changes in regulations related to Waters of the United States have reduced those areas considered to be Federally jurisdictional. This affects a variety of types of wetlands and water, including Vernal Pools. These types of wetlands are home to multiple federally endangered species, including Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp, and many plant species. Therefore, many projects that would have previously required a Section 404 permit to fill wetlands from the U.S. Army Corps of Engineers no longer need a federal permit and thus no longer have a federal handle. This means that they can no longer use the Section 7 consultation process and will instead require a Section 10 ITP to ensure compliance with the Federal ESA.

Several areas of the region already have a large-scale regional HCP in place to protect species and streamline permitting. The Placer County Conservation Plan (PCCP) and the South Sacramento Habitat Conservation Plan (SSHCP) are two such examples, covering hundreds of acres, which preserve core preservation and restoration areas while also providing a vehicle to streamline permitting and provide certainty to development entities on mitigation requirements. These large-area programs support compliance with Federal ESA while providing a structured process for completing necessary projects in the region.

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On the other hand, there are thousands of acres in the region that are not governed by a comprehensive habitat plan such as an HCP. In our region, there is a need for a streamlined process for permitting incidental take of certain commonly encountered federally protected species such as Valley elderberry longhorn beetle (VELB) and vernal pool crustaceans (located in non-Federal waters) in areas that are not currently covered by a regional habitat conservation plan. Currently, projects that may take federally protected species and their habitats and that do not have a federal handle (e.g. a USACE 404 permit, FHA funding, or similar) must complete a project specific HCP. This can be a time-consuming and resource-intensive process for staff at USFWS as each HCP must be developed specifically for a given project. For applicants, the individual HCP process can result in significant and expensive project delays since the process is not subject to the timeline requirements under Section 7.

An alternative approach to developing many project-specific HCPs would be to develop a regional GCP. GCPs provide a comprehensive strategy to promote the long-term conservation of identified species while allowing the USFWS to work more efficiently and effectively with landowners in the region and ensure their compliance under ESA. Through this collaborative approach, the USFWS can work with multiple proponents working on various development efforts to meet statutory and regulatory requirements while promoting conservation of identified species. A GCP for the region would create a structured approach to compliance with Federal ESA, providing clarity for project applicants and reducing the burden on regulators who would no longer need to develop multiple project specific HCPs.

In addition to providing streamlining for Federal ESA take coverage, the development and implementation of HCPs and GCPs, in general, provide many other benefits. These include providing certainty to the permitting process, permitting timelines, and mitigation requirements. This will in turn provide an incentive for the expansion of mitigation banking, which makes mitigation credits more available in the region. This will allow for the protection of additional conservation lands more quickly. Through these efforts, development proposals can proactively plan for conservation reserves, and the USFWS can fulfill its mission to conserve, protect, and enhance fish, wildlife, plants, and their habitats.

Directing the USFWS to explore the feasibility of developing a GCP for areas not governed by an existing HCP would help preserve sensitive environmental habitats and species while providing guidance and certainty to development entities. Directing monies and staff to the USFWS to explore this potential solution to problematic and extended permitting processes would facilitate the development of much-needed housing, flood protection infrastructure, replacement or expansion of utility infrastructure, and commercial uses to further the region's prosperity.