

presence of the endangered cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within known historic range of the species in Arizona. The proposed survey protocol comes in two versions depending on its use: the first is for use in determining if cactus ferruginous pygmy-owls are present on specific project sites where an activity is proposed; the second is for use in gathering information on distribution, occurrence, and numbers of pygmy-owls over more extensive areas of its historic range in Arizona. This proposed protocol is founded on procedures established by the Arizona Game and Fish Department in 1993. The current proposed protocol incorporates modifications found to be appropriate following the 5 years of field application. Differences between the 1993 protocol and the current proposed protocol include a reduction in the survey period from 9 months (September through May) to 6 months (January through June); and an increase in surveys from one to three, with at least 30 days between each of the three surveys preferred, but a minimum of 15 days required. At least one survey must occur between February 15 and April 15. In reviewing determinations of pygmy owl presence or absence, the Service will require the implementation of the protocol for two consecutive years prior to actions that may impact the owls or their habitats.

The existing protocol will remain in use (i.e., surveys from September through December this year will still be accepted through December 31, 1998). Use of the currently proposed protocol will be required from January 1, 1999, forward.

The Service and Department will be submitting the protocol to recognized species and technical experts for peer review to ensure a scientifically sound basis for determination of the presence of the species within its known range.

The Service and the Department will regularly review and modify, as necessary, the survey protocol to ensure that the best available scientific information is incorporated into the prescribed methodology.

**DATES:** Data and comments must be received by September 14, 1998.

**ADDRESSES:** Copies of this protocol may be obtained from the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Phoenix, Arizona, 85021. Comments and materials concerning the survey protocol should be sent to the Field Supervisor at the above address.

**FOR FURTHER INFORMATION CONTACT:** Tom Gatz, Acting Field Supervisor, Arizona

Ecological Services Field Office, at the above address (602) 640-2720.

#### SUPPLEMENTARY INFORMATION:

##### Background

The cactus ferruginous pygmy-owl was listed by the Service as an endangered species in Arizona on March 10, 1997, based on extensive population declines within its historic range in the state. The pygmy-owl, a small reddish-brown owl, nests in a cavity in a tree or large columnar cactus. The species was once common to abundant in riparian forests, mesquite-cottonwood woodlands, and desertscrub habitats in central and southern portions of the state. It is still considered a potential inhabitant of riparian areas, where this extremely limited vegetative community still occurs, and is found in upper Sonoran Desert habitats usually consisting of dense ironwood, mesquite, acacia, bursage, and saguaro cacti, with understory vegetation of smaller trees and shrubs.

The Service is seeking additional information in order to more adequately understand the occurrence and biology of the cactus ferruginous pygmy-owl in central and southern Arizona. However, until more complete scientific information is available, the Service believes that continued use of the current survey protocol through December, 1998, and use of the proposed protocol thereafter will provide the most biologically valid data upon which to determine habitat use and occupancy by the pygmy-owl.

##### Author

The primary author of this document is Jennifer Fowler-Propst, Acting Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

##### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: August 7, 1998.

**Geoffrey L. Haskett,**

*Acting Regional Director, Fish and Wildlife Service.*

[FR Doc. 98-21709 Filed 8-12-98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Notice of Guidance for Private Landowners and Federal, State, and Local Agencies Concerning Take of the Endangered Cactus Ferruginous Pygmy-Owl; Opening of Public Comment Period on the Guidance

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

**ACTION:** Notice of availability, opening of public comment period.

**SUMMARY:** The Fish and Wildlife Service (Service), announces the availability for public comment of guidance for use in determining if take of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) may result from activities within areas occupied by the species in Arizona.

Identification of actions that may be considered to result in take of the cactus ferruginous pygmy-owl was first provided by the Service in the final rule listing the species on March 10, 1997. Additional guidance for private landowners was subsequently issued by the Service in December 1997. The proposed revisions to this guidance more clearly define the types of habitats in which the owl may be encountered, and the Arizona counties in which the species is known to have historically occurred and which may still harbor the owl in appropriate habitats. This guidance also expands the required survey effort from one year to two consecutive years prior to actions that may impact the owl or its habitats.

**DATES:** Data and comments must be received by September 14, 1998.

**ADDRESSES:** Copies of this guidance may be obtained from the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Phoenix, Arizona 85021. Comments and materials concerning the guidance should be sent to the Field Supervisor at the above address.

**FOR FURTHER INFORMATION CONTACT:** Tom Gatz, Acting Field Supervisor, Arizona Ecological Services Field Office, at the above address, (602) 640-2720.

#### SUPPLEMENTARY INFORMATION:

##### Background

The cactus ferruginous pygmy-owl was listed by the Service as an endangered species in Arizona on March 10, 1997, based on extensive population declines within its historic range in the state. The pygmy-owl, a

small reddish-brown owl, nests in a cavity in a tree or large columnar cactus. The species was once common to abundant in riparian forests, mesquite-cottonwood woodlands, and desertscrub habitats in central and southern portions of the state. It is still considered a potential inhabitant of riparian areas, where this extremely limited vegetative community still occurs, and is found in upper Sonoran Desert habitats usually consisting of dense ironwood, mesquite, acacia, bursage, and saguaro cacti, with understory vegetation of smaller trees and shrubs.

Urban and suburban development within the remaining appropriate habitat of the pygmy-owl is ongoing. These and other actions may result in take of the species. The Endangered Species Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions that apply to all endangered and threatened wildlife, respectively. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect or to attempt any of these). Regulations at 50 CFR 17.3 define the terms "harm" and "harass" as used under the definition of "take." "Harm" is defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification that impairs essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined as an intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, including, but not limited to, breeding, feeding, or sheltering.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

At the time of listing the owl, the Service provided a partial listing of activities that could potentially harm, harass, or otherwise take the pygmy-owl. These included—

- (1) Removal of nest trees;
- (2) Removal of a nest box in use by the pygmy-owl;
- (3) Clearing or significant modification of occupied habitat, whether or not the nest tree is included;

(4) Sustained noise disturbance during the breeding season;

(5) Pursuit or harassment of individual birds;

(6) Frequent or lengthy low-level flights over occupied habitat during the breeding season;

(7) Severe overgrazing that results in the removal of understory vegetation.

In furtherance of the Service's policy to provide information concerning what activities may be considered take of the pygmy-owl, the Service is again making available information to aid both Federal and non-Federal entities in determining when a take situation may occur.

The Service is seeking additional information in order to more adequately understand the occurrence and biology of the cactus ferruginous pygmy-owl in central and southern Arizona. However, until more complete scientific information is available, the Service believes that the use of the guidance document will protect the pygmy-owl while allowing carefully considered development to proceed.

#### Author

The primary author of this document is Tom Gatz, Acting Field Supervisor, Arizona Ecological Services Field Office (see ADDRESSES section).

#### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: August 7, 1998.

**Geoffrey L. Haskett,**

*Acting Regional Director, Fish and Wildlife Service.*

**Notice:** Availability of take guidance for the cactus ferruginous pygmy-owl

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 073098B]

#### Mid-Atlantic Fishery Management Council; Public Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Public hearings, request for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) and the

Atlantic States Marine Fisheries Commission (Commission) will hold public hearings to allow for input on Amendment 1 to the Bluefish Fishery Management Plan (FMP).

**DATES:** Written comments on Amendment 1 will be accepted until September 15, 1998. The public hearings are scheduled to be held from August 24 to September 3, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** Send comments to Christopher M. Moore, Acting Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904.

The hearings will be held in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, and Florida. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Acting Executive Director, 302-674-2331, ext 16.

**SUPPLEMENTARY INFORMATION:**

#### Background

Amendment 1 to the FMP, prepared by the Council and the Commission, is intended to manage the bluefish fishery under both the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended by the Sustainable Fisheries Act (SFA), and the Atlantic Coastal Fisheries Cooperative Management Act. The management unit is bluefish (*Pomatomus saltatrix*) in U.S. waters in the western Atlantic Ocean. The goal of the management plan is to conserve the bluefish resource along the Atlantic coast.

The SFA requires that an FMP's definition of overfishing contain status determination criteria comprised of two components: (1) A maximum fishing mortality threshold and (2) a minimum stock size threshold. For bluefish, the maximum F threshold is specified as  $F_{MSY}$ , or the fishing mortality rate which produces maximum sustainable yield (MSY). The minimum biomass threshold is specified as one-half the biomass level associated with maximum sustainable yield ( $B_{MSY}$ ).

The Council and Commission propose to rebuild the bluefish stock to the  $B_{msy}$  level over a 9-year rebuilding period through the implementation of Amendment 1. The preferred alternative will eliminate overfishing and rebuild the bluefish stock through a graduated reduction in the fishing mortality rate. For the first 2 years of the rebuilding plan (1999-2000), F will remain at the