

[www.fws.gov/r5cbfo](http://www.fws.gov/r5cbfo) or by written or telephone request to John Wolflin, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, 410-573-4573.

**FOR FURTHER INFORMATION CONTACT:** John Wolflin at the above Service Office, Annapolis, Maryland.

**SUPPLEMENTARY INFORMATION:** On May 13, 1999, the Service issued an ITP for incidental "take" of the Delmarva fox squirrel. The ITP was issued pursuant to Section 10 of the Endangered Species Act (ESA), § 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B), and its implementing regulations at 50 CFR 17.22(b)(1).

On September 7, 1999, a neighbor to the proposed development (Gerber) and Defenders of Wildlife filed suit in Federal district court alleging violations of the National Environmental Policy Act, the ESA and the Administrative Procedure Act related to issuance of the ITP for the Home Port on Winchester Creek Habitat Conservation Plan.

The District Court for the District of Columbia granted summary judgment on all counts in favor of the Service on May 15, 2001. *See Gerber v. Babbitt*, 146 F.Supp.2d 1 (D. D.C. 2001). On appeal, the U.S. Court of Appeals for the D.C. Circuit remanded the matter to the District Court with instructions to remand to the agency to address two issues. *See id.* at 184. Specifically, the Court of Appeals held that the Service should have made a map of the mitigation area available during the public comment period and should have made an independent finding as to whether a possible project change identified in the record (the "Reduced Take Alternative") was practicable.

Pursuant to the remand, the Service conducted an independent analysis which was reflected in the draft document entitled "Draft—Assessment of Practicability of the Reduced Take Alternative on Remand." That document, in addition to the map, were made available for a 60-day public comment period starting May 9, 2003, (see 68 Fed. Reg. 25058). The Service received two comment letters, one from Mr. Gerber and one from Defenders of Wildlife. The Service has reviewed and considered those comments and has prepared a final decision document entitled "U.S. Fish and Wildlife Service's Decision Regarding the Incidental Take Permit (TE006310) to Maureen D. Waterman Following Remand" which includes the Service's responses to the comments received and is now available for public review at the address listed above.

#### Author

The primary author of this notice is Glenn Smith, Assistant Coordinator, Division of Endangered Species, Northeast Region, U.S. Fish and Wildlife Service.

**Authority:** The authority for this action is Section 10 of the Endangered Species Act (ESA), § 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B), and its implementing regulations at 50 CFR 17.22(b)(1).

Dated: August 28, 2003.

**Richard O. Bennett,**

*Acting Regional Director, Region 5, Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Privacy Act of 1974, As Amended; Revision of a System of Records

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

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** The Department of the Interior (DOI) is issuing public notice of its intent to revise a system of records in its current inventory, Permits System—Interior, FWS-21, subject to the Privacy Act of 1974. This action is necessary to meet the requirements of the Privacy Act to publish a notice in the **Federal Register** of amended systems of records. A notice on this system of records was previously published in the **Federal Register** on December 6, 1983, (48 FR 54719). The agency is updating information on the system and adding new information on categories of records, purposes, routine uses, and procedures.

**DATES:** Comments on this revised system of records must be received on or before October 14, 2003.

**ADDRESSES:** Address all comments on this revised system of records to U.S. Fish and Wildlife Service, Privacy Act Officer, Mail Stop 222, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203, or by email at [Johnny\\_Hunt@fws.gov](mailto:Johnny_Hunt@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Johnny R. Hunt, Service Privacy Act Officer, U.S. Fish and Wildlife Service, telephone: (703) 358-1730, or fax: (703) 358-2269.

**SUPPLEMENTARY INFORMATION:** The U.S. Fish and Wildlife Service's (FWS) permit programs collect information to establish and verify an applicant's eligibility for a permit to conduct

certain activities with wildlife and plants under various Federal wildlife laws and treaties. These include the Bald and Golden Eagle Protection Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Lacey Act, and Wild Bird Conservation Act. Information includes name, address, date of birth, Social Security Number, occupation, home and work phone numbers, facsimile number, and email address. The system no longer includes height, weight, or color of hair and eyes of applicants for applications received after 1997. The system also contains information on locations, types, and purposes of the proposed activity, qualifications of the applicant (such as education and experience), and tribal affiliation for eagle permits for Native American religious purposes. Other documents reflect the general administrative processing and review of an application, and the monitoring of activities under the issued permit. We propose to add new information on locations of records, categories of records, authority under the Wild Bird Conservation Act, purposes, procedures, current system managers, and record source categories, and we clarify when records would be released to the Department of Justice. We also propose to modify routine uses to include subject matter experts that provide advice on the issuance of permits; Federal, State, local or foreign wildlife and plant agencies for the exchange of permitting information; registrants involved in the breeding of endangered or threatened species under Captive-bred Wildlife registrations; appropriate authorities and others who need to know who is permitted to receive and rehabilitate sick, orphaned, and injured migratory birds; appropriate agencies when we need to monitor activities conducted under a permit or evaluate regulated trade and use; a congressional office in response to an inquiry an individual has made; the General Accounting Office or Congress when the information is required for the evaluation of the permit programs; and contractors, experts or consultations to accomplish a FWS function related to this system. The expanded routine uses do not require new information to be collected.

The Privacy Act (5 U.S.C. 552a(e)(11)) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget (OMB), in Circular A-130, requires an additional

10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed system notice may do so by submitting comments in writing as indicated under **ADDRESSES**. Comments received within 40 days of publication will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received that would require a contrary determination. We will publish a revised notice if we make changes based on our review of comments received.

Dated: August 29, 2003.

**John D. Kraus,**

*Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.*

#### **INTERIOR/FWS-21**

##### **SYSTEM NAME:**

Permits System.

##### **SECURITY CLASSIFICATION:**

None.

##### **SYSTEM LOCATION:**

The records are stored at the following offices of the U.S. Fish and Wildlife Service (FWS):

(1) For the Endangered Species Program:

(a) Regional Endangered Species Offices (*see* 50 CFR 2.2 for addresses) and

(b) Division of Consultation, HCPs, Recovery and State Grants and the Division of Conservation and Classification, Endangered Species Program, U.S. Fish and Wildlife Service, Mail Stop 420 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(2) Division of Management Authority, U.S. Fish and Wildlife Service, Mail Stop 700 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(3) Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Mail Stop MBSP-4107 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203, and Regional Migratory Bird Offices (*see* 50 CFR 2.2 for addresses).

(4) Office of Law Enforcement, U.S. Fish and Wildlife Service, Mail Stop LE-3000 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203; Regional Law Enforcement Offices (*see* 50 CFR 10.22 for addresses); designated ports of entry (*see* 50 CFR 14.12 for locations); and some border or special port offices (*see* 50 CFR 14.16 and 14.19 for locations).

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records are maintained on applicants who seek permits to conduct certain activities that affect wildlife and plants protected and/or regulated under the following Federal laws or treaties: Bald and Golden Eagle Protection Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Lacey Act, and Wild Bird Conservation Act.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The records contain the name, address, date of birth, Social Security Number, occupation, home and work phone numbers, facsimile number, and email address of someone who applies for a permit. For eagle permits for Native American religious purposes, the records contain tribal affiliation and, at the applicant's discretion, religious ceremony. The records also contain the qualifications of the applicant (such as, education and experience), the locations, types, and purposes of the proposed activity, and reports of activities conducted under an issued permit. They include documents that reflect the general administrative processing of the application and permit; public review required by certain laws, including comments received; our consultation with subject matter experts, including but not limited to experts within the FWS and in State, Federal, local, and foreign agencies, for the purpose of obtaining scientific, management, and legal advice; and our evaluation of information to make a decision on an application for a permit, and to monitor activities that occur under a permit. Although the system contains records on corporations and other business entities including Tax Identification Number, only records containing personal information on individuals are subject to the Privacy Act.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d); Migratory Bird Treaty Act (16 U.S.C. 703-712); Marine Mammal Protection Act (16 U.S.C. 1361-1407); Endangered Species Act (16 U.S.C. 1531-1544); Wild Bird Conservation Act (16 U.S.C. 4901-4916); and Lacey Act (18 U.S.C. 42), and Title 50, parts 10, 13, 14, 15, 16, 17, 18, 21, 22, and 23 of the Code of Federal Regulations.

##### **PURPOSE(S):**

The purposes are to establish and verify an applicant's eligibility for a

permit to conduct activities which affect wildlife and plants protected under a number of Federal wildlife laws and treaties; produce reports to monitor the use and trade in protected wildlife and plants; and assess the impact of permitted activities on the conservation and management of species and their habitats.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The FWS is the primary user of the system, and the primary uses of the records will be:

(1) To establish and verify an applicant's eligibility for a permit to conduct activities with protected wildlife and plants under a number of conservation laws and treaties.

(2) To provide the public and permittees with permit-related information.

(3) To monitor activities conducted under a permit.

(4) To analyze data and produce reports to monitor the use and trade in protected wildlife and plants.

(5) To assess the impact of permitted activities on the conservation and management of protected species and their habitats.

(6) To evaluate the effectiveness of the permit programs.

(7) To meet reporting requirements of the Department of the Interior (DOI) and FWS.

(8) To generate budget estimates and track performance.

Disclosures outside the DOI may be made under the routine uses listed below without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected.

(1) To subject matter experts, including but not limited to experts in State, Federal, local, and foreign agencies, for the purpose of obtaining scientific, management, and legal advice relevant to making a decision on an application for a permit.

(2) To the public as a result of publishing **Federal Register** notices announcing the receipt of permit applications for public comment or notice of the decision on a permit application.

(3) To Federal, State, local, or foreign wildlife and plant agencies for the exchange of information on permits granted or denied to assure compliance with all applicable permitting requirements.

(4) To Captive-bred Wildlife registrants under the Endangered Species Act for the exchange of captive-born, non-native endangered and

threatened species, and to share information on new developments and techniques of captive breeding of these protected species.

(5) To Federal, State, and local authorities who need to know who is permitted to receive and rehabilitate sick, orphaned, and injured birds under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act; federally permitted rehabilitators; individuals seeking a permitted rehabilitator with whom to place a sick, injured, or orphaned bird in need of care; and licensed veterinarians who receive, treat, or diagnose sick, orphaned, and injured birds;

(6) To the Department of Justice (DOJ), or a court, adjudicative, or other administrative body or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(i) The DOI or any component of the DOI;

(ii) Any DOI employee acting in his or her official capacity;

(iii) Any DOI employee acting in his or her individual capacity where the DOI or DOJ has agreed to represent the employee; or

(iv) The United States, when DOI determines that DOI is likely to be affected by the proceeding; and

(b) The DOI deems the disclosure to be:

(i) Relevant and necessary to the proceedings; and

(ii) Compatible with the purpose for which we compiled the information.

(7) To the appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license, or when we need to monitor activities conducted under a permit or evaluate regulated wildlife and plant trade and use.

(8) To a congressional office in response to an inquiry to the office by the individual to whom the record pertains.

(9) To the General Accounting Office or Congress when the information is required for the evaluation of the permit programs.

(10) To a contractor, expert, or consultant employed by the FWS when necessary to accomplish a FWS function related to this system of records.

(11) To provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of

locating a debtor to collect or compromise a Federal claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the DOI.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Pursuant to 5 U.S.C. 552a(b)12, disclosures may be made from this system to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in file folders, on microfiche, in electronic form in computer systems, and in reports and computer printouts. Paper records are stored in file cabinets, rooms, and offices. Electronic records are stored on a computer server and disks or tapes.

**RETRIEVABILITY:**

Paper and microfiche records are retrieved by name of applicant or by permit file number. Electronic records may be searched on or reported by any data field. Retrieval is dependent upon the report or purpose of usage and whether a need to know exists. Records are retrieved for several purposes, such as processing a permit application, verifying an individual has a permit to conduct an activity with a protected species, and tracking whether permit reports have been submitted.

**SAFEGUARDS:**

Access to records in the system is limited to authorized personnel whose official duties require such access, under requirements found in the Code of Federal Regulations (43 CFR 2.51). Paper and microfiche records are maintained in locked metal file cabinets and/or in secured rooms. Electronic records are password-protected, backed up daily, and maintained with safeguards meeting the security requirements of 43 CFR 2.51.

**RETENTION AND DISPOSAL:**

Records are maintained in accordance with the FWS record schedule.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

(1) Chief, Division of Consultation, HCPs, Recovery and State Grants, and Chief, Division of Conservation and Classification, Endangered Species Program, U.S. Fish and Wildlife Service, Mail Stop 420 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(2) Chief, Division of Management Authority, U.S. Fish and Wildlife Service, Mail Stop 700 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(3) Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Mail Stop 4107 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(4) Chief, Office of Law Enforcement, U.S. Fish and Wildlife Service, Mail Stop LE-3000 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

**NOTIFICATION PROCEDURES:**

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the appropriate System Manager identified above. We require the request be in writing, be signed by the requester, and include the requester's full name and address, Social Security Number, and permit file number, if applicable. (See 40 CFR 2.60 for procedures on making inquiries.)

**RECORD ACCESS PROCEDURES:**

For copies of your records, write to the pertinent System Manager at the location above. The request envelope and letter should be clearly marked "PRIVACY ACT REQUEST FOR ACCESS." A request for access must meet the content requirements of 43 CFR 2.63(b)(4).

**CONTESTING RECORD PROCEDURES:**

Use the same procedures as "Records Access Procedures" section above. (See 43 CFR 2.71.)

**RECORD SOURCE CATEGORIES:**

Records come from individuals who apply for permits to conduct certain activities with protected wildlife and plants.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Privacy Act at 5 U.S.C. 552a(j)(2) provides general exemption authority for some systems or records. Under that authority, the FWS adopted a regulation [43 CFR 2.79(b)]. Under that regulation, the system is exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a): subsections (d)(1) and (g)(1)(B). For more information, see **Federal Register** publication 40 FR 37217 published on August 26, 1975.

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