

Dated: August 18, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for
Housing.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Safe Harbor Agreement With Chevron Hawaii Refinery at James Campbell Industrial Park for Management of the Hawaiian Stilt and Hawaiian Coot, Oahu, HI

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; receipt of
application.

SUMMARY: The Chevron Hawaii Refinery (Chevron) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to the Endangered Species Act, (ESA). The permit application includes a proposed Safe Harbor Agreement (Agreement) between Chevron, the Service, and the Hawaii Department of Land and Natural Resources. The proposed Agreement and permit application are available for public comment.

The proposed Agreement allows for the management of nesting and foraging habitat for the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*) and endangered Hawaiian coot (*Fulica alai*) at the Chevron Hawaii Refinery. The proposed duration of the Agreement and permit is 6 years.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. We explain the basis for this determination in an Environmental Action Statement, which is also available for public review.

DATES: Written comments must be received by September 23, 2004.

ADDRESSES: Comments should be addressed to Mr. Jeff Newman, Acting Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; facsimile (808) 792-9580.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene Pangelinan, Supervisory Fish and Wildlife Biologist (see **ADDRESSES**), or telephone (808) 792-9400.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners

voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for ESA section 10(a)(1)(A) enhancement of survival permits based on Safe Harbor Agreements are found in 50 CFR 17.22(c).

Through a Cooperative Agreement, the Service and Chevron have been working together since 1992 to manage Rowland's Pond (6 acres) for Hawaiian stilt nesting habitat, located at the Chevron Hawaii Refinery on the island of Oahu, Hawaii. In lieu of renewing the Cooperative Agreement, the Service has been working with Chevron and the Hawaii Department of Land and Natural Resources to develop a Safe Harbor Agreement to continue the management of habitat for the endangered Hawaiian stilt and, in addition, the endangered Hawaiian coot at the refinery. Under the proposed Agreement, Chevron would: (1) Maintain 6 acres of stilt nesting habitat at Rowland's Pond (e.g., manage water level and vegetation) and 5 acres of stilt and coot foraging habitat at the Impounding Basin and Oxidation Ponds; (2) implement a program to control predators (e.g., cats, mongoose) at Rowland's Pond, the Impounding Basin, and Oxidation Ponds during the stilt and coot breeding season; and (3) monitor stilts and coots during the breeding season. In addition, Chevron would conduct an education program for its employees and contractors about the Hawaiian stilt and Hawaiian coot at the refinery.

The conservation measures set forth in the Agreement are expected to result in the following net conservation benefits to the covered species: (1) Contribute offspring to stilt and coot populations to achieve recovery goals; and (2) increase availability of predator-reduced nesting and foraging habitat for stilts and coots.

Consistent with Safe Harbor policy and regulations, the Service proposes to issue a permit to Chevron authorizing take of Hawaiian stilt and Hawaiian coot incidental to otherwise lawful activities (i.e., normal refinery operations and refinery maintenance activities) at the refinery, as long as baseline conditions are maintained and the terms of the

Agreement are implemented. Proposed activities include incidental take of stilts or coots from: (1) Release of oil, other petroleum, or chemical products into Rowland's Pond from a tank rupture; (2) release of oil or other petroleum products from a tank overflow; (3) appearance of oil or petroleum products in the sediment and/or water used in the Oxidation Pond, Impounding Basin, and Rowland's Pond; (4) accidental crushing of stilt or coot chicks by vehicles; (5) accidental crushing of stilt or coot eggs during refinery maintenance; (6) flooding of nests and eggs; and (7) measures to prevent stilts from nesting or attempting to nest outside of the usual stilt nesting areas at the refinery. The proposed permit would also authorize incidental take resulting from stilt and coot monitoring activities. We expect that the maximum level of incidental take proposed to be authorized under this permit would never be realized due to Chevron Hawaii Refinery's history of successful maintenance and operation of the facility to prevent releases of oil or other petroleum products, and proposed monitoring activities during the breeding season to track stilt and coot nesting success and identify situations when management actions may need to be immediately implemented to prevent injury to the coots and stilts at the refinery.

The proposed permit would also allow Chevron to return to baseline conditions at the end of the term of the Agreement, if so desired by Chevron. However, when the proposed Agreement expires, we anticipate that any stilts or coots that were nesting at Chevron when Rowland's Pond was managed pursuant to the Agreement would not be injured or harmed, but would relocate on their own to other suitable wetlands. We anticipate that the benefits of entering into the proposed Agreement would outweigh the risks of attracting Hawaiian stilts and Hawaiian coots to an oil refinery, taking into account the potential for incidental take, the benefits resulting from implementing the proposed Agreement and minimization measures to reduce take, the fact that there has never been a catastrophic oil release since the refinery was established in 1959, and our successful management with Chevron pursuant to the Cooperative Agreement. Therefore, we anticipate that the environmental effects of the proposed Agreement and the activities it covers, which would be facilitated by the allowable incidental take, would provide a net conservation

benefit to the Hawaiian stilt and Hawaiian coot.

Public Review and Comments:

Individuals wishing copies of the permit application, the Environmental Action Statement, and/or copies of the full text of the proposed Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the Service office in Honolulu (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). Documents also will be available for public inspection, by appointment, during normal business hours at this office.

We request comments from the public on the permit application, Agreement, and Environmental Action Statement. All comments received, including names and addresses, will become part of the Administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

We will evaluate the permit application, the proposed Agreement, associated documents, and comments submitted thereon to determine whether or not the permit application meets the requirements of section 10(a) of the ESA and National Environmental Policy Act regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to Chevron for the incidental take of stilts and coots as a result of otherwise lawful activities in accordance with the terms of the Agreement. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6).

Dated: July 12, 2004.

David J. Wesley,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Record of Decision for the Programmatic Environmental Impact Statement/Environmental Impact Report for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) announces availability of the Record of Decision (ROD) for the Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/R) for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program. The ROD is available to the public after publication of this Notice of Availability in the **Federal Register**. The Service and the California State Coastal Conservancy jointly prepared the EIS/R to address environmental impacts and benefits of alternatives for the *Spartina* Control Program and provide for early-stage public involvement, as required under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The *Spartina* Control Program's goal is to control or eradicate four species of non-native, invasive perennial cordgrass (genus *Spartina*) in the San Francisco Bay Estuary (Estuary), including the San Francisco Bay National Wildlife Refuge.

Requests for the ROD should be directed to Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Littlefield, Sacramento Fish and Wildlife Office, (916) 414-6600.

SUPPLEMENTARY INFORMATION: The programmatic EIS/R analyzed potential effects of implementing *Spartina* control or eradication methods at a generalized, region-wide program level rather than a detailed, individual project level. The purpose of the *Spartina* Control Program is to arrest and reverse the spread of invasive, non-native cordgrasses (*S. alterniflora*, *S. anglica*, *S. densiflora*, and *S. patens*) in the Estuary to preserve and restore the ecological integrity of its intertidal habitats and estuarine ecosystem.

The Estuary supports a diverse array of native plants and animals, including several Federal and State listed species. Many nonnative species of plants and animals have been introduced into the

Estuary, and some now threaten to cause fundamental changes in the structure, function, and ecological value of the Estuary's tidal lands. In recent decades, populations of nonnative cordgrasses were introduced to the Estuary and rapidly began to spread. Although valuable in their native settings, these introduced cordgrasses are highly invasive in new environments and frequently become the dominant plant species. In particular, the non-native Atlantic smooth cordgrass (*S. alterniflora*) and its hybrids, formed when this species crosses with native Pacific cordgrass (*S. foliosa*), are now threatening the ecological balance of the Estuary. In the Estuary, Atlantic smooth cordgrass is likely to choke tidal creeks, dominate newly restored tidal marshes, impair thousands of acres of existing shorebird habitat, and eventually cause extinction of the native Pacific cordgrass.

Once established in the Estuary, nonnative invasive cordgrass could rapidly spread to other estuaries along the California coast through seed dispersal on the tides. Nonnative invasive cordgrasses are spreading rapidly in the Estuary and currently dominate 500 acres of mudflats and tidal marshes on State, Federal, municipal, and private lands. The *Spartina* Control Program implemented through the selected alternative will provide for a coordinated, region-wide eradication program, consisting of a number of on-the-ground treatment techniques to address this invasion. The *Spartina* Control Program focuses on the nearly 40,000 acres of tidal marsh and 29,000 acres of tidal flats that compose the shoreline areas of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, and Sacramento counties.

The ROD provides: (1) The Service's decision; (2) the proposed action; (3) alternatives considered in the EIS/R, including the Environmentally Preferable Alternative (Selected Alternative); (4) the basis for the Service's decision; (5) associated impacts, mitigation and findings, providing all practicable means to avoid and minimize environmental harm; (6) public involvement, including an explanation of changes made between the draft and final EIS/R; (7) implementation guidelines; and (8) conclusion.

(Authority: National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); Regulations for Implementing the Procedural Provisions of