

**SUPPLEMENTARY INFORMATION:** Pedro Vidal (Appellant) has filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations found at 15 CFR part 930, subpart H. Mr. Vidal appeals on objection raised by the Puerto Rico Planning Board to a consistency certification contained within Vidal's application for a U.S. Army Corps of Engineers permit necessary to reconstruct a stilt house destroyed by Hurricane George. The proposed project is located within the maritime-terrestrial zone, territorial waters and submerged lands of the Commonwealth of Puerto Rico.

The CZMA requires a notice be published in the **Federal Register**, indicating the date on which the decision record has been closed. A final decision on this appeal must be issued no later than 90 days after publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing, within the 90-day period, a subsequent notice explaining why a decision cannot be issued within this time frame. In this event, a final decision must be issued no later than 45 days after publication of the subsequent notice. 16 U.S.C. 1465(b).

For additional information about this appeal contact Nancy Briscoe, 301-713-1219.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: December 6, 2004.

**James R. Walpole,**

*General Counsel.*

[FR Doc. 04-27415 Filed 12-14-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

## DEPARTMENT OF THE INTERIOR

**U.S. Fish and Wildlife Service**

[I.D. 100104A]

### **Notice of Intent to Conduct Public Scoping and Prepare an Environmental Impact Statement**

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

**ACTION:** Notice of intent to conduct public scoping and prepare an Environmental Impact Statement related to the Sequim-Dungeness Valley Agricultural Water Users Association's Conservation Plan.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) this notice advises the public that the USFWS and NMFS (collectively, the Services) intend to gather information necessary to prepare an Environmental Impact Statement (EIS). The EIS will analyze the potential approval of a Conservation Plan (CP) and issuance of two incidental take permits (ITP); one issued by NFMS and one by the USFWS. The ITP applicant is the Sequim-Dungeness Valley Agricultural Water Users Association (the Association) of Sequim, Washington. The ITP would allow take of four threatened species and nine unlisted species that may be affected by the Association's activities in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (ESA).

**DATES:** Written comments are encouraged, and should be received on or before February 14, 2005.

**ADDRESSES:** Address comments and requests for information related to preparation of the EIS, or requests to be added to the mailing list for this project, to Tim Romanski, USFWS, 510 Desmond Drive S.E., Suite 102, Lacey, WA 98503-1263; facsimile (360)753-9518; or to Matt Longenbaugh, NMFS, 510 Desmond Drive S.E., Suite 103, Lacey, WA 98503-1273; facsimile (360)753-9517. Comments may be submitted by e-mail to the following address: [SDVAWUA-CP.nwr@noaa.gov](mailto:SDVAWUA-CP.nwr@noaa.gov). In the subject line of the e-mail, include the document identifier: The Sequim Association CP - EIS. Comments and materials received will be available to public inspection, by appointment, during normal business hours at the above addresses.

**FOR FURTHER INFORMATION CONTACT:** Tim Romanski, USFWS, (360)753-5823; or Matt Longenbaugh, NMFS, (360)753-7761.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The National Environmental Policy Act (NEPA) requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) permit applications anticipated from the Association. Therefore, the Services are seeking public input on the scope of the

required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA as to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). Harm is defined by the USFWS to include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727; November 8, 1999).

Section 10 of the ESA contains provisions for the issuance of an ITP to non-Federal landowners for the take of endangered and threatened species, provided that all permit issuance criteria are met, including the requirement that the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, a CP containing a strategy for minimizing and mitigating the take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate monitoring and funding for the CP will be provided.

To pursue regulatory certainty of its existing and future water supplies, the Association is seeking an ITP that would provide long-term assurances for the reliability of water supplies. The Association needs an ITP because some of its activities have the potential to take listed species. The Association is composed of seven irrigation districts and private irrigation companies in the Sequim-Dungeness Valley area. The seven irrigation districts include Agnew Irrigation District, Clallam Ditch Company, Cline Irrigation District, Dungeness Irrigation Company, Dungeness Irrigation District, Highland Irrigation District, and Sequim-Prairie Tri-Irrigation Company. These seven irrigation districts divert water primarily from intakes in the Dungeness River and deliver water to users throughout the area.

The ITP application is related to the operation and maintenance of water

diversions and conveyance facilities on the Dungeness River (covered activities) near the City of Sequim in Clallam County, Washington. These covered activities can be summarized as follows:

- Water diversion and conveyance;
- Operation and maintenance of diversion facilities such as diversion intakes, intake channels, headgates, fish screens, and bypass channels;
- Maintenance of canals and laterals;
- Discharge of tailwater (including both irrigation water and intercepted stormwater);
- Releases of intercepted stormwater into selected creeks at points other than tailwater discharge points when stormwater flows exceed ditch capacity; and
- Construction activities related to capital projects provided in the CP.

The Association has a board of directors representing respective districts and companies, and appoints a Water Coordinator to assist in overall water resource management. The Association has the ability to adopt policies, rules, and regulations that apply to all of its members, and retains the authority to enter into agreements with outside organizations.

The Association has informed the Services of its proposal to submit a conservation plan (CP) and application for an ITP under section 10(a)(1)(B) of the ESA. The proposed CP and ITP would cover various activities relating to the Association's continued diversion and delivery of water from the Dungeness River, Washington, and other sources, as well as planned infrastructure improvements intended to conserve listed and unlisted species. The geographic areas to be covered are located in eastern Clallam County, Washington. More information on the geographic area can be found at an Internet site maintained by Clallam County: [http://www.clallam.net/Maps/html/mapindex\\_e.htm](http://www.clallam.net/Maps/html/mapindex_e.htm).

Species for which the Association seeks ITP coverage include four ESA-listed threatened species (Coastal-Puget Sound bull trout, Puget Sound chinook salmon, Hood Canal summer-run chum salmon, bald eagle) and nine unlisted species that may be affected by the Association's activities in the Dungeness River Watershed.

To obtain an ITP, the Association must prepare a CP that meets the issuance criteria established by the Services (50 CFR 17.22 and 222.307). Federal approval of an ITP and associated CP require environmental review under the NEPA. The Services will complete an EIS evaluating the environmental effects of the

Association's operations under its proposed CP.

Under NEPA, a reasonable range of alternatives to a proposed project must be developed and considered in the Services' environmental review. At a minimum, the alternatives developed must include: (1) No Action alternative, and (2) the Proposed Action, with thorough descriptions of its management features and anticipated resource conservation benefits and potential impacts.

The Services are currently in the process of developing alternatives for analysis, and have considered analyzing the following:

*Alternative 1: No Action:* Under the No Action Alternative, an ITP would not be issued by the Services, there would not be a commitment to implement the CP (although it is expected that improvements will be made on an uncertain schedule), and ESA assurances under section 10 would not be provided to the Association;

*Alternative 2: The Proposed Action - Implement the CP:* There would be full implementation of the CP, which includes a variety of infrastructure improvement projects, and operation and maintenance procedures to improve in-stream flow and to reduce other impacts from irrigation structures and practices;

*Alternative 3:* Certain water conservation projects contained under the Proposed Action (potentially impacting certain wetlands) would not be implemented (i.e., partially implementing the CP);

*Alternative 4:* The CP would be modified by adding the piping of nearly all of the ditches in the Association members' irrigation systems, approximately 2 miles (3.2 kilometers) of small portions of ditches.

Additional project alternatives may be developed based on input received from this and future scoping during development of the EIS.

The Services provide this notice to: (1) advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the scope of issues to include in the EIS. The Services are considering whether there is sufficient interest to schedule scoping meetings. If meetings are held, details of where and when will be provided by future notice so the public will be able to plan to participate. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. The Services request that comments be as specific as possible. In particular, we request

information regarding: the direct, indirect, and cumulative impacts that implementation of the proposed CP could have on endangered and threatened and other covered species, and their communities and habitats; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in the City of Sequim area of Clallam County; other plans or projects that might be relevant to this proposed project; and minimization and mitigation efforts.

In addition to considering potential impacts on listed and other covered species and their habitats, the EIS could include information on potential impacts resulting from alternatives on other components of the human environment. These other components could include air quality, water quality and quantity, geology and soils, cultural resources, socioeconomic resources, vegetation, and environmental justice.

Comments or questions concerning this proposed action and the environmental review should be directed to the USFWS or NMFS at the addresses or telephone numbers provided above. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500-1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: November 30, 2004.

**David J. Wesley,**

*Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.*

Dated:

**Nancy K. Daves,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

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