

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.

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(e) The parties to an appeal to the Board of Patent Appeals and Interferences may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board of Patent Appeals and Interferences is final and appealable by any party to an appeal to the Board of Patent Appeals and Interferences who is dissatisfied with the final decision of the Board of Patent Appeals and Interferences.

(f) An appeal to the Board of Patent Appeals and Interferences by a party is considered terminated by the dismissal of that party's appeal, the failure of the party to timely request rehearing under § 1.979(a) or (c), or the failure of the party to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the appeal to the U.S. Court of Appeals for the Federal Circuit expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the appeal is considered terminated when the mandate is issued by the Court. Upon termination of an appeal, if no other appeal is present, the reexamination proceeding will be terminated and the Director will issue a certificate under § 1.997.

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23. The undesignated center heading immediately preceding § 1.983 is revised to read as follows:

Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

24. Section 1.983 is revised to read as follows:

§ 1.983 Appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

(a) The patent owner or third party requester in an *inter partes* reexamination proceeding who is a party to an appeal to the Board of Patent Appeals and Interferences and who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may, subject to § 1.979(e), appeal to the U.S. Court of Appeals for the Federal Circuit and may be a party to any appeal thereto taken from a reexamination decision of the Board of Patent Appeals and Interferences.

(b) The appellant must take the following steps in such an appeal:

(1) In the U. S. Patent and Trademark Office, timely file a written notice of appeal directed to the Director in accordance with §§ 1.302 and 1.304;

(2) In the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court; and

(3) Serve a copy of the notice of appeal on every other party in the reexamination proceeding in the manner provided in § 1.248.

(c) If the patent owner has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the third party may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(d) If the third party has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the patent owner may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(e) A party electing to participate in an appellant's appeal must, within 14 days of service of the appellant's notice of appeal under paragraph (b) of this section, or notice of cross appeal under paragraphs (c) or (d) of this section, take the following steps:

(1) In the U. S. Patent and Trademark Office, timely file a written notice directed to the Director electing to participate in the appellant's appeal to the Court by mail to or hand service on the General Counsel as provided in § 104.2;

(2) In the Court, file a copy of the notice electing to participate in accordance with the rules of the Court; and

(3) Serve a copy of the notice electing to participate on every other party in the reexamination proceeding in the manner provided in § 1.248.

(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the Court.

Dated: April 22, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI48

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Arizona distinct population segment of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), and for the draft economic analysis for the proposed designation. Additional information from the administrative record concerning the locations of pygmy-owls recently has become available to the public, and therefore we are reopening the comment period for the proposal and for the draft economic analysis to allow all interested parties additional time to review the available information and provide comments. Comments previously submitted need not be resubmitted, because they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the proposed critical habitat designation and the draft economic analysis until June 27, 2003.

ADDRESSES: Send comments and information concerning the proposed critical habitat designation and draft economic analysis to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. You also may send written comments by facsimile to 602/242-2513. For

instructions on submitting comments by electronic mail (e-mail), see Public Comments Solicited in the **SUPPLEMENTARY INFORMATION** section of this notice.

Information from the administrative record, including the information that recently has become available to the public concerning the location of pygmy-owls, as well as comments and materials received, are available for public inspection, by appointment, during normal business hours at the above address. You may also write the Field Supervisor at the address above, or call 602/242-0210 to request that a copy of material be mailed to you or made available for you to pick up at the address above. You may also obtain a copy of the draft economic analysis on the Internet at <http://arizonaes.fws.gov/cactus.htm>.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (see **ADDRESSES**), at telephone 602/242-0210; or by facsimile at 602/242-2513.

SUPPLEMENTARY INFORMATION: Our proposal to designate critical habitat for the Arizona distinct population segment of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) was published on November 27, 2002 (67 FR 71032). In the November proposal we also announced the availability of the draft economic analysis for the proposed designation of critical habitat. The public comment period on the proposal and the draft economic analysis was scheduled to close on February 25, 2003. On that date, we published a notice in the **Federal Register** (68 FR

8730) extending the public comment period until April 25, 2003. The extension was based on a February 3, 2003, order from the United States District Court for the District of Arizona to allow the Plaintiffs and Intervenors in *National Home Builders Association v. Norton*, Civ. No. 000903-PHX-SRB (D.Az.), 60 additional days to review and comment on materials used by us to develop our critical habitat determination for the pygmy-owl.

Recently, additional information from the administrative record concerning the locations of pygmy-owls has become available to the public, in part as a result of a court ruling in *National Association of Home Builders v. Norton*, 309 F.3d 26 (D.C. Cir. 2002). In order to provide all interested parties adequate time to review and comment on the recently available information and other materials used by the Service to develop the proposed rule to designate critical habitat for the pygmy-owl, we are reopening the comment period on the proposal and the draft economic analysis for an additional 60 days.

Public Comments Solicited

We are reopening the comment period in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat designation for the pygmy-owl and the draft economic analysis of the proposal. The Public Comments Solicited section of the preamble to our proposed rule (67 FR 71032) includes a list of topics for which we are particularly seeking comments. Previously submitted comments need

not be resubmitted. You may submit written comments by any of several methods:

You may mail or hand-deliver written comments to the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may send comments by e-mail to cfpo_habitat@fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message.

You may send written comments by facsimile to 602/242-2513.

Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period. You may inspect comments and materials received, as well as supporting documentation used by us in preparation of the proposal to designate critical habitat, by appointment during normal business hours at our office listed in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 21, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03-10531 Filed 4-24-03; 12:48 pm]

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