

APPENDIX 17:

Examples of Issued Incidental Take Permits

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE



FEDERAL FISH AND WILDLIFE PERMIT

3-201 (10/86)

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)

REGULATIONS (ATTACHED)

50 CFR §13 & 17, & 21

3. NUMBER

PRT-XXXXX

4. RENEWABLE

XXXX YES
____ NO

5. MAY COPY

XXXX YES
____ NO

6. EFFECTIVE

09/21/96

7. EXPIRES

12/31/2095

1. PERMITTEE

NAME
ADDRESS
CITY, STATE, ZIP CODE
PHONE

8. NAME AND TITLE OF PRINCIPAL OFFICER (IF # 1 IS A BUSINESS)

N/A

9. TYPE OF PERMIT

INCIDENTAL TAKE - ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

TWO TRACTS OF LAND, ONE ENCOMPASSING 7,200 ACRES. BOTH ARE LOCATED IN NORTH CAROLINA, AS DESCRIBED IN THE PERMITTEE'S HCP.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR § 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND HIS DESIGNATED AUTHORIZED AGENTS.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND HIS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A-P (5 PAGES TOTAL)

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN ITEMS N, O, AND PERMIT. THE FIRST REPORT IS DUE DECEMBER 31, 1996.

ISSUED BY:

TITLE

DATE

REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

ORIGINAL

NAME

STREET ADDRESS
CITY, STATE, ZIP CODE
PHONE
PERMIT NUMBER

- E. The Permittee owns the lands identified in Block #10, above. Within the 8,000-acres encompassed within the property, surveys indicate that approximately 1,121-acres are occupied by the endangered red-cockaded woodpecker, *Picoides borealis*, and that approximately 3,363 acres is currently unoccupied, but suitable *Picoides borealis* habitat. The Permit authorizes the take of the endangered red-cockaded woodpecker, *Picoides borealis*, incidental to lawful timber harvest and other land management activities (Project). Twelve *Picoides borealis* groups may be incidentally taken under the authority of this Permit, subject to the terms and conditions stipulated herein. Additionally, this Permit provides authorization to incidentally take any “future” *Picoides borealis* that may occupy the Project after the effective date of this Permit and for its duration, subject to the terms and conditions stipulated herein.
- F. Permittee is authorized to take all *Picoides borealis* cavity trees, located on the lands identified in Block 10 above, under the authority of this permit, subject to the terms and conditions stipulated herein. This permit also constitutes a Special Purpose Permit under 50 CFR § 21.27 for take of *Picoides borealis* in the amount and/or number and subject to the terms and conditions specified herein. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § § 703-12).
- G. The Permittee agrees to allow U.S. Fish and Wildlife Service personnel, personnel from the North Carolina Wildlife Resources Commission, or these agencies’ designated representatives to enter the property identified in Block 10 of this permit for general purposes as specified in 50 CFR §13.21(d)(2).
- H. The following measures will be employed to ensure that *Picoides borealis* take is minimized and successfully mitigated for the current *Picoides borealis* population. For purposes of this Item, success will be accomplished when the Permittee successfully creates twelve new *Picoides borealis* groups on private, State, and Federal lands in North Carolina within 3 years of the effective date of the permit, or December 31, 1999, whichever is sooner. The Permittee may not incidentally take one (1) extant *Picoides borealis* group until the successful creation (as defined in Item H.3) of one (1) *Picoides borealis* group off-site as stipulated herein. As new *Picoides borealis* groups are created successfully, the Permittee has the option to incidentally take an existing *Picoides borealis* group, so long as a 1:1 ratio (created:taken) is maintained.
1. The Permittee will fund the creation of a minimum of four (4) artificial cavities (either drilled or inserts) and two (2) cavity starts (forty-eight (48) cavities and twenty-four (24) starts in all) within a minimum of twelve (12) recipient sites. The recipient sites will be determined in cooperation with the Permittee and the U.S. Fish and Wildlife Service. Ultimate approval of the sites will rest with the U.S. Fish and Wildlife Service. Additionally:
 - I. The artificial cavities will be kept screened until all internal sap leakage ceases. If internal sap leakage is severe, the leaking cavity will be replaced with a new starts/cavities.
 - ii. Cavities damaged or made unsuitable due to modification by other species, such as pileated woodpeckers, will be repaired with cavity restrictors or replaced during the 3-year monitoring period.

NAME
STREET ADDRESS
CITY, STATE, ZIP CODE
PHONE
PERMIT NUMBER

H. (Continued)

2. The Permittee will fund the initial management prescriptions, if necessary, for the twelve (12) recipient sites. The management prescriptions may include hardwood mid-story removal and/or understory removal, with the express purpose of enhancing each site's potential to attract and maintain a *Picoides borealis* breeding group.
3. After cavity provisioning, all provisioned sites must be monitored for subsequent use and/or occupation every four (4) months (April, August, and December) through December 31, 1999, or until success is documented sooner. Success is defined as when each of the twelve (12) provisioned recipient sites is occupied by a *Picoides borealis* breeding group (as evidenced by observations of copulation during the breeding season, and/or eggs or nestlings; or observation of two adults at a site over a 6-month period during the breeding season).
4. The Permittee will provide funding for implementation of Conditions H.1 through H.3, not to exceed \$45,000 (Forty-five thousand dollars).
5. The Permittee agrees to provide a 60-day advance notice prior to timber harvesting and incidental taking of a existing *Picoides borealis* group, to allow the U.S. Fish and Wildlife Service, or its authorized agent(s), to capture and translocate juvenile *Picoides borealis* to either candidate sites or other sites selected by the U.S. Fish and Wildlife Service.

I. Approximately 3,363 acres of the Project area is currently suitable but unoccupied *Picoides borealis* habitat. The Permittee agrees to the following mitigation/minimization strategy in the event that, at some point after the effective date of this permit, additional ("future") *Picoides borealis* occupy these lands:

1. Continue to conduct *Picoides borealis*-compatible land management within the currently unoccupied acreage, including (but not limited to) thinning, prescribed burning, and hardwood mid-story control.
2. Avoid any activities that may result in incidental take during the nesting season (generally March through August), within the foraging and nesting area of a "future" *Picoides borealis* group.
3. Provide a 60-day advance notice to the U.S. Fish and Wildlife Service to allow for the capture and translocation of any adult and/or juvenile *Picoides borealis* that may be directly impacted by future timber-harvesting activities within the occupied and utilized habitat of these "future" *Picoides borealis* group.
4. Allow the U.S. Fish and Wildlife Service to enter the unoccupied 3,363 acres to provision suitable sites (at its expense) with the intent of accelerating the chances of *Picoides borealis* occupancy.
5. Allow the U.S. Fish and Wildlife Service to enter the areas of the Project site that are occupied by "future" *Picoides borealis* during the term of the Permit for the express purpose of *Picoides borealis* capture and translocation to sites selected by the U.S. Fish and Wildlife Service.

NAME
STREET ADDRESS
CITY, STATE, ZIP CODE
PHONE
PERMIT NUMBER

- J. The Permittee must select an experienced contractor to perform the mitigation and minimization and monitoring duties as described in this Permit. The selected contractor must be pre-approved by the contact office of the U.S. Fish and Wildlife Service and must obtain all necessary local, State, and Federal permits prior to initiating the work. The Permittee, upon further consultation and approval from the U.S. Fish and Wildlife Service, will select a contractor and develop an expenditure budget for the funds identified in Item H.4, above.
- K. By December 31, of each year this Permit is valid, (starting in 1996) the Permittee will submit an annual report to U.S. Fish and Wildlife Service offices listed in Items N, O, and P of this Permit. The annual reports are due as specified until the successful creation of twelve (12) *Picoides borealis* groups, as described in Item I, above, is achieved, or December 31, 1999, whichever is soon. The annual report shall outline and describe the implementation and success of mitigation and minimization measures as identified below:
1. Progress on compliance with the success criteria outlined in Condition I. Further, the annual report must specify the number of incidental take actions taken upon the existing twelve (12) *Picoides borealis* groups, if applicable.
 2. A copy of the executed contract with the qualified contractor, as outlined in Item J, if not previously provided.
 3. An accounting of the funding identified in Item H.4.
 4. Include any corrective measures or other changes that may be necessary to improve the efficacy of the Permit.
- L. Upon locating a dead, injured, or sick *Picoides borealis*, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, Strom Thurman Federal Building, 1835 Assembly Street, Room 971-B, Columbia, South Carolina 29201. The phone number is 803/765-5626. Notification should also be made (by the next work day) to the U.S. Fish and Wildlife Service office appearing in Item N, below. Care should be taken in handling sick or injured specimens to ensure effective treatment and care in handling dead specimens to preserve biological materials in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered species or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- M. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating impacts to *Picoides borealis*, circumstances could arise which were not fully anticipated by this Permit and which are considered unforeseen. Such circumstances may become apparent either to the Permittee, his authorized agents, or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as any significant, unanticipated adverse change in the status of species; any significant, unanticipated adverse change in impacts of the Project or in other factors upon which the HCP and Permit are based; or any other significant new

NAME
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M. (Continued)

information relevant to the Permit and Project that was unforeseen by the Permittee and the U.S. Fish and Wildlife Service that could give rise to the need to review the Permittee's conservation program. If unforeseen circumstances arise, the Permittee and the contact office of the U.S. Fish and Wildlife Service shall meet within twenty (20) working days following notice of such unforeseen circumstances. The Permittee shall develop appropriate measures and begin their implementation within an additional thirty (30) working days.

N. For purposes of administration of the monitoring and compliance aspects, addressing unforeseen circumstances, and other matters associated with implementation of this Permit, the contact office of the U.S. Fish and Wildlife Service is:

Field Supervisor (HCP Program)
U.S. Fish and Wildlife Service
160 Zillicoa Street
Asheville, North Carolina 28801
Phone: 704/258-3939

O. For purposes of administration of the monitoring and compliance aspects, addressing unforeseen circumstances, and other matters associated with implementation of this Permit, the alternative contact office of the U.S. Fish and Wildlife Service is:

Field Supervisor (HCP Program)
U.S. Fish and Wildlife Service
Department of Forest Resources
261 Lehotsky Hall, Box 341003
Clemson, South Carolina 29634-1003
Phone: 803/656-2432

P. Copies of annual reports will also be provided to the following U.S. Fish and Wildlife Service offices:

Endangered Species Permits (AES/TE/P)
U.S. Fish and Wildlife Service
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Phone: 404/679-7110

END

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE



FEDERAL FISH AND WILDLIFE PERMIT

3-201 (10/86)

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)

REGULATIONS (ATTACHED)

50 CFR §13 & 17, & 21

3. NUMBER

PRT-XXXXX

4. RENEWABLE

XXXX YES

_____ NO

5. MAY COPY

XXXX YES

_____ NO

6. EFFECTIVE

11/07/96

7. EXPIRES

11/07/2046

1. PERMITTEE

NAME
ADDRESS
CITY, STATE, ZIP CODE
PHONE

8. NAME AND TITLE OF PRINCIPAL OFFICER (IF # 1 IS A BUSINESS)

N/A

9. TYPE OF PERMIT

ENDANGERED/THREATENED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Orange County, California: on lands specified within the body of the permit.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR § 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND HIS DESIGNATED AUTHORIZED AGENTS.
- D. FURTHER CONDITIONS OF AUTHORIZATION ARE CONTAINED IN THE ATTACHED SPECIES TERMS AND CONDITIONS.

12. REPORTING REQUIREMENTS

See permit conditions for reporting.

ISSUED BY:

TITLE

DATE

U.S. FISH AND WILDLIFE SERVICE, PORTLAND, OREGON
PERMIT CONDITIONS FOR PRT-784571

- D. Acceptance of this permit serves as evidence that the permittees, and their designated agents, understand and agree to abide by the "General Conditions for Native Endangered and Threatened Wildlife Species Permits" (copy attached).
- E. The permittees, and their designated agents, are authorized to incidentally take coastal California gnatcatchers (*Polioptila californica californica*) occupying 27 of the 142 acres of coastal sage scrub and 108 acres of cactus scrub habitat in the course of otherwise lawful development and conservation activities, as described in the permittees' application and supporting documents, and as conditioned herein.
- F. The permittees, and their designated agents, are authorized to incidentally take cactus wrens (*Campylorhynchus brunneicapillus cousei*) located in 83 of the 108 acres of cactus scrub and 142 acres of coastal sage scrub, in the course of otherwise lawful development and conservation activities, as described in the permittees' application and supporting documents, and as conditioned herein. Provided that this permit has become effective, per term and condition G below, take authorization for the cactus wren shall become effective upon the listing of the species under the Federal Endangered Species Act of 1973, as amended, (Act) to the extent that take would otherwise be prohibited under section 9 of the Act, and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act.
- G. As noted in the Implementing Agreement, Section V.A.3.a(1), take authorization for Western Shell Oil, Inc. (Shell) shall become effective upon demonstration in writing to the U.S. Fish and Wildlife Service (Service) of the transfer of ownership from Shell to the California Department of Parks and Recreation (State Parks) of the approximately 979-acre parcel depicted on Exhibit 23 of the Habitat Conservation Plan. Also as noted in the Implementing Agreement, Section V.A.3.a(2), take authorization for the Metropolitan Water District shall become effective upon demonstration in writing to the Service of the recordation of an open space/conservation easement and/or offer of dedication to State Parks.
- H. This permit shall remain in effect for 50 years or until an earlier time as provided in the Implementing Agreement, including Section III.B., VII, or VIII.E..
- I. The authorization granted by this permit is subject to full and complete compliance with, and implementation of, the Habitat Conservation Plan and Implementation Agreement, executed by the permittees, State Parks, and the Service. Attachment A summarizes the responsibilities of the applicants while conducting activities that may effect coastal California gnatcatchers and cactus wrens.
- J. Upon locating dead, injured, or sick federally-listed endangered or threatened species, initial notification must be made within three (3) working days of the finding to the Service's Division of Law Enforcement, Torrance, California at (370 Amapola Avenue, Suite 114, Torrance, California 90501, telephone 310-297-0062) and The Service's Carlsbad Field Office at (2730 Loker Avenue West, Carlsbad, California 92008, telephone 619-431-9440). Also, the Service must be notified immediately, in the event that habitat loss exceeds the amount authorized in the Habitat Conservation Plan and Implementing Agreement. Written notification to both offices must be made within 5 calendar days.

- K. As noted in the Implementing Agreement, Section V.A.3.b(3) and in the Habitat Conservation Plan, Section V, an annual report shall be prepared and submitted by a Shell/MWD funded biologist by December 31 of each year that the permit is in effect, beginning in 1997. One copy of the report shall be submitted to each of the following:
- 1) Regional Director, U.S. Fish and Wildlife Service 911 Northeast 11th Avenue, Portland, Oregon 97232, and
 - 2) Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The annual report shall include the results of coastal sage scrub and cactus scrub habitat surveys, the cowbird trapping program, the population estimates, and the determination of the extent and the locations of habitat used by the coastal California gnatcatcher, cactus wren, and any other sensitive species present in the Northeast Preserve, Telegraph Canyon, and Carbon Canyon area. Following the completion of the restoration program, the Golf Course Habitat Conservation Area will be included in the annual reporting.
- L. A copy of this permit and Attachment A must be in the possession of the permittees and designated individuals while conducting taking activities (construction or grading). Please refer to the permit number in all correspondence and reports concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Carlsbad Field Office.

ATTACHMENT A

A copy of this Attachment must be in the possession of the permittees and designated individuals while conducting activities that may effect the coastal California gnatcatcher and cactus wren or their habitats. The following construction management and monitoring measures shall be implemented to minimize impacts to coastal California gnatcatchers, cactus wrens, and coastal sage and cactus scrub habitats:

1. Construction will be monitored by a U.S. Fish and Wildlife Service (Service) approved biologist, responsible to the project applicant. The contractor and the monitor will review the rough grading plans and staking to ensure that the grading is within the project footprint as described in the HCP. All temporary fencing or other markers will be clearly visible to construction personnel. No construction access, parking or storage of equipment or materials will be permitted within such marked areas. A monitoring biologist(s) will be on-site during brush-clearing and grading of all coastal sage and cactus scrub vegetation.
2. Prior to any construction or grading activities, education of all project personnel regarding the prevention of harm, harassment, injury, or death of wildlife will be provided by the biological monitor. This instruction shall be given as often as necessary to ensure that all personnel working on-site are adequately briefed in the matter.
3. Except as necessary to respond to public health and safety concerns, or otherwise authorized by the Service, no physical disturbance of coastal sage or cactus scrub occupied by nesting coastal California gnatcatcher or cactus wrens will occur in the breeding season (approximately February 15 through August 30). Shell/MWD will provide the Service with maximum practicable notice of the need to proceed under such circumstances to allow for avoidance or other technique. With regard to construction required on the Shell project site, the breeding season limitation shall apply; provided that construction activities necessitating unexpected slope stabilization or erosion control measures and emergency facility repairs be undertaken subject to the foregoing notice provision and minimization of impacts requirement.
4. Shell/MWD, as appropriate, will notify the Service at least seven (7), preferably fourteen (14) calendar days prior to the clearing of cactus or coastal sage scrub habitat.
5. The monitoring biologist(s) will flush coastal California gnatcatchers, cactus wrens, and other wildlife from occupied habitat areas immediately prior to brush-clearing and earth-moving activities. The monitoring biologist(s) will ensure that no coastal California gnatcatchers or cactus wrens will be directly harmed by brush clearing and earth-moving equipment.
6. The monitor will be empowered to temporarily halt construction activities and make recommendations to ensure impact minimization, compliance with the relevant provisions of the incidental take statement, and that work does not take place in habitat areas outside the clearing limits as staked in the field.
7. Coastal sage or cactus scrub habitat within or immediately adjacent to project construction areas will be monitored. Prior to the commencement of grading operations or other activities involving significant soil disturbance, a survey will be conducted to locate all coastal California gnatcatchers and cactus wrens within 100 feet of the outer extent of projected soil disturbance activities, and will be clearly marked and identified on the construction grading/operations plans so that the monitor can make informed recommendations. The purpose of this monitoring will be either to verify that the construction does not adversely affect coastal California gnatcatcher or cactus wren activity or to determine whether "take" occurs, whichever the case may be. If this monitoring indicates that unauthorized take of coastal California gnatcatchers or cactus wrens has occurred, construction will cease pending coordination with the Service.

8. Vehicle transportation routes between cut-and-fill locations will be restricted to a minimum number during construction. Earth-moving equipment will be confined to the narrowest practicable corridor during construction. Waste dirt or rubble will not be deposited on adjacent, native vegetation. Earth-moving equipment will avoid unnecessary maneuvering in areas adjacent to protected habitat. Preconstruction meetings involving the monitoring biologist, construction supervisors, and equipment operators will be conducted and documented to ensure adherence to these measures.