

Handbook (November 1996). Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies 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 a significant reduction in population numbers 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 therefore determined that issuance of an ITP to the Applicant qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further NEPA documentation will therefore 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, an ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP; the final decision will be made no sooner than 30 days from the date of this notice.

Dated: March 11, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04-6666 Filed 3-24-04; 8:45 am]

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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 the City of Palm Bay, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. and Mrs. James Elliott and Mr. and Mrs. Jose Gracia (Applicants) request 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 Applicants anticipate taking about one-half acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging habitat, incidental to lot preparation for the construction of a single-family home and supporting infrastructure in the City of Palm Bay, Brevard County, Florida (Project). The destruction of one-half acre of foraging habitat is expected to result in the take of one family of scrub-jays.

The Applicants' 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 would qualify 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 April 26, 2004.

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 TE070785-0 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, U.S. 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 Mr. Mike Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (*see ADDRESSES* above), telephone: 904/232-2580.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE070785-0 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". 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 FOR FURTHER INFORMATION CONTACT*). Finally, you may hand deliver comments to either Service office listed below (*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.

Residential construction will take place within section 5, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida, on lots 7 and 8 of Block 329, Port Malabar Unit 9. Lots 7 and 8 are within 438 feet of locations where scrub-jays were sighted during 2001–2002 surveys for this species. Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of 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 parcels were within occupied scrub-jay habitat, we calculated the maximum average “shift” in territories 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 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 lots fall within the 438 buffer established for known scrub-jay territories and/or point data. Although the applicant's property lacks substantial woody vegetation typically required for scrub-jay nesting and sheltering habitat, it does provide suitable foraging habitat. Accordingly, loss of this habitat due to residential construction will result in the destruction of scrub-jay foraging habitat.

The Applicants do not propose to implement on-site minimization measures to reduce take of scrub-jays. Both lots, in combination, encompass about 0.5 acres and the footprint of the home, infrastructure and landscaping

preclude retention of scrub-jay habitat. On-site minimization may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

The Applicants propose to mitigate for the loss of 0.5 acres of scrub-jay habitat by contributing \$6,700 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 \$6,700 is sufficient to acquire and perpetually manage ± 1.0 acres 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.

As stated above, we have 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 EA or EIS. This preliminary information 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 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. We do 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.

We have determined that approval of the Plan qualifies as a categorical exclusion under the 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.

We 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. We 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.

Dated: March 11, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04-6667 Filed 3-24-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Safe Harbor Agreement for Topminnow and Pupfish in Arizona and Receipt of Application for Incidental Take Permit for the Arizona Game and Fish Department

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and 30-day public comment period.

SUMMARY: The Arizona Game and Fish Department (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE-083686-0. The requested permit, which is for 50 years, would authorize incidental take of the endangered Gila topminnow (*Poeciliopsis o. occidentalis*), endangered Yaqui topminnow (*Poeciliopsis o. sonoriensis*), endangered Quitobaquito pupfish (*Cyprinodon eremus*), and endangered desert pupfish (*Cyprinodon macularius*). The proposed take would occur as a result of conservation measures on non-federal

lands within the historical range of the species in Arizona.

DATES: Written comments on the Safe Harbor Agreement and Environmental Assessment must be received on or before April 26, 2004, to be considered by the Service. The agreement and supporting documentation are available for public 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 address specified below.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the Safe Harbor Agreement and environmental assessment may obtain copies by contacting Doug Duncan, Tucson Suboffice, Arizona Ecological Services Field Office, 201 North Bonita Avenue, Suite 141, Tucson, Arizona 85745 (520-670-6144, extension 236; Fax 520-670-6154). Documents will be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30), at the Tucson Suboffice, or the Phoenix office at 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, (602-242-0210; Fax 602-242-2513). Written data or comments concerning the application, Safe Harbor Agreement, and Environmental Assessment should be submitted to the Field Supervisor, Ecological Services Field Office, Phoenix, Arizona (see address above). Please refer to permit number TE-083686-0 when submitting comments. All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Doug Duncan at the Tucson Suboffice, Arizona Ecological Services Field Office, 201 North Bonita Avenue, Suite 141, Tucson, Arizona 85745.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of threatened and endangered species such as the Gila topminnow, Yaqui topminnow, Quitobaquito pupfish, and desert pupfish (topminnow and pupfish). However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The proposed action is issuance of the enhancement of survival permit and implementation of the Safe Harbor Agreement as submitted by the Applicant. The Safe Harbor Agreement provides for actions that promote conservation and recovery of the four species by: Providing additional suitable aquatic habitats that have previously been largely unavailable for reestablishment of topminnow and pupfish populations; increasing public awareness of conservation needs for native fishes; providing opportunities to use native fish for mosquito control while reducing or eliminating the use of the nonnative mosquitofish; and developing new partnerships between Federal, State, and non-federal landowners. The Safe Harbor Agreement is designed to provide a net conservation benefit to the topminnow and pupfish. The Safe Harbor Agreement has stipulations for monitoring of species populations and habitats and functioning of the Safe Harbor Agreement. The Safe Harbor Agreement also provides for funding of the mitigation measures and monitoring.

Non-federal landowners, who commit to implementing conservation measures for the listed species under the proposed Safe Harbor Agreement, will receive assurances from the Service upon signing a Certificate of Inclusion with the Applicant that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed as long as the conservation measures are continuing and consistent with the agreement. The Service has prepared an Environmental Assessment for the enhancement of survival permit application. A determination of jeopardy to the species will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: The Arizona Game and Fish Department intends to enroll appropriate non-federal lands to allow for the reestablishment of Yaqui topminnow, Quitobaquito pupfish, Gila topminnow, and desert pupfish. The incidental take of these fish may occur at the release sites during certain management activities.

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

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