

conduct certain activities with marine mammals. The application was 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 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: Charles P. Kupfer, Millbury, MA, PRT-143853.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: January 19, 2007.

Monica Farris,

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

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should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B-SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513-7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the ADS by Secretarial Order 3259, of February 8, 2005, as amended on August 11, 2005, and on March 31, 2006. This notice is based on a determination that the Mashpee Wampanoag Tribal Council, Inc. (MWT) meets all of the seven mandatory criteria for acknowledgment in 25 CFR 83.7.

The Department considered the Mashpee petition under slightly modified timeframes set by a July 22, 2005, Joint Settlement Agreement and Stipulated Dismissal (Agreement) resolving the case of *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 180 F. Supp. 2d 130 (D.D.C. 2001), rev'd, 336 F.3d 1094 (D.C. Cir. 2003), *on remand*, No. CA 01-111 JR (D.D.C.).

A notice of the proposed finding (PF) to acknowledge the petitioner was published in the **Federal Register** on April 6, 2006 (71 FR 17488). Publishing notice of the PF initiated a 180-day comment period during which time the petitioner, and interested and informed parties, could submit arguments and evidence to support or rebut the PF. The comment period ended on October 3, 2006. The regulations at 25 CFR 83.10(k) provide the petitioner a minimum of 60 days to respond to comments that interested and informed parties submitted on the PF during the 180-day comment period. The Agreement modified this timeframe, providing the petitioner a 30-day response period, which ended on November 1, 2006. This final determination (FD) is made following a review of the petitioner's and public comments as well as the petitioner's response to the public comments.

During the comment period, the petitioner submitted an updated membership list, supplemental genealogical and governmental materials, and historical documents, in response to requests for information made by the Department in the PF and in an informal technical assistance teleconference with the petitioner. These materials did not change the conclusions of the PF. The Department received several letters of support from the public for the Mashpee group. These

letters did not provide substantive comment. The Department also received a letter from a former selectman of the Town of Mashpee pertaining to negotiations between the petitioner and the Town. This letter did not comment substantively on the PF. The only substantive comment by interested or informed parties came from the Office of the Massachusetts Attorney General (Massachusetts AG), to which the petitioner submitted a response on October 30, 2006. The Massachusetts AG's comments are discussed under criteria 83.7(b) and 83.7(c) below.

Criterion 83.7(a) requires external identifications of the petitioner as an American Indian entity on a substantially continuous basis since 1900. The PF concluded external observers identified the petitioning group as an American Indian entity on a substantially continuous basis since 1900. However, it pointed out that the available identifications of the Mashpee in the record for 1900–1923 constituted sufficient but minimal evidence for substantially continuous identification for those years, and encouraged the petitioner to strengthen its evidence for criterion 83.7(a) by submitting additional identifications for that period. In response, the petitioner submitted a new argument concerning a 1907 document. As reevaluated for the FD, this document provides an additional identification of the Mashpee. When combined with the other identifications in the record for the PF for those years, the additional evidence is sufficient to show consistent identifications of the Mashpee from 1900 to 1923. The evidence submitted for both the PF and the FD demonstrates external observers identified the Mashpee as an Indian entity on a substantially continuous basis since 1900. Therefore, the petitioner meets the requirements of criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF concluded that the petitioner presented sufficient evidence to satisfy this criterion. During the comment period, in response to the Department's request for information, the petitioner submitted a copy of the 1776 Gideon Hawley census of Mashpee. As part of an analysis of residential patterns of the Mashpee group for the colonial and Revolutionary periods, the PF described this document's details using only descriptions of it from both State reports and secondary sources. For the FD, Department researchers analyzed the newly-submitted 1776 Hawley census

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Mashpee Wampanoag Indian Tribal Council, Inc. of Massachusetts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(l)(2), notice is hereby given that the Department of the Interior (Department) has determined that the Mashpee Wampanoag Indian Tribal Council, Inc., P.O. Box 1048, Mashpee, Massachusetts, 02649, is an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner satisfies all seven mandatory criteria set forth in 25 CFR 83.7, and thus meets the requirements for a government-to-government relationship with the United States.

DATES: This determination is final and will become effective 90 days from publication of this notice in the **Federal Register** on May 23, 2007, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

ADDRESSES: Requests for a copy of the Summary Evaluation of the Criteria

and found that it supported the PF's conclusions regarding the residential patterns of the group for the colonial and Revolutionary periods.

In its comments on the PF dated October 2, 2006, the Massachusetts AG expressed concern that the PF did not adequately consider the evidence contained in the record of the lengthy jury trial in the Mashpee's land claim suit of 1977–1978. The jury concluded that the Mashpee group did not constitute an Indian tribe for purposes of the Indian Nonintercourse Act (25 U.S.C. 177). See *Mashpee Tribe v. Town of Mashpee*, 447 F. Supp. 940 (D. Mass. 1978), aff'd, *Mashpee Tribe v. New Seabury Corp.*, 592 F. 2d 575 (1st Cir. 1979). In particular, the Massachusetts AG cited the testimony of the defendants' two expert witnesses at specific sections of the trial transcript as examples of evidence that appeared to militate against Federal acknowledgment of the group. The Massachusetts AG then urged the Department to give the trial record of the case the fullest review before issuing the FD. In a follow-up letter dated October 3, 2006, the Massachusetts AG clarified that it was not taking a position on the recognition of the Mashpee in its October 2, 2006, comments, but was simply addressing those issues related to its concerns about adequate consideration of the evidence in the 1978 trial record.

The Department gave the evidence from the trial record a thorough review at the time of the PF. The Department examined all of the transcripts of the testimony (over 7,300 pages) as part of its evaluation of the Mashpee petition before the PF's issuance. Although quality, not quantity, is critical, the Department also based the PF on considerably more evidence, over 10,100 documents totaling about 54,000 pages in the petition record. In contrast, there were only about 274 exhibits before the Court. None of these materials with the exception of the exhibits were available to the court at the time of the trial. In response to the Massachusetts AG's comments, the Department reviewed again the evidence from the trial record, particularly the cited testimony of the defendants' two expert witnesses. This review did not change the findings in the PF.

The PF additionally examined the group's community and politics for the lengthy period since the suit, approximately 30 years, as well as the earlier periods. It also incorporated more in-depth evaluations of the evidence, including detailed marriage and residency analyses, as well as 31

interviews conducted by the Department's anthropologist during an on-site investigation in 2006.

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF addressed the issues dealing with distinct community raised by the defendants' expert witnesses in the trial transcript pages cited by the Massachusetts AG. Generally, the two witnesses argued the Mashpee lacked cultural distinctiveness and economic autonomy from the wider society and therefore were not a tribe. The Federal acknowledgment regulations, however, do not require a petitioner to maintain cultural distinctiveness or economic autonomy to be an Indian community. Instead, the regulations require the petitioner to be a socially distinct group of people within the wider society. In the Mashpee case, the PF described at length their continued community cohesion and social distinction from non-Indian populations since first sustained contact.

In sum, neither the comments of the Massachusetts Attorney General nor the evidence in the trial transcript it referenced changed the PF's conclusions that the Mashpee were a distinct community (criterion 83.7(b)). The Massachusetts AG raised concerns that the Department may not have fully considered the evidence and issues raised in the trial transcript. The PF was thorough in its review of the materials in the trial transcript and a larger body of evidence that the court did not have in the land claim suit. This FD reevaluated the evidence in the trial testimony. In response to the comments submitted by the Massachusetts AG citing the testimony of the two defendants' witnesses, the FD reviewed this testimony and finds that the standards and definitions of a tribe used by these witnesses differ substantially from the requirements in the seven mandatory criteria of the regulations. The FD also finds that the trial testimony did not provide any evidence or arguments not already discussed in the PF, and did not merit a change in the evaluation of the evidence under criterion 83.7(b) in the PF. Therefore this FD affirms the PF's conclusions. The petitioner meets the requirements of criterion 83.7(b).

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The PF concluded that the petitioner presented sufficient evidence to satisfy this

criterion. Neither the petitioner nor any third parties submitted new evidence related to the PF's conclusions regarding criterion 83.7(c). Several of the pages in the trial transcript of the 1977–1978 land claim suit that the Massachusetts AG cited in its comments dealt with issues related to criterion 83.7(c). The defendants' expert witnesses claimed, for instance, that the Mashpee were not a tribe because they lacked political autonomy from the wider society. The acknowledgment regulations only require political autonomy in relation to other Indian groups, defining autonomy as the exercise of political authority independent of any other Indian governing entity (See 25 CFR section 83.1). Participation in the political processes of the wider society, as in the Mashpee's case, is not evidence that a group does not exist as an Indian tribe exercising political influence or authority over its members. These witnesses also tended to ignore or minimize informal forms of leadership based on consensus and persuasion, and alternative forms of governance the Mashpee adopted in response to their unique history, geography, culture, and social organization, in favor of restrictive and limited notions of Indian leadership.

Political influence over the group's members was demonstrated by a long line of Mashpee leaders. Since the colonial period, the Mashpee have had sachems, proprietors, spiritual leaders, informal leaders, district and town officials, and council members who influenced and were influenced by the members on political matters of importance. The PF also showed group members considered the actions of their leaders important and were highly involved in political processes.

In sum, the reevaluation of the evidence in the trial transcript referenced in the comments of the Massachusetts AG did not result in a modification of the PF's conclusions that the Mashpee demonstrated political influence (criterion 83.7(c)). The PF dealt with the issues raised in the trial testimony affecting the evaluation of evidence under criterion 83.7(c) in its review of the materials in the trial transcript and a larger body of evidence that the court did not have in the land claim suit. This FD reevaluated the evidence in the trial testimony. In response to the comments submitted by the Massachusetts AG citing the testimony of the two defendants' witnesses, the FD reviewed this testimony and finds that the standards and definitions of a tribe used by these witnesses differ substantially from the requirements in the seven mandatory

criteria of the regulations. The FD finds that this material did not provide any evidence or arguments not already discussed in the PF, and did not merit a change in the evaluation under criterion 83.7(c) that the Mashpee demonstrated political influence from first historical contact to the present. Therefore, the petitioner meets the requirements of criterion 83.7(c).

The PF found that the petitioner met the requirements of criterion 83.7(d) by submitting its present governing document: a constitution dated September 28, 2004, which described the group's membership criteria and the current governing procedures. For the FD, the petitioner submitted a membership enrollment ordinance dated September 21, 2006, which clarifies certain sections of the constitution and provides additional evidence concerning the group's membership criteria. The FD affirms the PF's conclusion that the petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. The PF found that 88 percent of the petitioning group descended from the historical tribe and met the requirement for criterion 83.7(e). The PF advised the petitioner to submit evidence to document descent for the remaining 12 percent and to update its membership list.

In response, the MWT submitted a properly certified membership list dated September 13, 2006, naming 1,453 members. The petitioner provided evidence acceptable to the Secretary demonstrating that about 97 percent of its members (1,403 of 1,453) descend from the historical Mashpee tribe as defined by the 1861 Earle Report. About 2 percent (41 members) descend from the two Christiantown Wampanoag Indian families, Peters-DeGrasse and Peters-Palmer, who did not document descent from the historical tribe as defined in the Earle Report, but who are defined as qualifying ancestors in the MWT constitution. One of these families settled in Mashpee shortly after 1861 and became part of the group by the early 1900's. Descendants of both families became part of Mashpee community socially and politically by the mid-20th century. Nine remaining members (about 1 percent), do not have complete birth records naming parents, but are expected to be able to provide the proper evidence.

The new evidence for the FD modifies the PF's conclusions by changing the number of members in the MWT from 1,462 to 1,453 and the percentage of members who have documented descent from the historical tribe from about 88 percent to approximately 97 percent. The evaluation of additional documentation submitted strengthens the conclusion that the Mashpee petitioner meets the requirements of criterion 83.7(e). This FD concludes that the evidence is sufficient to meet the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian tribe. A review of the available documentation for the PF and the FD revealed that the membership is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. A review of the available documentation for the PF and the FD showed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

A report summarizing the evidence, reasoning, and analyses that are the bases for the FD will be provided to the petitioner and interested parties, and is available to other parties upon written request.

After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of the FD in the **Federal Register**. The FD will become effective as provided in the regulations 90 days from the **Federal Register** publication unless a request for reconsideration is received within that time.

Dated: February 15, 2007.

James E. Cason,
Associate Deputy Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Two Permits for Incidental Take of a Threatened Species to the Cedar City Corporation and the Paiute Indian Tribe in Iron County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; issuance of permit.

SUMMARY: This document provides notice that we, the U.S. Fish and Wildlife Service, issued two permits for the incidental take of the Utah prairie dog, a threatened species, on the Cedar Ridge Golf Course and the Paiute Tribal Lands in Iron County, Utah.

ADDRESSES: Documents and other information submitted with the permit application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, from the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Elise Boeke, Fish and Wildlife Biologist, Utah Field Office (see **ADDRESSES**), telephone (801) 975-3330.

SUPPLEMENTARY INFORMATION: On May 15, 2006, we published a notice in the **Federal Register** (71 FR 28048) announcing that we had received an application from the Cedar City Corporation and the Paiute Indian Tribe (Applicants), for permits to incidentally take, under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), the Utah prairie dog on the Cedar Ridge Golf Course and the Paiute Tribal Lands in Iron County, Utah.

On January 5, 2007, we issued permits (TE-125039-0, TE-143347-0) to the Applicants subject to certain conditions, which we listed on the permit. We issued the permits only after we determined that—(1) The Applicants applied in good faith, (2) granting the permits will not be to the disadvantage of the Utah prairie dog, and (3) issuing the permits will be consistent with the purposes and policy set forth in the Act.

Authority: The action is authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: January 5, 2007.

Mike Stempel,
Acting Regional Director, Region 6.
[FR Doc. E7-2981 Filed 2-21-07; 8:45 am]

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