

Amendments of 1991 (Pub. L. 102-234), which added section 1923(f)(1)(A) of the Act and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so CMS could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

This proposed amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While this proposed amendment meets the timing criteria for this exception, as it was submitted on November 18, 1991, it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSH to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This proposed amendment did not concern the designation of DSHs, but only concerned the payment rate for some already designated hospitals. This proposed amendment provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found that this exception did not apply and disapproved Missouri SPA 91-50.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Dana Katherine Martin,  
Director, Department of Social Services,  
Broadway State Office Building,  
P.O. Box 1527,  
Jefferson City, Missouri 65102.

Dear Ms. Martin:

I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 91-50, which was submitted on November 18, 1991.

The issue is whether this amendment proposed a retroactive effective date that is not consistent with law for an additional

disproportionate share hospital (DSH) payment to the 10 highest Medicaid utilization hospitals in the State that had a high volume of nursery and neonatal care days. The proposed effective date of the SPA is October 21, 1991.

Under the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102-234), which added section 1923(f)(1)(A) of the Social Security Act (the Act) and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so the Centers for Medicare & Medicaid Services (CMS), could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

This proposed amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While this proposed amendment meets the timing criteria for this exception, as it was submitted on November 18, 1991, it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSH to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This proposed amendment did not concern the designation of DSHs, but only concerned the payment rate for some already designated hospitals. This proposed amendment provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found that this exception did not apply and disapproved Missouri SPA 91-50.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 2002, at 10:00 a.m.; Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106-2808. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786-2055.

Sincerely,  
Thomas A. Scully,  
(Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 10, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 01-31261 Filed 12-18-01; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered Species Permit Issuance

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

**ACTION:** Notice of emergency exemption issuance.

**SUMMARY:** The following applicant has been issued a scientific research permit to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**FOR FURTHER INFORMATION CONTACT:** Linda Belluomini, Permits Biologist at 503-231-2063.

**SUPPLEMENTARY INFORMATION:** The Washington Department of Fish and Wildlife has been authorized via permit number TE-050644, by the U.S. Fish and Wildlife Service's Pacific Region to capture individuals from the Columbia Basin distinct population segment (DPS) of the pygmy rabbit (*Brachylagus idahoensis*) for a captive propagation program. We issued this permit for the purpose of enhancing the propagation and survival of the Columbia Basin pygmy rabbit. The 30-day public comment period required by the Endangered Species Act (Act) was waived in accordance with section 10(c) of the Act upon a determination that an emergency affecting the health and life of specimens of Columbia Basin pygmy rabbits exists, and that no reasonable alternative is available to the applicant.

The Columbia Basin pygmy rabbit DPS has undergone dramatic annual declines since 1998, and the entire wild portion of this population now consists of fewer than 50 individuals from just 1 known colony on State land in Douglas County, Washington. As part of a captive breeding program, initiated by the Washington Department of Fish and Wildlife (WDFW) during the spring of 2001, an additional 14 individuals from this population are being held in

captivity, including 5 offspring born at the holding facility. The WDFW has scheduled additional capture operations over the next 30 days in order to secure more animals for the captive breeding program. The intent is to capture additional animals from the wild that will complement the genetic profiles and potential breeding scenarios of those already in captivity. Any pygmy rabbits that are not considered essential to the captive breeding program will be left in the wild, and ongoing management to protect this portion of the population will continue.

Delay in the WDFW's planned activities due to the 30-day public comment period could jeopardize the success of the captive breeding program and, ultimately, the long-term security of the Columbia Basin pygmy rabbit. Individuals within the wild portion of this population may experience significant mortality due to increased susceptibility to predation and inclement weather with the onset of winter, and additional animals may not be available for capture later in the season. Even if this population does not undergo further decline this winter, any wild individuals will likely have weakened body conditions and be more susceptible to capture-related stress and mortality if captured later in the season. Capture operations in midwinter may also be compromised by seasonal precipitation and/or low temperatures. Finally, capturing any additional animals later in the season will give them less time to acclimate to the holding facilities, and they may be unavailable for breeding efforts planned for early spring 2002.

Dated: December 6, 2001.

**Rowan W. Gould,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 01-31193 Filed 12-18-01; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Species Permit Applications

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

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

#### PRT-697830

*Applicant:* Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests an amendment to his permit for scientific take activities of listed species in Region 3 to add the following species for scientific purposes and the enhancement of propagation or survival of the species in the wild, in accordance with listing, recovery outlines, recovery plans and/or other Service work for the species: Canada lynx (*Lynx canadensis*), Whooping crane (*Grus americana*), Lake Erie water snake (*Nerodia sipedon insularum*), Tumbling Creek cavesnail (*Antrobia culveri*), Scaleshell (*Leptodea leptodon*), Cave crayfish (*Cambarus aculabrum*), Short's bladderpod (*Lesquerella globosa*), Short's goldenrod (*Solidago shortii*), and Virginia sneezeweed (*Helenium virginicum*).

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Mr. Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612) 713-5343; Fax: (612) 713-5292; E-mail: [peter-fasbender@fws.gov](mailto:peter-fasbender@fws.gov).

Dated: December 7, 2001.

**Lynn M. Lewis,**

*Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 01-31194 Filed 12-18-01; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Species Permit Application

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

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit amendment to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

#### Permit Number TE 049738

*Applicant:* Third Rock Consultants, LLC., Lexington, Kentucky

The applicant requests a permit to take (collect) the following species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), Ozark big-eared bat (*C. t. ingens*), copperbelly water snake (*Nerodia erythrogaster neglecta*), blackside dace (*Phoxinus cumberlandensis*), duskytail darter (*Etheostoma percnurum*), relict darter (*E. chienense*), palezone shiner (*Notropis albizonatus*), pygmy madtom (*Noturus stanauli*), yellowfin madtom (*N. flavipinnis*), slender chub (*Erimystax cahni*), spotfin chub (*Cyprinella monacha*), Cumberland elktoe (*Alasmidonta atropurpurea*), fanshell (*Cyprogenia stegaria*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*E. capsaeformis*), catspaw (*E. obliquata obliquata*), northern riffleshell (*E. torulosa rangiana*), pink mucket (*Lampsilis abrupta*), slabside pearl mussel (*Lexingtonia dolabelloides*), ring pink (*Obovaria retusa*), little-wing pearl mussel (*Pegias fabula*), orangefoot pimpleback (*Plethobasus cooperianus*), clubshell (*Pleurobema clava*), Cumberland pigtoe (*P. gibberum*), rough pigtoe (*P. plenum*), fat pocketbook (*Potamilus capax*), fluted kidneyshell (*Ptychobranthus subtentum*), Cumberland monkeyface (*Quadrula intermedia*), and Cumberland bean (*Villosa trabalis*). Activities are proposed for studies to identify populations of listed species and to develop methods to minimize or avoid project related impacts to those populations. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612) 713-5343; Fax: (612) 713-5292.