

otherwise lawful activities in accordance with the terms of the permit. We will not make our 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 Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: January 6, 2005.

**David Wesley,**

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

[FR Doc. 05-605 Filed 1-11-05; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Brevard County, FL

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

**ACTION:** Notice.

**SUMMARY:** Deleta Earle (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking about 0.23 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Brevard County, Florida (Project). The destruction of 0.23 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). We announce the

availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

**DATES:** Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before February 11, 2005.

**ADDRESSES:** Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE090970-0 in such requests. 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 Field Supervisor, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or Ms. Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232-2580, ext. 126.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE090970-0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "[david\\_dell@fws.gov](mailto:david_dell@fws.gov)". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by

law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

The applicant's residential construction will take place within Section 5, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida. Lot 21, Block 340, Port Malabar Unit 9, is within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2002. Scrub-jays using the subject residential lot and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River Counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat

fragmented by residential development. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays within the City of Palm Bay are unlikely to persist, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

The subject residential parcel lies within a "high density" urban setting, and the corresponding territory size of the resident scrub-jays has been estimated to range from 5.2 to 10.8 acres based on average territory sizes of scrub-jay in other urban areas. Data collected from 12 scrub-jay families within the city limits of Palm Bay during the 2000 and 2001 nesting seasons provided information about survival and reproductive success of scrub-jays, but did not attempt to estimate territory sizes. This information indicated that territory boundaries tended to shift from year to year, making calculations of territory size difficult. Similarly, point data do not reliably indicate occupied habitat over time since birds in urban settings tend to move within and between years. Thus, using known territory boundaries and point data to delineate occupied habitat likely underestimates areas occupied by scrub-jays.

To assess whether the Applicant's parcel was within occupied scrub-jay habitat, we calculated the maximum average "shift" in territory locations between 2000 and 2001. Based on these estimates, we calculated a maximum average shift of 438 feet between years. We subsequently used the 438 feet as a buffer to surround known territory boundaries and point locations for scrub-jays. We reasoned that 438 feet represented a biologically-based buffer, within which scrub-jays were likely to occur. Application of the 438-foot buffer to known territories and point locations provides a quantitative method to delineate occupied scrub-jay habitat in highly urbanized areas within the city limits of Palm Bay.

The Applicant's residential lot falls within the 438-foot buffer established for known scrub-jay territories and/or point data. The lot provides habitat for foraging, sheltering, and possibly nesting. Accordingly, loss of this habitat

due to residential construction will result in the destruction of scrub-jay habitat.

The Applicant agrees to avoid construction during the nesting season if active nests are found onsite, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lot encompasses about 0.23 acre and the footprint of the home, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization is not considered to be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

The Applicant proposes to mitigate for the loss of 0.23 acre of scrub-jay habitat by contributing \$3,082 to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The \$3,082 is sufficient to acquire and perpetually manage 0.46 acre of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average \$5,700 per acre, plus a \$1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

The Service has determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an environmental assessment or environmental impact statement. This preliminary determination may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies as a low-effect plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has determined that approval of the Plan qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D. D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing "No Surprises" assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with "No Surprises" assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain "No Surprises" assurances.

Dated: December 23, 2004.

**Cynthia K. Dohner,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 05-611 Filed 1-11-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of Applications for Permit

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

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered marine mammals.

**DATES:** Written data, comments or requests must be received by February 11, 2005.

**ADDRESSES:** Documents and other information submitted with these applications 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 within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

#### SUPPLEMENTARY INFORMATION:

##### Endangered Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). 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.

*Applicant:* Smithsonian Marine Station at Fort Pierce, Fort Pierce, FL, PRT-096527.

The applicant requests a permit to acquire blood and tissue samples from captive held Florida manatees (*Trichechus manatus latirostris*) for the purpose of scientific research on dietary isotope fractionation. This notification covers activities to be conducted by the applicant over a one-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: December 31, 2004.

**Michael L. Carpenter,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 05-542 Filed 1-11-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 3, 2005, a proposed Consent Decree in *United States of America v. Weyerhaeuser Company*, Civil Action No. 1:05CV0003, was lodged with the United States District Court for the Western District of Michigan.

In this action the United States sought to recover from Weyerhaeuser environmental response costs in connection with a landfill and paper mill at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Portage Counties, Michigan (the "Site"). In addition, the United States sought a judgment declaring that the Defendant is liable for any further response costs that the United States may incur as a result of releases or threatened releases of hazardous substances at the landfill and paper mill. The Consent Decree provides that Weyerhaeuser shall, *inter alia*, (1) (1) perform the remedy selected by EPA for the landfill area, and investigate and perform the subsequently-selected remedy for the mill property, using at least in part \$6.2 million obtained from a bankruptcy settlement; (2) pay all of EPA's costs of overseeing the work; (3) pay approximately \$138,000 towards EPA's past costs and \$6.2 million into a special account that will be available to EPA to fund remedial investigations and work in the Kalamazoo River, and (4) withdraw its objections to a bankruptcy settlement and its pending appeals from the approval of that settlement.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States of America v. Weyerhaeuser Company*, D.J. Ref. 90-11-2-07912/2.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 5th Floor, The Law Building, 330 Iona Ave., Grand Rapids, MI 49503, and at the offices of the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose check in the amount of \$31.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 05-642 Filed 1-11-05; 8:45 am]

**BILLING CODE 4410-15-M**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of