

Act, using the Service's best scientific expertise.

The Service understands that some may believe they have reason to bring suit against the Service for failing to carry out specific actions with regard to specific species. These actions question the Service's judgment and priorities, placing the emphasis of Act compliance on technical fulfillment of the statute for specific species rather than on the best use of the Service's resources to provide the maximum conservation benefit to all species. There are many outstanding section 4 matters currently in litigation. In each case, the plaintiff seeks, in effect, to require the Service to sacrifice conservation actions which the Service believes would have major impacts for actions which the Service believes would have much lesser effects.

In no case will the Service adjust its priorities to reflect the threat or reality of litigation. The Service has argued and will continue to argue before the courts that it should be allowed to prioritize its activities so as to best fulfill the spirit of the Act. Should any court not accept this argument, the Service will, of course, carry out the instruction of the court or the terms of any settlement reached. The Service believes, however, that such obligations impede the overall conservation effort for a much lesser benefit for a single species.

For example, during FY 1997, a plaintiff succeeded in obtaining a court order that required the Service to designate critical habitat for the southwestern willow flycatcher. The Service acknowledges that it had a responsibility to carry out this action and intended to meet its statutory requirement, like all others, when its budget and backlog of higher priority listing actions allowed. However, the Service still contends that this particular action had relatively little conservation benefit, especially compared to the numerous listings of wildlife and plants that had to be delayed to allow it to proceed when it did. The Service's Region 2 is suffering from their inability to prioritize its responsibilities and complete several high priority species issues last year.

#### Public Comments Solicited

The Service intends that any action resulting from this proposed guidance be as accurate and as effective as possible. Therefore, any suggestions from the public, concerned governmental agencies, the scientific community, environmental groups, industry, commercial trade entities, or any other interested party concerning any aspect of this proposed guidance are hereby solicited. The Service will take

into consideration any comments and additional information received and will announce final guidance after the close of the public comment period and as promptly as possible after all comments have been reviewed and analyzed. The Final FY 1997 Listing Priority Guidance, extended on October 23, 1997, will remain in effect until publication of the Final FY 1998 and FY 1999 Listing Priority Guidance.

#### Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: March 2, 1998.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 98-5814 Filed 3-4-98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of Amended Environmental Assessment and Receipt of Application for Amendment to Previously Issued Incidental Take Permit From Waterside Downs

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Waterside Down Development Corporation (Applicant), is seeking to amend a previously-issued incidental take permit (ITP), PRT-800150, from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act), as amended. The ITP authorizes for a period of 5 years, the incidental take of the threatened Florida scrub jay, *Aphelocoma coerulescens* in Brevard County, Florida. The originally issued ITP was to authorize incidental take incidental to construction of a mixed use development/commercial enterprise on approximately 76.5 acres, known as Waterside Down-Phase I.

The Applicant proposes to expand the original project, originally known as Waterside Down-Phase I, by 63.30 acres. Within this additional acreage, the Applicant proposes to construct as yet an unspecified number of single family homes, condominium units, and necessary infrastructure to this to the original ITP, known as Waterside Downs-Phase II. Waterside Downs-Phase II is located on the barrier island of Brevard County, adjacent to a Wal-Mart/Albertson strip mall and Brittany Apartments to the north, S.R. A1A to

the east, Holy Name of Jesus Church and a residential development to the south, and vacant land scheduled to be Waterside Down-Phase I on the east. Of the 63.3 acres of land within Waterside Downs-Phase II, the Service has determined that 4.96 acres are considered occupied by the Florida scrub-jay. The amendment would address this additional amount of impact to the Florida scrub-jay as a result of adding in Phase II.

The Service also announces the availability of a supplement to the May 1996, Environmental Assessment (EA), Finding Of No Significant Impact (FONSI) and an amended Habitat Conservation Plan (HCP) for the revised level of expected/anticipated incidental take. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that re-issuing the ITP with the requested amendment is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The FONSI is based on information contained in the EA and amended HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

**DATES:** Written comments on the amended application, EA, and amended HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before April 6, 1998.

**ADDRESSES:** Persons wishing to review the amended application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville, Florida, Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216-0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit PRT-800150 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see ADDRESSES above), telephone: 404/679-7110; or Mr. Jay Herrington at the Jacksonville, Florida, Field Office (see ADDRESSES above), telephone: 904/232-2580.

**SUPPLEMENTARY INFORMATION:** The Florida scrub-jay, *Aphelocoma coerulescens*, is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration due to the expanded placement of permanent infrastructure, homes, and other attributes of the amended project (now including both Waterside Downs-Phase I and Waterside Downs-Phase II) will reduce the availability of feeding, shelter, and nesting habitat.

The supplement to the May 1996, EA considers the environmental consequences of several alternatives for the amended project. One action proposed is issuance of the amended ITP based upon submittal of the revised HCP as proposed. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens* and exposure of the Applicant under Section 9 of the Act. A third alternative is a proposed Project that is designed with a different mitigation strategy focusing on management of existing lands surrounding the project area. The proposed action alternative is issuance of the ITP as requested to be amended to minimize and mitigate the loss of an additional 4.96 acres of occupied scrub-jay habitat. This provides for restrictions of construction activity during the species' nesting season. Further, the revised HCP and ITP proposes to increase, in relative proportion compared to the original project, and purchase of additional offsite habitat for the Florida scrub jay, and the endowment fund for the offsite acquired habitat.

As stated above, the Service has made a preliminary determination that the

issuance of an amended ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA, HCP, and appropriate amendments. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an amended ITP would not have significant effects on the human environment in the project area.

2. The additional proposed take is incidental to an otherwise lawful activity.

3. The applicant has ensured that adequate additional funding will be provided to implement the measures proposed in the submitted revisions to the HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the amended ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of his permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of the amended Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinions, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an amended ITP.

Dated: February 26, 1998.

**H. Dale Hall,**

*Deputy Regional Director.*

[FR Doc. 98-5664 Filed 3-4-98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Issuance of Permit for Marine Mammals

On September 4, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 176, Page 47826, that an application had been filed with the Fish and Wildlife Service by Darryl Hastings

for a permit (PRT-834072) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Davis Strait population, Northwest Territories, Canada prior to April 30, 1994.

Notice is hereby given that on February 6, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358-2104 or Fax (703) 358-2281.

Dated: February 27, 1998.

**Mary Ellen Amtower,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 98-5613 Filed 3-4-98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Marine Mammals; Stock Assessment Reports

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of draft revised marine mammal stock assessment reports for Alaska sea otter, walrus and polar bear; request for comments.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has developed draft revised marine mammals stock assessment reports for sea otter, polar bear and walrus in Alaska which are available for public review and comment.

**DATES:** Comments must be received by June 3, 1998.

**ADDRESSES:** Copies of the draft revised stock assessment reports are available from the (1) Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; or (2) Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Room 840-ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203. Copies of FWS's final stock assessment reports for the southern sea otter in California, the northern sea otter in