

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Receipt of an Application for an Incidental Take Permit for the Operation and Management of a Tourist and Residential Project, Palmas del Mar, Humacao, Puerto Rico**

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

**ACTION:** Notice.

Palmas del Mar Homeowners Association (PHA) (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of eggs and hatchlings from two nests of the endangered hawksbill sea turtle (*Eretmochelys imbricata*) or the endangered leatherback sea turtle (*Dermochelys coriacea*) and the take of one hawksbill or leatherback sea turtle female in the form of abandonment of nesting attempts or disorientation, on the beachfronts of Beach Village Regimes (phases) Beach Bohío, Crescent Cove, and Crescent Beach for a period of ten (10) years. The proposed taking is incidental to beach cleaning activities, vehicular driving on the beach, use of recreational beach equipment, lighting, and landscaping associated with the operation and management of the above mentioned buildings and facilities. Nest surveys conducted in the area indicate that both sea turtle species use the beach for nesting. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on these 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 the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces 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).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE033100-0 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 the Service that we have received your internet message, contact us directly at either telephone number listed below (see **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.

**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 December 10, 2001.

**ADDRESSES:** Persons wishing to review the application, supporting documentation, and HCP 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 Permit), or Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE033100-0 in such comments, or in requests of the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313; or Ms. Marelisa Rivera, Fish and Wildlife Biologist, Boquerón Field Office, (see **ADDRESSES**), telephone 787/851-7297.

**SUPPLEMENTARY INFORMATION:** Nesting grounds of the leatherback sea turtle are distributed world-wide. In the Caribbean, the species nests in French Guiana, Surinam, Guyana, Colombia, Venezuela, Panamá and Costa Rica. In the U.S. Caribbean, nesting has been reported from St. Croix, St. Thomas, St. John, and Puerto Rico. The U.S. Caribbean may support nesting by 150 to 200 adult females per year, representing the most significant nesting activity of this species within the United States. The largest concentration of nesting leatherback sea turtles in the U.S. Caribbean has been documented at Sandy Point National Wildlife Refuge, St. Croix, and Playa Brava and Playa Resaca on Culebra Island, Puerto Rico. Nesting females prefer high-energy beaches with deep and unobstructed access.

The hawksbill sea turtle is found throughout the world's tropical waters. Nesting within the U.S. Caribbean and Southeast U.S. occurs in Puerto Rico, the U.S. Virgin Islands and very infrequently in Florida. Two important known nesting areas in the U.S. Caribbean are Mona Island in Puerto Rico and Buck Island Reef National Monument in St. Croix, USVI. The species nests on beaches all around the coast of Puerto Rico, but the area that receives the highest number of nesting attempts is Mona Island, with approximately 500 nests per year.

Hawksbill sea turtles nest on high- and low-energy sandy beaches with woody vegetation such as sea grape or salt shrub located within a few meters of the water line. Suitable nesting habitat can be extremely variable, and range from high-energy ocean beaches to

tiny pocket beaches only a few meters in width.

Major threats to all sea turtle species include loss or degradation of nesting habitat from coastal development and beach armoring; disorientation of hatchlings and females by artificial lighting; poaching; disease; commercial trawling, longline and gill net fisheries; and illegal trade, particularly in hawksbill products.

Along the Humacao coast, a total of 117 leatherback nesting attempts and 230 hawksbill sea turtle nesting attempts have been documented (data collected in 1997 and 1998). Of these, 9 leatherback sea turtle nesting attempts and 49 hawksbill sea turtle nesting attempts occurred at the beachfront of the Project site buildings and facilities during this two-year period.

At Palmas del Mar, Humacao, beach cleaning activities, vehicular traffic on the beach, use of recreational beach equipment, lighting, and landscaping associated with existing buildings (Beach Village Regimes (II–IV–V), Beach Bohío, Crescent Cove and Crescent Beach) without management to accommodate sea turtles, will likely result in death of or injury to, sea turtle eggs and hatchlings, and disorientation or beach abandonment by nesting adults of leatherback sea turtle and hawksbill sea turtle, incidental to the carrying out of these otherwise lawful activities. Since 1996, six incidents have been reported documenting hatchling disorientation caused by artificial lighting, destruction of nests by construction and maintenance activities, or disorientation of adult females by artificial lighting. The ITP does not address these previous incidents (which were subject to Law Enforcement investigation), but would serve to minimize and avoid the possibility of future incidental take.

Under section 9 of the Act and its implementing regulations, “taking” of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has developed an HCP as required for their incidental take permit application.

The HCP describes measures the Applicant will take to minimize and mitigate taking at the Project site. To minimize impacts to listed species from the operation and management of the existing tourist/residential facilities, the Applicant will:

1. Modify beach cleaning;

- a. Mechanical beach cleaning activities will be confined to daylight hours.

- b. Monitor sea turtle nesting activity and inform personnel responsible for cleaning the beach area about the precise location of nests in order to protect them and avoid damaging nests.

- c. All nests left in place will be marked to avoid effects during beach cleaning.

- d. Mechanical cleaning will be limited to the area between the approximate water edge and the previous day's high tide mark or debris line.

- e. Beach cleaning equipment will not encroach upon existing vegetation areas.

- f. Removal of collected beach debris will occur immediately after the cleaning has been performed. No inorganic debris will be buried or stored on the beach. Organic debris will be disposed of outside the potential nesting area.

2. Restrict vehicle use:

- a. The Golf Cart Agreement will include a regulation that indicates that the use of the vehicles on the beach is prohibited. Palmas Homeowners Association (PHA) will include this clause in the Licensee's Agreement.

- b. Golf carts will only be allowed along the paths parallel to the beach.

- c. Security will enter the beach only in case of an emergency. Specific areas will be designated for emergency access, only for official vehicles.

3. Modify operation of recreational facilities on the beach (Beach Bohío):

- a. PHA will continue monitoring patrols to identify nesting activities.

- b. PHA will implement a lighting plan to substitute the High Pressure Sodium lights for Low Pressure Sodium lights or bug lights, and use of low, shielded and directed light fixtures to reduce the amount of light on the beach.

- c. Close open area below the Beach Bohío to avoid impacts to nesting in the area.

- d. Use of the Beach Bohío will be terminated, music stopped, lights turned off and the facility closed to the public at 12 Midnight.

4. Regulate use of recreational beach equipment:

Crescent Cove Condominium, Crescent Beach Condominium and Wyndham Hotel will remove all beach equipment from the beach by dusk. All equipment will be stored in a designated area landward of the beach vegetation.

5. Regulate beach lighting:

A comprehensive lighting plan was developed for each building and facilities and incorporated into the HCP. Measures include installation of shields,

replacement of light fixtures with bollards and use of Low Pressure Sodium lights, among others.

To mitigate for the nest that may be taken, the applicant will provide the following:

1. Beach Cleaning:

- a. Construct an incubation cage or hatchery in a designated area to relocate nests at risk from erosion or poaching.

- b. Provide training to beach cleaning personnel on how to detect sea turtle nests and how to protect them.

- c. PHA will provide beach cleaning equipment with a rake or cleaning apparatus which limits penetration into the sand of not more than two (2) inches. Maximum tire pressure on beach cleaning equipment will be of 10 p.s.i.

- d. Guests will be informed by brochures or in Palmas del Mar Homeowners News of the efforts to preserve sea turtles in order to create awareness and motivate them to avoid littering the beach.

- e. The applicant will create a protocol to ensure effective communication between the STPL, DNER Rangers, and PHA.

2. Beach Driving:

- a. Vegetation will be planted or barriers constructed to impede vehicle access from residential/tourist areas to beach areas.

- b. Signs will be posted explaining that motor vehicles and horses are prohibited on the beaches.

3. Operation of recreational facilities on the beach (Beach Bohío):

All nests at the Beach Bohío area will be relocated to the hatchery or incubation cage.

4. Landscaping:

Vegetation along the coast will be restored with plants appropriate to the area such as sea grapes, West Indian creeper, beach morning glory, palm trees, beach plum, among others.

Landscaping will not entail the substitution of sand with soil so it does not disrupt the nesting process of the turtles. The height of the vegetation will be maintained to at least four feet in order to serve as a natural barrier and to filter out disruptive lights. The vegetation will also control erosion and provide shade.

5. Education:

An environmental education program will be designed especially for Palmas del Mar Resort. Components of the program were extensively discussed in the applicant's HCP.

As stated above, the Service has made a preliminary determination that issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C)

of NEPA. This preliminary information may be revised due to public comment received in response to this notice.

The Service will also evaluate whether the renewal 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: October 15, 2001.

**Cynthia K. Dohner,**

*Acting Regional Director.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Preparation of an Environmental Impact Report/Statement for the South Subregion Natural Community Conservation Plan/Habitat Conservation Plan, County of Orange, California**

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

**ACTION:** Notice of Intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) reopens the comment period to gather additional information necessary to prepare, in coordination with the County of Orange, California (County), a joint programmatic Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the South Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) proposed by the County. The Service's previous notice, published August 23, 2001 (66 FR 44372), contained errors. We are republishing the corrected notice in its entirety.

We are furnishing this notice to: (1) Advise other Federal and State agencies, affected Tribes, and the public of our intentions; (2) reopen the public scoping period for 15 days; and (3) obtain suggestions and information on the scope of issues to be included in the EIR/EIS.

**DATES:** We will accept written comments until November 23, 2001.

**ADDRESSES:** Send comments to Mr. James Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008; facsimile (760) 431-9618.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Evans, Assistant Field Supervisor, (see ADDRESSES), telephone (760) 431-9440.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 9 of the Endangered Species Act (Act) of 1973, as amended, and Federal regulation prohibiting the "taking" of a species listed as endangered or threatened. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits for take of listed species that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22.

The County and possibly other jurisdictions intend to request Endangered Species Act permits for federally listed threatened or endangered species and for unlisted species that may become listed during the term of the permit. The permit is needed to authorize take of listed species (including harm, injury, and harassment) during urban development in the approximately 200 square-mile study area in the southern County. The proposed NCCP/HCP would identify those actions necessary to maintain the viability of South Subregion coastal sage scrub habitat for the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*), and other species and major habitat types identified for inclusion and management during the preparation of the NCCP/HCP.

If the Service approves the NCCP/HCP, we may authorize incidental take of the California gnatcatcher and other identified federally listed species through issuance of Endangered Species Act incidental take permits. The NCCP/HCP, coupled with an Implementation Agreement, could also form the basis for issuing incidental take permits for other identified non-listed species, should these identified species be listed during the term of the permit.

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 FR 16742). The Final Rule was followed by a Special Rule on December 10, 1993 (50 FR 65088) to allow take of the California gnatcatcher pursuant to

section 4(d) of the Act. The Special Rule defined the conditions under which take of the coastal California gnatcatcher and other federally-listed species, resulting from specified land use activities regulated by state and local government, would not violate section 9 of the Act. In the Special Rule the Service recognized the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 and encouraged their holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species. The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional NCCP prepared under the NCCP Program, provided the Service determines that the subregional NCCP meets the issuance criteria of an incidental take permit pursuant to section 10(a)(1)(B) of the Act and 50 CFR 17.32(b)(2). The County currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit.

##### **Proposed Action**

The Service will prepare a joint EIR/EIS with the County's lead agency for the NCCP/HCP. The County will prepare an EIR in accordance with the California Environmental Quality Act. The County will publish a separate Notice of Preparation for the EIR.

The South Subregional NCCP/HCP study area covers more than 200 square miles in the southern and eastern portions of the County. This NCCP subregion is bounded on the east by the San Diego County line and on the north by Riverside County line. Along the west, the study area boundaries follow San Juan Creek inland to the Interstate 5 (I-5) overcrossing, then northwest along I-5 to El Toro Road, and north along El Toro Road to the intersection of Live Oak Canyon Road, and northeasterly on a straight line from that intersection to the northern apex of the County boundary. The subregion is bounded on the south by the Pacific Ocean.

The NCCP/HCP will describe strategies to conserve coastal sage scrub and other major upland and aquatic habitat types identified for inclusion and management, while allowing incidental take of endangered and threatened species associated with development. Development may include residential, commercial, industrial, and recreational development; public infrastructure such as roads and utilities; and maintenance of public facilities.