

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants: Notice of Receipt of an Application for an Incidental Take Permit (ITP) and Availability and Opening of Comment Period for a Draft Environment Assessment (EA) Habitat Conservation Plan (HCP) for the West Virginia Northern Flying Squirrel in Association With Snowshoe Mountain, Incorporated, Pocahontas County, WV**

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

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This notice advises the public that Snowshoe Mountain, Incorporated (SMI) has applied to the U.S. Fish and Wildlife Service (Service) for an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), as amended. The application has been assigned permit number TE-102380. The proposed permit would authorize the incidental take of a federally endangered species, the West Virginia northern flying squirrel (WVNFS) (*Glaucomys sabrinus fuscus*), known to occur throughout the property owned by the applicant at Snowshoe Mountain Resort, Pocahontas County, West Virginia. The proposed taking is incidental to a planned recreation and infrastructure expansion project on approximately 43 acres owned by SMI. The permit would be in effect for up to 10 years depending on completion of the proposed activities.

The Service announces the receipt of the SMI ITP application and the availability of the proposed Recreation and Infrastructure Expansion at Snowshoe Mountain HCP which accompanies the ITP application, for public comment. In addition, the Service also announces the availability of a draft EA for the proposed issuance of the ITP. This notice is provided pursuant to the section 10(c) of the ESA and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for the incidental take of the WVNFS. The final NEPA and permit determinations will

not be completed until after the end of the 60-day comment period and will fully consider all public comments received during the comment period.

**DATES:** Written comments on the permit application, HCP, and EA should be sent to the Service's West Virginia Field Office (see **ADDRESSES**) and should be received on or before November 7, 2005.

**ADDRESSES:** Persons wishing to review the permit application, HCP, and draft EA may obtain a copy by writing to the Service's West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. Requests for the documentation must be in writing to be processed.

Written data or comments concerning the permit application, draft EA and/or HCP should also be addressed to the Field Office Supervisor, U.S. Fish and Wildlife Service, West Virginia Field Office, at the address above. Please refer to permit TE-102380 when submitting comments. Documents will also be available for public inspection by written request, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Chapman or Shane Jones, West Virginia Field Office (see **ADDRESSES**), 304-636-6586.

**SUPPLEMENTARY INFORMATION:** Section 9 of the ESA and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to "incidentally take" listed species, if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

**Background**

SMI has applied to the Service for an ITP pursuant to section 10(a) of the ESA. The applicant proposes to implement an HCP for the WVNFS that will allow construction within WVNFS habitat. The applicant's proposed activities may result in take, as defined in the ESA and its implementing regulations, of listed species. Authorized take would only affect WVNFS; take of other federally listed species is specifically excluded from the proposed action. This permit would authorize the incidental take of WVNFS at Snowshoe Mountain Resort through otherwise lawful activities, specifically the recreation and infrastructure expansion, occurring in WVNFS habitat.

The HCP and permit would be in effect for a maximum of 10 years upon issuance.

The applicant proposes to construct additional downhill ski slopes and expand an existing trail at Snowshoe, to accommodate the projected increase in skiers, particularly beginners and intermediate skiers, and the demand for skiable terrain. In connection with ski slope expansion, SMI proposes to complete a parking area expansion to alleviate traffic congestion as a result of the projected increased recreational use of the resort. Finally, SMI is proposing to develop an area in which to store some equipment, including snowplows, bulldozers, buses, trucks, earth graders, backhoes, and landscaping equipment. It is necessary to house this equipment in a centrally located area to ensure that heavy equipment traffic on the main road is minimized. The proposed activities are expected to remove approximately 43 acres of forest.

The anticipated incidental take will be limited to harm through habitat loss as the result of the permanent loss of 43 acres of suitable WVNFS habitat. SMI proposes to implement measures to minimize, mitigate, and monitor impacts to the WVNFS and include surveying for WVNFS, following seasonal clearing restrictions, allowing when possible, natural forest regeneration in temporary construction zones, and establishing a permanent conservation area to provide refuge for the WVNFS.

The draft EA considers the environmental consequences of three alternatives, including a no-action alternative, the proposed action, and a reduced impact alternative.

The Service provides this notice pursuant to section 10(c) of the ESA. The Service will evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the ESA by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the evaluation of the permit application, the HCP, EA, and comments submitted thereon, will be used in the final analysis to determine whether the application meets the requirements of section 10(a) of the ESA. If the requirements are met, the Service will issue a permit to SMI for the incidental take of WVNFS during the proposed recreation and infrastructure expansion activities. We will make the final permit decision no sooner than 60 days from the date of this notice.

**Authority:** The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 17, 2005.

**Marvin E. Moriarty,**

*Regional Director, Region 5.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 050405E]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Petition for Emergency Rulemaking for Red Snapper

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Denial of a petition for emergency rulemaking.

**SUMMARY:** NMFS announces its decision to deny a petition for emergency or interim rulemaking under the Administrative Procedure Act (APA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Coastal Conservation Association (CCA), a marine conservation group composed of approximately 90,000 members, petitioned the U.S. Department of Commerce to immediately promulgate an emergency or interim rule under the Magnuson-Stevens Act to prevent overfishing of red snapper resulting from bycatch in the shrimp trawl fishery of the Gulf of Mexico. NMFS finds the emergency or interim rulemaking is not warranted, and additional management measures to end overfishing of red snapper would better be addressed through a Gulf of Mexico Fishery Management Council (Council) regulatory amendment and development of a fishery management plan (FMP) amendment.

**ADDRESSES:** Copies of the NMFS decision on the CCA petition are available from Phil Steele, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305, and via internet at: <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, Fishery Administrator, NMFS, Southeast Regional Office; telephone: 727-824-5305; e-mail: [phil.steele@noaa.gov](mailto:phil.steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** CCA filed a petition for emergency or interim

rulemaking on March 29, 2005. NMFS published a notice of receipt of petition for rulemaking on May 12, 2005 (70 FR 39700), and invited public comments for 60 days ending July 11, 2005. Summaries of and responses to comments are provided in the Response to Public Comments section below.

#### The Petition

The petition filed by CCA states the red snapper stock in the Gulf of Mexico is overfished and undergoing overfishing. Although the petition acknowledges the directed red snapper commercial and recreational sectors share responsibility for rebuilding the stock, it asserts the failure of bycatch reduction devices (BRDs) required in the commercial shrimp fishery to meet established bycatch reduction standards makes recovery of the Gulf red snapper fishery unlikely and ensures years of continued overfishing of this stock. The petition states the directed recreational and commercial red snapper sectors have already adopted many measures necessary to rebuild the stock. The petition seeks emergency regulations or interim measures to stop the overfishing resulting from excessive bycatch of juvenile red snapper in the Gulf shrimp fishery. The petition also suggests management measures such as bag limits and total allowable catch restrictions would be applicable to the directed red snapper fishery.

The CCA petition states the prevention of overfishing and recovery of the red snapper stock is predicated on at least a 44-percent reduction from the average level of bycatch mortality on juvenile red snapper, age 0 and age 1, by the Gulf shrimp fishery during the years 1984-1989. Further, because recent research indicates current BRD use, in practice, yields only a 12-percent bycatch reduction, CCA argues that the existing plan for preventing overfishing and rebuilding the red snapper stock must be declared a failure. CCA asserts the fisheries regulatory establishment is plainly aware of red snapper overfishing by the shrimp trawl fishery, but has failed to take corrective action. The petition requests NMFS immediately initiate emergency regulations or interim measures resulting in bycatch reduction sufficient to allow the red snapper stock to rebuild within the time period established in the Reef Fish Fishery Management Plan (Reef Fish FMP). The petition states such bycatch reduction measures should include strict bycatch quotas tracked by observer data, time and area closures or restrictions, improved BRDs, season limitations, seasonal closures, and/or other

reduction measures. In addition, the petition states a firm bycatch reduction target of 60-80 percent of historic levels should be set, with a time line to achieve the target within the shortest period possible. The petition also proposes a mandated effort reduction program for the Gulf shrimp fleet.

#### History of NMFS and Council Efforts to Reduce Bycatch in the Shrimp Fishery

Efforts to rebuild the red snapper stock are complicated by significant amounts of bycatch in the shrimp fishery. Ending overfishing and allowing the stock to rebuild cannot occur through regulations on the directed red snapper fishery alone. The shrimp fishery annually removes 25 to 45 million juvenile red snapper (approximately 2-5 million lb (0.9-2.3 million kg)), primarily from the western Gulf, whereas the directed fishery removes approximately 4 million adult fish (approximately 9 million lb (4.1 million kg)) annually. The success of the red snapper rebuilding plan depends heavily on reductions in shrimp trawl bycatch.

The Council recognized the inherent need to reduce red snapper bycatch in the shrimp fishery in 1997 when they approved Amendment 9 to the Shrimp Fishery Management Plan (Shrimp FMP). The purpose of this amendment was to reduce unwanted bycatch of juvenile red snapper in the shrimp fishery and, to the extent practicable, not adversely affect the shrimp fishery. Because of substantial fishing mortality on juvenile red snapper and the need to rebuild the overfished stock, the Council considered development and use of BRDs and other management measures to reduce bycatch. The Council approved a goal for reducing red snapper bycatch by 44 percent from the average annual mortality of age-0 and age-1 red snapper during 1984-1989. Upon approval of Amendment 9, the fisheye BRD and Andrews Turtle Excluder Device (Andrews TED) were the only two devices determined to be capable of reducing bycatch by the required amount; however, the Andrews TED was proposed to be certified as a BRD only during a time when and in a geographical area where it is an approved TED. On December 19, 1997, approval of the Andrews TED, as a TED, was withdrawn; therefore, the Andrews TED was not certified as a BRD in the final rule implementing Amendment 9. However, the framework procedure approved by the Council in Amendment 9 allowed for additional BRDs to be certified by NMFS. Cooperative industry/government research available in 1997 indicated the approved BRDs