

1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-839607

Applicant: Franz Metz, Hobe Sound, FL.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement to the survival of the species.

PRT-839405

Applicant: The Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to import 4 wild-caught cheetahs (*Acinonyx jubatus*) from Namibia for the purpose of captive propagation.

PRT-839842

Applicant: Michael A. Passaglia, Yuba City, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT-770191

Applicant: U.S. Fish and Wildlife Service, Jacksonville, FL.

Permit Type: Enhancement.

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), unlimited.

Summary of Activity to be Authorized: The applicant requests renewal and amendment to the enhancement permit for recovery, rehabilitation and release of West Indian manatees (*Trichechus manatus*). To reduce space constraints at Florida facilities, the applicant has requested an amendment to the permit that would allow for the temporary transfer of manatees to facilities outside of Florida for continued rehabilitation. Authorization for incidental public display with an appropriate education program at the out-of-state facilities is requested as is currently allowed for in-state facilities.

Source of Marine Mammals: Florida.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the

Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT-839518

Applicant: John Kloosterman, Tucson, AZ.

The applicant requests a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken prior to April 30, 1994, from the Baffin Bay polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address on or before April 6, 1998.

Dated: February 27, 1998.

MaryEllen Amtower,

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

[FR Doc. 98-5614 Filed 3-4-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Proposed Listing Priority Guidance for Fiscal Years 1998 and 1999

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces proposed guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during fiscal year (FY) 1998 and FY 1999. Although the Service is returning to a more balanced listing program, serious backlogs remain and a method of prioritizing among the various activities is necessary. Highest

priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Processing of proposed or final designations of critical habitat will be accorded the lowest priority.

DATES: Comments on this guidance will be accepted until April 6, 1998. The FY 1997 Listing Priority Guidance (extended on October 23, 1997) will remain in effect until the Final FY 1998 and FY 1999 guidance is published.

ADDRESSES: Comments regarding this guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ-452, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703-358-2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098-43105), that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different types of listing actions such as preliminary determinations, proposed listings, and final listings.

Serious backlogs of listing actions resulted from the 1995 funding

rescission and 1996 major reductions in funding for the listing program and from the 1995-96 listing moratorium. The enactment of Pub. L. 104-6 in April 1995 rescinded \$1.5 million from the Service's budget for carrying out listing activities through the remainder of FY 1995. Pub. L. 104-6 prohibited the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down. The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 species. The extremely limited funding available to the Service for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service faced the considerable task of allocating the available resources to the significant backlog of listing activities. The Final Listing Priority Guidance for FY 1996 was published on May 16, 1996 (61 FR 24722). The Service followed that three-tiered approach until the Final Listing Priority Guidance for FY 1997 was published on December 5, 1996 (61 FR 64475). The FY 1997 Listing Priority Guidance employed four tiers for assigning relative priorities to listing actions to be carried out under section 4 of the Act. Tier 1, the Service's highest priority, was the processing of emergency listings for species facing a significant risk to their well-being. Processing final decisions on pending proposed listings was assigned to Tier 2. Tier 3 was to resolve the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations and processing reclassifications, activities which provide little or no additional conservation benefit to listed species, were assigned lowest priority (Tier 4).

While operating the listing program under the Final FY 1997 Listing Priority

Guidance, the Service focused its resources on issuing final determinations (Tier 2 listing activities); no Tier 1 actions (emergency listings) were required during FY 1997. During FY 1997, the Service made final determinations for 156 species (145 final listings and 11 withdrawals). As a result of this expeditious progress, only 100 proposed species remained at the end of FY 1997 (including newly proposed species). After April 1, 1997, the Service began implementing a more balanced listing program and began processing more Tier 3 listing actions. Thus, the Service also made expeditious progress on determining the conservation status of species designated by the Service as candidates for listing. A candidate is a species for which the Service has found that there is sufficient information indicating that a listing proposal is appropriate. Such a finding may be made on the Service's own initiative, or as a result of the petition process. Once a species is placed on the Service's list of candidates, its conservation status must be resolved by either proposing the species for listing or by completing a candidate removal form. During FY 1997, the Service proposed 23 species from the candidate list. In addition, the Service published 9 petition findings in FY 1997. The Service also updated the list of candidate species with the publication of the most recent Candidate Notice of Review published on September 19, 1997 (see 16 U.S.C. 1533(b)(3)(B)(iii)(II)); at that time, there were 207 candidate species. This total represents 52 additions to the list of candidates.

During FY 1997, the Service returned to a more balanced listing program, but serious backlogs remain. Besides the 100 species awaiting final rules and the 207 candidates awaiting resolution of their conservation status, there are 35 species with due/overdue 90-day petition findings and 30 species with due/overdue 12-month petition findings.

It is important to recognize that the Service faces even greater backlogs in its responsibilities to implement other aspects of the Act. There is a large section 7 consultation and Habitat Conservation Planning (HCP) backlog. The recovery backlog of over 300 species awaiting Recovery Plans and an extreme shortage of recovery implementation funding make the recovery backlog most severe. The Service bases its funding requests on the workloads faced by all activities of the endangered species program. Because the magnitude of the other endangered species backlogs exceeds the listing

backlog, the President's FY 1998 request for funding endangered species programs was focused on section 7 consultation, HCPs, and recovery rather than listing. However, the President's budget for FY 1999 includes a significant increase in funding for listing.

In enacting the Department of the Interior's FY 1998 Appropriations Act (Pub. L. 105-163), Congress agreed with the President's priorities regarding endangered species funding, providing significant increases to the section 7 consultation, HCP, and recovery programs, while still providing for a modest increase in the listing program funding. Moreover, Congress expressly limited the amount the Service can spend on listing actions (including the designation of critical habitat) to \$5.19 million.

Given the backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions awaiting administrative findings, it is extremely important for the Service to focus its efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. It has been longstanding Service policy (1983 Listing and Recovery Priority Guidelines (48 FR 43098)) that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. The Service also must prioritize among types of listing actions and this level of prioritization is the guidance provided below.

The Service has made this guidance applicable to FY 1999 as well as FY 1998 to avoid any confusion over whether this guidance will remain in effect if the budget process for FY 1999 is delayed. However, when the Service receives its FY 1999 budget, it will review this guidance, and, if appropriate, modify or terminate it.

Proposed Listing Priority Guidance for Fiscal Years 1998 and 1999

To address the biological, budgetary, and administrative issues noted above, the Service submits the following proposed listing priority guidance. As with the Final Listing Priority Guidance for FY 1997 issued December 5, 1996 (extended on October 23, 1997), this guidance supplements, but does not replace, the 1983 listing priority guidelines, which was silent on the

matter of prioritizing among different types of listing activities.

As noted above, the Department of the Interior's FY 1998 appropriation provides no more than \$5.19 million for the Service's endangered species listing program. The \$5.19 million budget for all listing activities will fall far short of the resources needed to completely eliminate the listing backlogs in FY 1998 and FY 1999. Therefore, some form of prioritization is still necessary, and the Service will implement the following listing priority guidance in FY 1998 and FY 1999.

The following sections describe a three-tiered approach that assigns relative priorities, on a descending basis, to listing actions to be carried out under section 4 of the Act. The 1983 listing priority guidelines will continue to be used to set priority among species within types of listing activities. The Service emphasizes that the Final Listing Priority Guidance for FY 1997 (extended on October 23, 1997) will be effective until final FY 1998 and FY 1999 guidance is issued, unless extended or canceled by future notice. In order to continue to move toward a more balanced listing program, the Service will concurrently undertake listing actions in Tiers 1 and 2 during FY 1998 with a listing budget of only \$5.19 million. As the Service informed Congress in its budget justification, critical habitat designations (Tier 3 actions) during FY 1998 should not be expected. The FY 1998 listing appropriation is only sufficient to support high-priority listing, candidate assessment, petition processing activities, and a minimal amount of high priority delisting/reclassification actions. A single critical habitat designation could consume up to twenty percent of the total listing appropriation, thereby disrupting the Service's biologically based priorities. Higher priority listing actions (Tiers 1 and 2) provide the greatest amount of protection for imperiled species while making the most efficient use of limited resources.

Completion of emergency listings for species facing a significant risk to their well-being remains the Service's highest priority (Tier 1). Processing final decisions on pending proposed listings, the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal), processing 90-day or 12-month administrative findings on petitions, and undertaking a limited number of delisting/reclassification activities are assigned to Tier 2. Third priority is the processing of petitions for critical habitat designations and the

preparation of proposed and final critical habitat designations; these actions provide little added conservation benefit and are therefore assigned lowest priority (Tier 3).

Tier 1—Emergency Listing Actions

The Service will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant and imminent risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This would include preparing a proposed rule to list the species. The Service will conduct a preliminary review of every petition that it receives to list a species or reclassify a threatened species to endangered in order to determine whether an emergency situation exists. If the initial review indicates an emergency situation, the action will be elevated to Tier 1 and an emergency rule to list the species will be prepared. Emergency listings are effective for 240 days. A proposed rule to list the species is usually published at the same time as an emergency rule. If the initial review does not indicate that emergency listing is necessary, processing of the petition will be assigned to Tier 2 as discussed below.

Tier 2—Processing Final Decisions on Proposed Listings; Resolving the Conservation Status of Candidate Species (Resulting in a New Proposed Rule or a Candidate Removal); Processing Administrative Findings on Petitions To Add Species To the Lists and Petitions to Delist or Reclassify Species; and Delisting or Reclassifying Actions

The majority of the unresolved proposed species face high-magnitude threats. Focusing efforts on completing final determinations provides maximum conservation benefits to those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a withdrawal of a proposed listing. Completion of a withdrawal may not appear consistent with the conservation intent of this guidance. However, once a determination not to make a final listing has been made, publishing the withdrawal of the proposed listing takes minimal time and appropriations. Thus it is more cost effective and efficient to bring closure to the proposed listing than it is to postpone the action and take it up at some later time. For the same reasons, the Service will consider critical habitat prudency and determinability findings to be Tier 2

activities, although actual designation of critical habitat is a Tier 3 activity. The publication of new proposals (candidate conservation resolution) and the processing of petition findings to add species to the lists of threatened and endangered species have significant conservation benefit and these actions are also now placed in Tier 2. Delisting activities also have been placed in Tier 2 because of the indirect conservation benefits of these actions. Nationwide in FY 1998 and FY 1999, the Service will undertake the full array of listing actions in Tiers 1 and 2 as appropriate. However, some Regions and some Field Offices still have significant backlogs of proposed species, candidates, petitions, and delistings. Therefore, additional guidance is needed to clarify the relative priorities within Tier 2.

Setting Priorities Within Tier 2

Pursuant to the 1983 listing priority guidelines, proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest priority within Tier 2. If an emergency situation exists, the species will be elevated to Tier 1. Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed first to avoid possible extinction. Proposed listings for species facing high-magnitude threats that can be quickly completed have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete. Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue will be processed first.

Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. It provides some protection in that all Federal agencies must "confer" with the Service on actions that are likely to jeopardize the continued existence of proposed species.

Resolving the conservation status of candidates will be afforded the second highest priority within Tier 2. The resolution of a candidate species' conservation status will be accomplished through the publication of new proposed rules or the processing of candidate removal forms (which, when signed by the Director, remove species from the candidate list). The 1983 listing priority guidelines are the basis for assigning a candidate species a listing priority number. This system ensures that species in the greatest need

of protection should be processed first. New proposed listings for species facing imminent, high-magnitude threats (candidates with the highest listing priority numbers) will be processed ahead of candidates with lower listing priority numbers. The Service includes new proposals for petitioned species that are currently on the candidate list in this priority level within Tier 2.

The processing of 90-day petition findings and 12-month petition findings to add species to the lists will be the next priority among Tier 2 listing activities. Once a 90-day petition finding is published, the Service will make every reasonable effort to complete the 12-month finding in the appropriate time frame. When it is practicable for the Service to complete a 90-day finding within 90 days, the Service is statutorily afforded a 12-month period from the receipt of a petition to completion of the 12-month finding. However, in those cases in which it is not practicable for the Service to complete a 90-day finding within 90 days of receipt of the petition, after the 90-day finding is completed, the Service will still require 9 months to complete a thorough biological status review and issue a 12-month finding.

Finally, the Service expects to complete a small number of delistings and reclassifications during FY 1998 and FY 1999. The recovery of listed species is the ultimate goal of the endangered species program. The Service finds that the prompt delisting of recovered species and the reclassification of recovering species (from endangered to threatened status) is necessary to keep the public and other interested parties informed of a species' conservation status; this is especially important to reducing the section 7 consultation backlog since a species that is recovered and delisted will no longer require consultation. Monitoring of species already on the lists is accomplished through the recovery program; however, the small expenditure of funds necessary to process the change in a species' status will continue to be undertaken by the listing program. Delisting and reclassifications will be afforded the lowest priority in Tier 2. As with the processing of withdrawals, the conservation benefit of these actions may not be readily apparent. However, the Service believes that significant, albeit indirect, conservation benefit will result from the processing of certain high-priority delisting or reclassification actions. Moreover, the Service is obligated to maintain the lists of threatened and endangered species and

it is of utmost importance to keep the lists accurate and up to date.

The Service expects to make substantial progress in removing or reducing the backlogs of proposed species awaiting final determination, candidates awaiting resolution, and petitions awaiting findings during FY 1998 and FY 1999. During FY 1998 and FY 1999, the application of both the listing priority guidance described above and the 1983 guidelines are critical to maintaining nationwide and program-wide biologically sound priorities to guide the allocation of limited listing resources.

Tier 3—Processing Critical Habitat Determinations

Designation of critical habitat, when undertaken, consumes large amounts of the Service's listing appropriation and, in most cases, does not add any conservation benefit beyond those achieved when a species is listed as endangered or threatened. It is essential during periods of limited listing funds to maximize the conservation benefit of listing appropriations. The Service has determined that in most cases no additional protection is gained by designating critical habitat for species already on the lists and the application of the Service's limited resources is best utilized to add new species to the lists rather than designating critical habitat for species already receiving full protection under the Act. The Service places higher priority on addressing imperiled species that presently have very limited or no protection under the Act, than on devoting limited resources to the expensive process of designating critical habitat for species already protected by the Act. Critical habitat will remain in Tier 3, and the Service does not intend to process Tier 3 actions, including petitions related to critical habitat designation, during FY 1998; this will be re-evaluated when FY 1999 appropriations are received. Furthermore, because the protection that flows from critical habitat designation applies only to Federal actions, the designation of critical habitat provides little or no additional protection beyond the "jeopardy" prohibition of section 7, which also applies only to Federal actions.

Allocating Listing Resources Among Regions

The Service allocates its listing appropriation among its seven Regional Offices based strictly on the number of proposed and candidate species for which the Region has lead responsibility with the exception of providing minimum "capability

funding" for one listing biologist for each Region. The objective is to ensure that those areas of the country with the largest percentage of known imperiled species will receive a correspondingly high level of listing resources. The Service's experience in administering the Act for the past two decades has shown, however, that it needs to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term, thus the "capability funding" to each Region. In the past, when faced with seriously uneven workloads, the Service has experimented with reassigning workload from a heavily burdened Region to less burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a listing package will be useful for recovery planning and other conservation activities, and that expertise should be concentrated in the geographic area inhabited by the species. In addition, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge may be useful in processing a final decision. For these reasons, the Service has found it unwise to reassign one Region's workload to personnel in another Region. Because the Service must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to address lower priority listing actions within Tier 2 (such as new proposed listings or petition findings), while Regions with many outstanding proposed listings will use most of their allocated funds on finalizing proposed listings.

Addressing Matters in Litigation

The Service understands the numerous statutory responsibilities it bears under the Act. These responsibilities, however, do not come with an unlimited budget. The Service is often required to make choices about how to prioritize its responses to those statutory responsibilities in order to make the best use of its limited resources. Under these circumstances, technical compliance with the Act with respect to one species often means failure to comply with the technical requirements of the Act for another species. This guidance is part of a continuing effort to express to the public that the Service is striving towards compliance with the Act in the manner that best fulfills the spirit of the

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]

BILLING CODE 4310-55-P

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.