

CACTUS FERRUGINOUS PYGMY-OWL MAY WARRANT PROTECTION UNDER THE ENDANGERED SPECIES ACT

The U.S. Fish and Wildlife Service announced today that the cactus ferruginous pygmy-owl may warrant federal protection as a threatened or endangered species under the Endangered Species Act (ESA). This decision follows an initial review of a petition seeking to protect the pygmy-owl by adding it to the federal list of endangered and threatened wildlife, and commences the beginning of a 12 month status review.

The petition, submitted by Defenders of Wildlife and the Center for Biological Diversity, presents new information on genetics, taxonomic classification and threats that was not available, or was not within the scope of analysis, when the Arizona population of the pygmy-owl was previously listed in 1997 and delisted in 2006. The petition relies largely on a recently proposed scientific reclassification of the pygmy-owl that recognizes the cactus ferruginous pygmy-owl subspecies in southern Arizona, and Sonora and Sinaloa, Mexico, as distinct, and with a smaller range than was recognized in 1997 for the subspecies. The petitioners seek to list either the entire subspecies, or the Sonoran or the Arizona populations as distinct population segments.

“Recently published genetic and taxonomic information, together with updated data on the threats to the pygmy-owl and its habitat, are substantial. Our initial examination of the information in the petition has prompted us to initiate an assessment of the entire subspecies,” said U.S. Fish and Wildlife Service Southwest Regional Director Benjamin N. Tuggle, Ph.D. “Any additional information regarding threats to and conservation of the pygmy-owl will be essential to us as we determine whether Endangered Species Act protection is warranted.”

Today’s decision, known as a 90-day finding, is based on scientific information about the species as provided in the petition requesting listing of the species under the ESA. The petition finding does not mean that the Service has decided it is appropriate to give the pygmy-owl federal protection under the ESA. Rather, this finding is the first step in a process that triggers a more thorough review of all the biological information available. The analysis of information during this petition process will be broader in scope than the analysis the Service conducted during the delisting process, the scope of which was constrained by an opinion of the Ninth Circuit Court of Appeals.

The Service will undertake a more thorough status review of the species to determine whether to propose adding it to the list of threatened and endangered species. To ensure this status review is comprehensive, the Service is soliciting information from state, tribal, and federal natural resource agencies and all interested parties regarding the pygmy-owl and its habitat.

Based on the status review, the Service will make one of three possible determinations:

- 1) Listing is not warranted, in which case no further action will be taken.
- 2) Listing as threatened or endangered is warranted. In this case, the Service will publish a proposal to list, solicit independent scientific peer review of the proposal, seek input from the public, and consider the input before a final decision about listing the species is made. In

general, there is a one-year period between the time a species listing is proposed and the final decision.

3) Listing is warranted but precluded by other, higher priority activities. This means the species is added to the federal list of candidate species, and the proposal to list is deferred while the Service works on listing proposals for other species that are at greater risk. A warranted but precluded finding requires subsequent annual reviews of the finding until such time as either a listing proposal is published, or a not warranted finding is made based on new information.

The Endangered Species Act makes it illegal to kill, harm or otherwise "take" a listed species, or to possess, import, export or engage in interstate or international commerce of a listed species without authorization in the form of a permit from the Service. The ESA also requires all federal agencies to minimize the impact of their activities on listed species, and directs the Service to work with federal agencies and other partners to develop and carry out recovery efforts for those species. Listing also focuses attention on the needs of the species, encouraging conservation efforts by other agencies (federal, state, tribal, and local), conservation groups and other organizations and individuals.

The Arizona pygmy-owl population was previously protected under the ESA. Utilizing the best scientific information available in 1997, the Service added the Arizona population of the pygmy-owl to the federal endangered species list under the Distinct Population Segment (DPS) policy. In 2003, the Ninth Circuit Court of Appeals ruled that the Arizona population was discrete, but found that the Service did not articulate a rational basis for finding that it was significant to the taxon. Subsequently, the Service found that the Arizona population of the pygmy-owl did not contribute significantly to the whole subspecies as recognized in the 1997 listing, and failed to meet DPS requirements. Following public comment, the Service removed the Arizona population from the list of threatened and endangered wildlife on April 14, 2006. The delisting remains on appeal in the Ninth Circuit Court of Appeals. This petition process is separate and different than the delisting process with regard to the proposed change in taxonomy of the pygmy-owl, the range of the taxon, and other information that must be considered.

The cactus ferruginous pygmy-owl is a small, reddish-brown bird with a cream-colored belly streaked with reddish-brown, and a long tail. Pygmy-owls average 2.2 ounces and are approximately 6.75 inches long. The eyes are yellow, the crown is lightly streaked, and there are no ear tufts. Paired black spots on the back of the head may resemble eyes. Their diet includes lizards, birds, insects, and small mammals.

The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021. More information about the pygmy-owl and this finding and the petition are available at <http://www.fws.gov/southwest/es/arizona>.

Anyone wishing to submit information on the pygmy-owl and its habitat may do so by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2008-0070; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us. The Service requests that information be submitted by August 1, 2008.

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