Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5), authorization is hereby granted to Cote Farms, Inc. (c/o Mr. Rick Dawson) for the incidental take of the ironcolor shiner fish (*Notropis chalybaeus*) from an unnamed tributary of Beaver Creek (drainage ditch), Beaverville Township, Iroquois County, Illinois. The Illinois Department of Natural Resources (Department) has determined that this taking is incidental to the removal of sediment from this drainage channel.

Procedural History

In December, 2001, Cote Farms, Inc. (c/o Mr. Rick Dawson) consulted with the Site Superintendent (Frank Snow) of Iroquois County Conservation Area (ICCA) regarding the cleaning/dredging of a ditch bordering the ICCA and County Roads 2800 East and 3200 North (T29N, R11W, S22/SW1/4). A letter dated 12 March 2002 by Glen Kruse of the Department was sent to Mr. Dawson. This correspondence recommended that because of the presence of the State threatened ironcolor shiner in the drainage ditch (unnamed tributary of Beaver Creek), Cote Farms, Inc. prepare a conservation plan and apply to the Department for an incidental take authorization. A letter dated 25 March 2002 from Mr. Dawson was sent to the Department. This letter asked that the Department allow dredging of the unnamed tributary of Beaver Creek without the submittal of a conservation plan and issuance of an incidental take authorization. An aquatic survey of the subject drainage ditch was performed by IDNR Streams Biologist, Gary Lutterbie, on 11 April 2002. The subject ditch is approximately 1,338 feet long. Of this, 663 feet were surveyed for 50 minutes using a backpack shocker. Two (2) 50 foot seine hauls were taken in the remaining 675 foot section. Fish were identified and released except for voucher specimens of each species deposited in the collections of the Illinois Natural History Survey (INHS). Fifty-nine (59) individuals representing 14 species of fish were captured during this survey. A total of nine (9) ironcolor shiners ranging from 28-50 mm in length were collected. A correspondence dated 22 April 2002 from Keith Shank of the Department was sent to Mr. Dawson. This correspondence discussed the results of the 11 April 2002 aquatic survey and encouraged Mr. Dawson to pursue an incidental take authorization before proceeding with dredging activities. A subsequent letter from Glen Kruse of the Department dated 5 June 2002 strongly recommended that Cote Farms, Inc. prepare a conservation plan for the ironcolor shiner as part of the incidental take authorization process before proceeding with ditch dredging activities. Soon after, Cote Farms, Inc. (c/o Mr. Rick Dawson) prepared a conservation plan as described by the Act. That plan and a request for incidental take of ironcolor shiners were received by the Department on 19 August 2002. A letter dated 28 August 2002 from Joseph Kath of the Department was sent to Mr. Dawson. This correspondence offered several suggestions and/or revisions that should be made to the conservation plan so that it would adequately comply with requirements described under the Illinois Endangered Species Act. A revised plan and request for incidental take of ironcolor shiners were received by the Department on 11 February 2003. Public notice of the request for authorization of incidental take of ironcolor shiners was published in the Edwardsville Intelligencer (official state newspaper) on March 10, 2003 and in the Iroquois County Times Republic on March 10, March

Illinois
Department of
Natural Resources
One Natural Resources Way • Springfield, Illinois 62702-1271
http://dnr.state.il.us
Rod R. Blagojevich, Governor

September 25, 2003

Mr. Rick Dawson, Manager
Cote Farms, Inc.
1918 W. 200 East Rd.
Morocco, Indiana 47963

Dear Mr. Dawson:

RE: *Dredging of Beaver Creek - Unnamed Tributary (Iroquois County, Illinois)*
Threatened and Endangered Species Issues - Incidental Take Authorization

Dear Mr. Dawson:

Enclosed, please find one (1) signed and executed (official) copy of the Authorization for Incidental Take and Implementing Agreement for the Dredging of Beaver Creek - Unnamed Tributary in Iroquois County, Illinois.

As always, please do not hesitate to contact our office at (217)785-8774 with any questions or comments you may have regarding this information. Thank you for your assistance during this project.

Sincerely,

Joseph A. Kath
Endangered Species Project Manager
IDNR-Office of Resource Conservation

Enclosure(s)

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17, and March 24, 2003. Public comments on the conservation plan were accepted by the Department until April 23, 2003. No comments were received from the public during the period of March 10 through April 23, 2003.

Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each are listed below.

1. The taking will not be the purpose of, but will only be incidental to, the carrying out of an otherwise lawful activity:

> The stated and apparent purpose of this proposed action is the removal of silt and debris from an unnamed tributary of Beaver Creek (drainage ditch) in Beaverville Township, Iroquois County, Illinois. The project is being undertaken to drain several hundred acres of agricultural ground to allow economical production on Illinois farmland owned by Cote Farms, Inc. The removal of silt and debris from the subject ditch could result in the direct mortality of ironcolor shiners. Ditch clearing activities may result in the direct removal, crushing, and/or burying of ironcolor shiners which certainly constitutes a "take" under the Act. This take is not the purpose of Cote Farms, Inc. activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

> Cote Farms, Inc. realizes that the only alternative that would not result in the take of State listed fish is the "do-nothing" alternative, which means that the unnamed tributary to Beaver Creek (subject drainage ditch) would not be cleared. According to Cote Farms, Inc., this alternative is an unacceptable approach to grain production as this channel appears to be the only outlet for the drainage of over 700 acres of agricultural ground. Not being allowed to clear the subject ditch will result in the continued decline in the capacity of the land upstream to economically produce grain. The removal of silt and debris from the subject ditch could result in the direct mortality of ironcolor shiners. Ditch clearing activities may result in the direct removal, crushing, and/or burying of ironcolor shiners which certainly constitutes a "take" under the Act.

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided:

> Due to the circumstances and beneficiary of this project, (i.e. economical and efficient agricultural/grain production by Cote Farms, Inc.) it remains logical that Cote Farms, Inc.

will be able to adequately fund and implement all aspects of the conservation plan for the ironcolor shiner. In accordance, a Certificate of Liability Insurance from Cote Farms, Inc. has been provided to the Department and remains on file in Springfield, Illinois.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered or threatened species in the wild in Illinois, the biotic community of which the species is a part, or the habitat essential to the species existence in Illinois:

The ironcolor shiner is listed as threatened in Illinois because its populations are strictly restricted to the sand areas of Kankakee, Iroquois, Mason, and Tazewell Counties. An aquatic survey of the subject drainage ditch was performed by IDNR Streams Biologist, Gary Lutterbie, on 11 April 2002. Fifty-nine (59) individuals representing 14 species of fish were captured during this survey. A total of nine (9) ironcolor shiners ranging from 28-50 mm in length were collected. The removal of silt and debris from the subject ditch could result in the direct mortality of ironcolor shiners. Ditch clearing activities may result in the direct removal, crushing, and/or burying of ironcolor shiners.

Based upon the 11 April 2002 IDNR survey, the area to be cleaned can be classified as a run or ditched channel. The length of the ditch to be cleaned is approximately 1,338 feet; the average wetted width is 10 feet; the bankfull width is 24 feet; and the thalweg depth was 14 inches at the time of the survey. In-stream vegetation is dominated by curlyleaf pondweed, coontail, elodea, and cattails. Other in-stream cover consists of submerged roots, brush/debris, and submerged logs. The substrate to be removed is comprised of an estimated: 25% silt/mud, 35% sand, 40% aquatic vegetation, 3% detritus, and 1% submerged logs. The approximate amount of silt and debris to be removed from the ditch is an estimated 565 cubic yards.

In order to minimize siltation downstream of the subject channel and minimize the potential take of ironcolor shiners, all dredging will be completed during a non-spawning period (October 1 - February 15). In addition, banks will be restored to their pre-dredging condition(s) and all bank-side vegetation disturbed during spoil removal shall be replaced with a native seed mixture and/or plugs (species shall be approved by the Department prior to planting). A final approval of bank-side post dredging conditions shall be made by Department staff.

One (1) specimen of the ironcolor shiner was collected in the Des Plaines River in Cook County in 1901. Otherwise, all recent collections are from the Kankakee sand area(s) of Kankakee and Iroquois counties and from the sand area(s) of Mason and Tazewell counties. In these two areas it is common, but it has been found nowhere else in Illinois.

This fish usually occurs in small, clear, low-gradient streams with a sand/organic matter substrate and an abundance of aquatic macrophytes. These minnows seem to have little affiliation to a particular spawning area. When disturbed and driven out of one spawning area to an adjacent site, these shiners resume spawning almost immediately. This species' restricted distribution within Illinois and its clean water requirements threaten its continued existence in Illinois. With the precautions and mitigation measures that will be instituted as part of this project, potential losses of ironcolor shiners will more than likely be minimized.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act will be performed:

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and Cote Farms, Inc.'s signature on this authorization indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application:

Public notice of the request for authorization of incidental take of ironcolor shiners was published in the Edwardsville Intelligencer (official state newspaper) on March 10, 2003 and in the Iroquois County Times Republic on March 10, March 17, and March 24, 2003. Public comments on the conservation plan were accepted by the Department until April 23, 2003. No comments were received from the public during the period of March 10 through April 23, 2003.

Authorization

It is the determination of the Department that the measures that would be implemented by Cote Farms, Inc. at the project site will adequately minimize and mitigate the anticipated taking of ironcolor shiners associated with the dredging of an unnamed tributary of Beaver Creek (subject drainage ditch) in Beaverville Township, Iroquois County, Illinois . Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival of the ironcolor shiner in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act, this authorization is issued subject to the following additional terms and conditions:

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of five (5) years, commencing on the date that all dredging activities within the subject ditch begin/start, unless terminated pursuant to Section 5.5. of the Illinois Endangered Species Protection Act.

2. In order to minimize siltation downstream of the subject channel and minimize the potential take of ironcolor shiners, all dredging will be completed during a non-spawning period (October 1 - February 15).

Banks will be restored (by Mr. Rick Dawson/Cote Farms, Inc.) to their pre-dredging condition and all bank-side vegetation disturbed during spoil removal shall be replaced with a native seed mixture (species shall be approved by the IDNR prior to planting). If the initial planting fails, Mr. Rick Dawson/Cote Farms, Inc. shall make one (1) additional attempt to establish native bank-side vegetation. A final assessment and approval of post dredging bank-side conditions, including plantings, shall be made by either Frank Snow, IDNR Site Superintendent of Iroquois County Conservation Area and/or Eric Smith, IDNR District Natural Heritage Biologist. During spoil removal, the applicant shall make every effort to minimize bank-side erosion. Spoil material that inadvertently falls on the banks, shall be removed by the applicant as soon as possible.

The affected property lies in the allotted right-of-way of the Beaverville Township Road District, roads 3200 North and 2800 East. As stated in the conservation plan received by the Department on 11 February 2003, the Beaverville Township Road Commissioner has granted his approval of ditch cleaning activities to take place from the county road right-of-way. All spoil material associated with this project will be delivered to property owned and managed by Cote Farms, Inc. and used as clean fill. According to Rick Dawson (Cote Farms, Inc.), no permits are required for this hauling activity.

3. Within 12 months after dredging of the subject ditch is complete, Cote Farms, Inc. shall donate no less than $1,500.00 to the "Illinois Wildlife Preservation Fund". As a means of mitigation for the effects of this ditch dredging effort, these funds will be directly applied towards surveys/inventories of creeks and ditches within a five to ten mile (5-10) radius of the subject ditch. These inventories (and any subsequent species relocations) will help Departmental staff determine how many extant populations of the State threatened ironcolor shiner *(Notropis chalybaeus)* exist within the subject watershed. This population information will provide a source for recovery of this species with regards to future incidental take applications in the project area. A check or money order made out to the "Illinois Wildlife Preservation Fund" for an amount no less than $1,500.00 shall be sent to the following address:

Illinois Department of Natural Resources
Division of Resource Protection & Stewardship
Attn: Joseph Kath
One Natural Resources Way
Springfield, Illinois 62702-1271

4. The effective period of this authorization may be altered by mutual agreement between Cote Farms, Inc. and the Department.

5. This authorization may be revoked pursuant to Section 5.5 of the Act if the Department finds that Cote Farms, Inc. has failed to comply with any of these terms and conditions or has been responsible for the take of any ironcolor shiners beyond that which is incidental to the dredging of an unnamed tributary of Beaver Creek (subject drainage ditch) in Beaverville Township, Iroquois County, Illinois .

6. The Cote Farms, Inc. official identified below is authorized to execute this agreement. Execution by Cote Farms, Inc. indicates acceptance of all terms and conditions described in this document.

For the Illinois Department of Natural Resources

Brian Anderson, Director
IDNR-Office of Resource Conservation

9/24/03
Date Signed

For Cote Farms, Inc.

Rick Dawson
Signature

Rick Dawson Mgr.
Printed Name and Title

9-15-03
Date Signed