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AESO/SE  
02-21-03-F-0237-R2

April 29, 2004

Memorandum

To: Superintendent, Organ Pipe Cactus National Monument, Ajo, Arizona

From: Field Supervisor

Subject: Reinitiation #2–Biological and Conference Opinion for the International Boundary Vehicle Barrier on the Organ Pipe Cactus National Monument

This memorandum is in response to your February 25, 2004, request for reinitiation of formal consultation on the proposed International Boundary Vehicle Barrier on the National Park Service's (NPS) Organ Pipe Cactus National Monument (OPCNM), located in Pima County, Arizona. In the July 24, 2003, Biological and Conference Opinion (BO) (U.S. Fish and Wildlife Service 2003a), we evaluated effects of the proposed actions on the Sonoran pronghorn (*Antilocapra americana sonoriensis*, pronghorn), lesser long-nosed bat (*Leptonycteris curasoae yerbabuena*, bat), Quitobaquito pupfish (*Cyprinodon eremus*), and cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*, pygmy-owl), in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq., ESA). In the December 22, 2003, Reinitiation-Biological and Conference Opinion (RBO) (U. S. Fish and Wildlife Service 2003b), we evaluated the effects of changes to the proposed action to all four species addressed in the BO, plus concurrence for the Quitobaquito pupfish and critical habitat. This second reinitiation of consultation is requested because changes are proposed in the action that may alter the effects to the cactus ferruginous pygmy-owl [50 CFR 402.16(c)]. The possible impacts from these changes in the proposed action are addressed in this second Reinitiated Biological and Conference Opinion for all four species that were addressed in the BO. Concurrence for the determination for the Quitobaquito pupfish and critical habitat is addressed in the Appendix.

This biological opinion was prepared using information from the following sources: your February 24, 2004, request for reinitiation of formal consultation, U.S. Fish and Wildlife Service 2003a, U.S. Fish and Wildlife Service 2003b, Biological Assessment-International Boundary Vehicle Barrier (U.S. National Park Service 2003), and a telephone conversation with Tim Tibbitts of your office on March 30, 2004. A complete administrative record of this consultation is on file at the Phoenix, Arizona, Ecological Services Field Office.

## CONSULTATION HISTORY

The only additions to the Consultation History from the RBO are the completion of that reinitiation on December 22, 2003, your request for a second reinitiation (dated February 24, 2004), and a telephone conversation with Tim Tibbitts on March 30, 2004. Refer to our RBO and the July 24, 2003, BO for additional history.

## BIOLOGICAL OPINION

### DESCRIPTION OF PROPOSED ACTION

The proposed action remains the same as described in the BO and RBO, except changes are proposed to the construction and travel-related activities through and near Habitat Sections 2 and 3 during the pygmy-owl breeding season in 2004. NPS will also include new conservation measures as described below.

#### **Construction East of Lukeville, Habitat Segment 2**

NPS has proposed changes in the previously agreed-upon conservation measures for construction-related traffic that would pass through Habitat Segment 2 during the breeding season. These changes mainly address the number of times types of vehicles will pass through Habitat Segment 2 to areas of unsuitable pygmy-owl habitat. These changes are:

- Movement of large equipment (flat-bed trailers with forklifts, bobcats, etc.) may occur twice per day as part of the daily transport of personnel and smaller equipments; concrete trucks will transport three to four loads per day; and a water truck will make one trip per day.
  - o The RBO stated that movement of large equipment would only occur twice per week.
- A service vehicle will make four or five trips per day for supervision and transport of parts.
  - o The RBO stated that these types of vehicles would only be transported as part of the convoy twice per day.

#### **Construction Between Lukeville and Monument Hill, Habitat Segment 3**

NPS has proposed to complete the barrier in Habitat Segment 3 during the pygmy-owl breeding season, and not wait until July 31. In accordance with the BO, construction between Lukeville and Monument Hill to the west, in or beyond Habitat Segment 3, was scheduled to be completed prior to February 1, 2004. Work in the area was suspended on or about January 31, 2004, and construction in this area was approximately 95 percent complete as of February 1, 2004. The reason for proposing to complete this portion soon is that the areas where construction was left incomplete are now the only points where illegal border crossing by vehicle is possible for the 5-mile border area spanning Lukeville. Vehicles entering the Monument at these points will drive cross-country northward, resulting in impacts on habitat for the pygmy-owl, Sonoran pronghorn, lesser long-nosed bat, desert tortoise, and others. Specifically you propose to amend the original project description to include the work listed below during the pygmy-owl breeding season. Habitat Segment 3 has not been surveyed for pygmy-owls.

1. Construct approximately 80 feet of vehicle barrier (upright posts and horizontal rail) across the bed of one ephemeral wash, located at the western edge of pygmy-owl Habitat Segment 3.
2. Over a distance of approximately 450 feet on the lower slopes of the east side of Monument Hill, weld railroad-rail horizontal onto the upright posts, which are in place. This area is west of Habitat Segment 3. Rail would be trucked to the site, and then welded into place.
3. Place Normandy Barriers on the eastern slopes of Monument Hill, extending west and upslope of the terminus of the vehicle barrier, for a distance of 1,870 feet.

A five-person crew, working two weeks, would accomplish the work described above. Work item number 1, above, is at the western end of Habitat Segment 3. Work item numbers 2 and 3 above are west of Habitat Segment 3, on the steep rocky slopes of Monument Hill. Travel to and from all work areas would take place along the border road and the South Puerto Blanco Drive, which both pass through Habitat Segment 3. Equipment transported to the site would be similar to what is listed above for Habitat Segment 2, with these exceptions:

- The only excavating to be done would be digging a trench through the wash, requiring a backhoe or bobcat. None of the drill augers or supporting equipment will be needed.
- The only concrete work to be done will be in the short section spanning the wash, and this will only amount to pouring a footer, and then filling the upright posts with concrete.

### **Proposed Additional Conservation Measures**

The NPS is proposing the following additional measures be included as part of the proposed action to minimize activity-related disturbance of pygmy-owls.

1. Habitat Section 2—Complete all six survey visits to determine presence (we understand that at least four survey visits have been completed as of the date of this BO). If pygmy-owls are detected, then NPS will discontinue activities within 1,300 feet of the nest or detection site during the breeding season (Conservation Measure #3 in the BO, Page 8).
2. Habitat Section 3—Conduct all activities only from three hours after sunrise to two hours before sunset to avoid the most active times for pygmy-owls.

### **LESSER LONG-NOSED BAT (*Leptonycteris curasoae yerbabuena*)**

Status of the species, environmental baseline, and cumulative effects remain the same as described in the BO. Because the proposed action will result in the same or similar impacts (no impacts to roosting bats and same or similar impacts to food sources), the effects of the action will remain the same as in the BO. Therefore, proposed changes to the OPCNM vehicle barrier project do not change our previous conclusion that the proposed action is not likely to jeopardize the continued existence of this species; nor do we anticipate any incidental take.

**SONORAN PRONGHORN (*Antilocapra americana sonoriensis*)****STATUS OF THE SPECIES**

The status of Sonoran pronghorn remains similar as described in the BO and RBO, except that recovery actions described in the Status of the Species have progressed. The semi-captive breeding facility has been constructed, and three Sonoran pronghorn, including two females from Sonora, Mexico, and one male from the U.S. population, have been placed within the facility.

**ENVIRONMENTAL BASELINE**

The environmental baseline is the same as described in the BO and RBO.

**EFFECTS OF THE PROPOSED ACTION**

Effects to pronghorn from the proposed action will result in the same possible impacts as described in the BO and RBO. The proposed action will not result in any additional habitat or auditory/visual disturbance to Sonoran pronghorns than what was already anticipated in the BO.

**CUMULATIVE EFFECTS**

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Analysis of cumulative effects remains unchanged from the BO and RBO.

**CONCLUSION**

Proposed changes to the OPCNM vehicle barrier project do not change our previous conclusion that the proposed action is not likely to jeopardize the continued existence of the Sonoran pronghorn.

**INCIDENTAL TAKE STATEMENT**

Section 9 of the ESA and Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). "Harass" is defined as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as

part of the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

### **Amount or Extent of Take Anticipated**

Because the proposed action will result in the same project effects as described in the BO, we do not anticipate incidental take of Sonoran pronghorn as a result of the proposed action.

### **CONSERVATION RECOMMENDATIONS**

No additional conservation recommendations beyond what is described in the BO are recommended.

### **CACTUS FERRUGINOUS PYGMY-OWL (*Glaucidium brasilianum cactorum*)**

#### **STATUS OF THE SPECIES**

The status of the pygmy-owl remains the same as or similar to that described in the BO and RBO.

#### **ENVIRONMENTAL BASELINE**

The environmental baseline of the pygmy-owl remains the same as described in the BO and RBO.

#### **EFFECTS OF THE PROPOSED ACTION**

Implementing the proposed action will result in the same possible impacts to the pygmy-owl and its proposed critical habitat as described in the BO and RBO, except that there may be additional auditory/visual disturbance to pygmy-owls during the breeding season. The revised proposed action would not affect proposed critical habitat differently than what was described in the BO and RBO. In a change to the proposed action as analyzed in the BO/RBO, NPS proposes to use and move heavy equipment and vehicles through Habitat Segments 2 and 3 in and through suitable pygmy-owl habitat areas during the breeding season more often than what was proposed in the BO and RBO, and without completing surveys prior to these actions. These actions through suitable habitat would be done in order to install the barrier in areas of unsuitable habitat east of Habitat Segment 2, and to complete the barrier in and west of Habitat Segment 3 during the pygmy-owl breeding season.

Implementing the new proposed action may result in disturbance to owls that may be in the general area (up to 1/4 mile from these Habitat Segments). Very few surveys have been implemented in the project area prior to 2004. At least four survey visits have been completed around Habitat Segment 2 in 2004, but no surveys have been completed around Habitat Segment 3. One pygmy-owl was detected during a survey visit for Habitat Segment 2 on April 5, 2004 (Tim Tibbitts, pers. comm.). The location of this owl is over 1/4 mile north of Habitat Segment 2, which would not result in cessation of construction activities (as described in the BO/RBO).

Considering that some of the areas along the barrier route are suitable habitat for nesting and foraging, pygmy-owls nest elsewhere at OPCNM, and at least one pygmy-owl was detected during surveys for this project, it is not unlikely that these areas may be used by pygmy-owls in some years. Moving vehicles and equipment through occupied habitat and installation of the barrier may disturb any owls in the area.

Based on the assessment of the information provided by the NPS in their request for re-initiation of consultation memorandum, February 24, 2004, the changes in construction activities through Habitat Segments 2 and 3 are not anticipated to result in detectable differences in auditory or visual disturbance to pygmy-owls as compared to what was described in the BO and RBO because:

1. The observed auditory and visual disturbance levels from current and past construction-related actions, including travel, in the project area is the same or less than what was described in the BO/RBO.
2. The project-related activities would occur along with the existing background level of disturbances along the border with Mexico that includes various trucks, passenger cars, tractors, Mexican Federal Police, Mexican Army transports, vehicles ferrying illegal immigrants to border-crossing points at and near the construction areas, and residential areas in and adjacent to Sonoyta, Mexico. This background level of disturbance is the same or higher as that described in the BO/RBO. If pygmy-owls are resident in the area, they exist against this already significant background level of activity.
3. Habitat Segment 3 and adjacent areas are moderate to low quality habitat or are not habitat. The quality of habitat, along with existing disturbance levels, decreases the likelihood that any pygmy-owls would be in the area.
4. The construction activity in and near Habitat Segment 3 would be only a portion of the overall vehicle barrier construction activity level, because it will be performing three limited actions. The great majority of the vehicle barrier construction in this area is complete. With lower activity levels, in an area already highly impacted by human activity, this construction is likely to have insignificant effects on any resident pygmy-owls.
5. Although travel through Habitat Segment 3 on established roads will take place, the majority of work will take place on the steep rocky slopes of Monument Hill, which is not considered suitable habitat.
6. NPS has proposed additional conservation measures as part of the proposed action that will reduce or eliminate the likelihood of impacting reproduction. These include restrictions on timing and actions in and through suitable habitat.

In addition, more expeditious completion of the barrier fence will reduce the number of vehicles from entering the OPCNM and driving cross-country northward through pygmy-owl habitat.

## CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Our analysis of cumulative effects remains unchanged from the BO and RBO.

## CONCLUSION

After reviewing the current status of the pygmy-owl, the environmental baseline for the action area, the effects of the proposed NPS action, and the cumulative effects, it is our biological opinion that the proposed action is neither likely to jeopardize the continued existence of the pygmy-owl nor result in destruction or adverse modification of proposed critical habitat. Our rationale for this finding is described in the Conclusion section of the BO and RBO, and we modify our rationale with the following:

- NPS has proposed additional conservation measures that significantly reduce the effects of the proposed action on the pygmy-owl. These measures, described in “Proposed Changes to the Proposed Action” above, apply to all activities that may occur in, and within 1,300 feet of, Habitat Segments 2 and 3.
- The new proposed actions are not anticipated to result in detectable differences in auditory or visual disturbance to pygmy-owls as compared to what was described in the BO and RBO.
- All other conservation measures as documented in the BO and RBO will be implemented.
- Completion of the vehicle barrier will reduce the number of vehicles that may drive cross-country northward from Mexico, reducing impacts to pygmy-owl habitat on the OPCNM.

## INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. “Harm” is defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). “Harass” is defined as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

**Amount or Extent of Take Anticipated**

We do not anticipate the proposed action will incidentally take any pygmy-owl based on the current project description and prompt implementation of the proposed conservation measures.

**CONSERVATION RECOMMENDATIONS**

No additional conservation recommendations beyond what is described in the BO and RBO are recommended.

**DISPOSITION OF DEAD OR INJURED LISTED ANIMALS**

Upon locating a dead, injured, or sick listed species initial notification must be made to the FWS's Law Enforcement Office, 2450 West Broadway Road #113, Mesa, Arizona [telephone: (480) 967-7900] within three working days of its finding. Written notification must be made within five calendar days and include the date, time, and location of the animal, a photograph if possible, and any other pertinent information. The notification shall be sent to the Law Enforcement Office with a copy to this office. Care must be taken in handling injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible condition. If feasible, the remains of intact specimens of listed animal species shall be submitted to educational or research institutions holding appropriate State and Federal permits. If such institutions are not available, the information noted above shall be obtained and the carcass left in place.

Arrangements regarding proper disposition of potential museum specimens shall be made with the institution prior to implementation of the action. Injured animals should be transported to a qualified veterinarian by a qualified biologist. Should any treated listed animal survive, the Service should be contacted regarding the final disposition of the animal.

**REINITIATION NOTICE**

This concludes reinitiation of formal consultation and conference on the proposed vehicle barrier at OPCNM. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

You may ask us to confirm the conference opinion as a biological opinion issued through formal consultation if critical habitat for the cactus ferruginous pygmy-owl is designated. The request must be in writing. If we review the proposed action and find that there have been no significant changes in the action as planned or in the information used during the conference, we will



confirm the conference opinion as the biological opinion on the project and no further Section 7 consultation will be necessary.

Also, please note that the correct Consultation Number for this project is 02-21-03-F-0237R, not 02-21-03-F-237R as we have stated in some of our previous documents. We apologize for the inconvenience. Thank you for your cooperation and assistance throughout this consultation process. Any questions or comments should be directed to Mark Crites at (520) 670-6150, (x 229), or Jim Rorabaugh at (602) 242-0210, (x 238).

/s/ Steven L. Spangle

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)  
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Director of Natural Resources, Tohono O'odham Nation, Sells, AZ  
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### **LITERATURE CITED**

- U.S. National Park Service. 2003. Biological assessment, International Boundary Vehicle Barrier, Organ Pipe Cactus National Monument, Arizona, March 2003. Organ Pipe National Monument, Ajo, AZ. 46 pages.
- U.S. Fish and Wildlife Service. 2003a. Biological and conference opinion for the International Boundary Vehicle Barrier on the Organ Pipe Cactus National Monument. U. S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Phoenix, Arizona. 109 pages plus figures and tables.
- U.S. Fish and Wildlife Service. 2003b. Reinitiation--Biological and conference opinion for the International Boundary Vehicle Barrier on the Organ Pipe Cactus National Monument. U. S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Phoenix, Arizona. 11 pages plus figures.

## **APPENDIX**

### **CONCURRENCE**

#### **QUITOBAQUITO PUPFISH (*Cyprinodon eremus*)**

Status of the species and environmental baseline remain the same as described in the Appendix of the BO. Since the new action will result in the same impacts (no anticipated adverse impacts with implementation of the conservation measures as described in the Appendix of the BO), the effects of the action and cumulative effects will remain the same as in the Appendix of the BO. Therefore, we conclude that the proposed project is not likely to adversely affect the Quitobaquito pupfish or its critical habitat.