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U.S. Fish and Wildlife Service
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June 11, 2003

Memorandum

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

From: Field Supervisor

Subject: Addendum to Biological and Conference Opinion for the Organ Pipe Cactus National Monument General Management Plan

On April 7, 2003, we issued a revised biological and conference opinion for the Organ Pipe Cactus National Monument General Management Plan. The opinion was revised in accordance with a Memorandum Opinion and Order dated January 7, 2003, from Judge Ellen Huvelle of the United States District Court (Court) for the District of Columbia in the case of *Defenders of Wildlife, et al., v. Bruce Babbitt, et al.* (Civil Action No. 99-927 [ESH]). The biological and conference opinion found that the proposed action is not likely to jeopardize the continued existence of the Sonoran pronghorn (*Antilocapra americana sonoriensis*, pronghorn) or cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*, pygmy-owl). We also concluded that the proposed action was not likely to adversely modify or destroy critical habitat proposed for the pygmy-owl; no critical habitat is designated or proposed for the pronghorn, thus none would be affected. The opinion adopted the conclusion of a previous biological opinion (dated June 26, 1997) on this proposed action for the lesser long-nosed bat (*Leptonycteris curasoae yerbabuena*, bat), which was that the action is not likely to jeopardize the continued existence of that species. No critical habitat is designated or proposed for the bat, thus none would be affected. Due to the short schedule for completing this opinion imposed by the Court Order, there was minimal time for your review of the March 27, 2003, draft opinion. We did not receive your written comments (faxed to us on the afternoon of April 7) until after the biological opinion had been signed and put in the mail earlier that day.

Your memorandum clarified some of the commitments by your agency as described in the Conservation Measures for the pronghorn and pygmy-owl in the April 7 opinion. These Conservation Measures are portrayed on page 4 of the April 7 opinion as a part of your proposed action; the opinion also includes by reference Conservation Measures from the November 16,

2001, opinion. Some of your clarifications of these measures represent substantial changes from what we had understood based on previous communications and from what was described in our April 7, 2003, and November 16, 2001, opinions. You indicated that some of the measures were not possible to implement at this time due to various constraints. In electronic mail and telephone conversations from April 24 to May 8, 2003, we discussed with you options for clarifying the measures so they could be implemented by your agency. The original conservation measures that were of issue, problems with them, and agreed upon revisions, are included here:

Original Conservation Measure:

Closing North Puerto Blanco Drive at a point approximately 5.1 miles from the Visitor's Center, and also at its intersection with Pozo Nuevo Road from April 1 to July 15.

Problem with Conservation Measure:

The closure is difficult to implement at the 5.1 mile mark until the 2-way section of the road (from the Visitor Center to 5.1 miles) is completed.

Revision:

No revision needed. Construction of the 2-way section is scheduled for November or December 2003. After that time, traffic can be halted and turned around at the 5.1 mile mark, allowing the closure, beginning in April 1- July 15, 2004. Should construction not be completed for any reason, the closure will be put into effect at the Visitor's Center gate for the closure period of April 1 - July 15, until the 5.1 mile gate is completed.

Original Conservation Measure:

Establishing a 3-year experimental pronghorn crossing zone on SR 85 from milepost 67 to 71, consisting of a temporary speed limit reduction to 35 - 45 mph from 0400 - 0900 hours seasonally, including a monitoring program to assess effectiveness.

Problem with Conservation Measure:

Arizona Department of Transportation (ADOT) will not voluntarily implement this measure.

Revision:

Federal Highway Administration (FHWA) and ADOT, in cooperation with Organ Pipe Cactus NM, will develop a proposal to review the existing literature pertaining to interactions between pronghorn, roadside vegetation density, roadways, motor vehicles, and methodologies for reducing pronghorn mortality and movement issues related to roadways. ADOT will forward this proposal to the Arizona Transportation Research Center for competitive funding

consideration. In the event that the proposal is not funded, it will be revised and resubmitted. When the literature review is funded, an independent third party, such as the Arizona Game and Fish Department (AGFD), will carry out the literature review.

The results of the study will be reviewed by ADOT, FHWA, Organ Pipe Cactus NM, and the U.S. Fish and Wildlife Service to identify measures that could be implemented to reduce, minimize, or mitigate potential conflicts between pronghorn and roadways. Potential measures to be approved would result in tangible benefits, would be reasonable, would be within budgetary constraints of affected parties, and would be within the authority of the reviewing parties to implement. The results of this collaboration, a measure or set of measures that minimizes the effects of SR 85 on Sonoran pronghorn as agreed to by all parties, will be implemented by October 1, 2004.

Organ Pipe Cactus NM, FHWA, and the ADOT, in conjunction with the U.S. Fish and Wildlife Service, will develop and implement a vegetation management program for the roadside along State Route 85, between milepost 65 and milepost 72. The purpose is to minimize the potential for collisions between motor vehicles and pronghorn by removing vegetation to improve visibility for motorists, while maintaining opportunities for pygmy-owls to cross the highway. The vegetation management plan will build upon existing vegetation management plans and will be finalized by October 1, 2003.

Original Conservation Measure:

Mutually develop with the Border Patrol a comprehensive plan to manage human activity in backcountry areas associated with illegal traffic and associated law enforcement actions. The plan will include management actions specific to all listed species that occur on Organ Pipe Cactus NM, and will contain measures that specifically address minimization of noise and human activities near any pygmy-owl nests and known areas of pygmy-owl occurrence such as the Armenta Southeast, Boundary Site, Kuakatch, Growler, and Arch survey areas. The plan will be in place, and a copy provided to us, by January 31, 2004.

Problem with Conservation Measure:

Border Patrol will need to agree to this measure. Organ Pipe Cactus NM can only agree to a good faith effort to develop such a plan in coordination with the Border Patrol. Organ Pipe Cactus NM will continue other efforts with Border Patrol to monitor and reduce the effects of illegal activities and associated law enforcement response.

Revision:

Mutually develop with the Border Patrol a comprehensive plan to manage human activity in backcountry areas associated with illegal traffic and associated law enforcement actions. The plan will include management actions specific to all listed species that occur on Organ Pipe

Cactus NM, and will contain measures that specifically address minimization of noise and human activities near any pygmy-owl nest sites and known areas of pygmy-owl occurrence such as the Armenta Southeast, Boundary Site, Kuacatch, Growler and Arch Survey areas. The plan will be developed as soon as feasible, if cooperation from the Border Patrol on this plan can be obtained. Once completed, a copy of the plan will be provided to this office. Organ Pipe Cactus NM will continue ongoing dialogs with the Border Patrol on both resource management and law enforcement issues, and you will continue to provide Border Patrol agents with training on resource management policies and protection, including those relevant to threatened and endangered species. Organ Pipe Cactus NM will continue to monitor, document, and mitigate the impacts of undocumented aliens and smugglers on the natural resources of the Monument.

Original Conservation Measure:

Acquire and add to the Organ Pipe Cactus NM the section of state lands containing Growler Canyon (R7W, T14S, Section 36 Bates Well Quad).

Problem with Conservation Measure:

State law currently prohibits land exchanges between the State of Arizona and the Federal government. Acquisition of State land would have to occur through a bidding process. Funds may not be available to acquire the parcel. Organ Pipe Cactus NM can only commit to a good faith effort to acquire the parcel.

Revision:

Organ Pipe Cactus NM will use its authorities to acquire (if possible) and add to the Monument the section of state lands containing Growler Canyon (R7W, T14S, Section 36, Bates Well Quad).

All other Conservation Measures would remain as portrayed in our April 7, 2003, opinion.

Analysis of the Changes in the Conservation Measures

The SR 85 vegetation clearing project should provide immediate and long-term benefits for pronghorn. Pronghorn in the vicinity of SR 85 will be able to see oncoming vehicles, and vehicle operators will be more likely to see and avoid pronghorn. Movement corridors will be maintained for pygmy-owls. The literature review will improve our knowledge of road/pronghorn interactions and will ultimately lead to additional measures to reduce the potential for road mortality or other highway-associated adverse effects to pronghorn. Some saguaros and organ pipe cactus may be removed or transplanted. These cacti provide foraging resources for the lesser long-nosed bat; however, the clearing project will remove a very small percentage of flowering cacti available for the bat in the Organ Pipe Cactus NM area.

The Border Patrol comprehensive plan will still move forward; however, it will require cooperation from the Border Patrol as well as from Organ Pipe Cactus NM. The revision to this Conservation Measure inserts uncertainty into the timing and nature of the plan, and therefore potentially makes effects of illegal activities and associated law enforcement activities by Border Patrol greater than what was portrayed in our April 7 opinion. We are currently in consultation with the Tucson Sector of the Border Patrol and will make the development of such a plan a priority in that consultation. As a result, we assume that the comprehensive plan will be developed and implemented as described in the original conservation measure, although it will likely not be completed by January 2004. The additional commitments by Organ Pipe Cactus NM in the revised conservation measure, particularly in regard to endangered species awareness training for Border Patrol agents, will benefit the pronghorn, lesser long-nosed bat, and pygmy-owl.

Acquisition of the State lands parcel in the vicinity of Bates Well would remove some uncertainty in regard to future management of those lands, which include mesquite thickets at Bates Well that have been occupied by nesting pygmy-owls in the past. However, the development potential of this parcel is probably low because it is an inholding within the Monument. Thus, acquisition may remove a potential future threat of development, but that threat is not great. If the parcel is sold or leased to a party other than Organ Pipe Cactus NM, any subsequent development would need to comply with section 9 of the Endangered Species Act. Resulting incidental take of pygmy-owl or other listed species could potentially be addressed through section 10 of the Act.

CONCLUSION

Revisions to the four Conservation Measures above do not change our previous conclusions in the April 7, 2003, biological and conference opinion and our June 26, 1997, opinion that the proposed action is not likely to jeopardize the continued existence of the Sonoran pronghorn, lesser long-nosed bat, or cactus ferruginous pygmy-owl. The proposed action is also not likely to adversely modify or destroy critical habitat proposed for the pygmy-owl. No critical habitat has been designated for either the pronghorn or the bat, therefore, none will be affected. The reasons for our conclusions are outlined in the "Conclusions" sections for the pronghorn and pygmy-owl in the April 7, 2003 opinion, and for the bat in the June 26, 1997, opinion.

Thank you for your cooperation and assistance throughout this consultation process. Any questions or comments should be directed to Jim Rorabaugh (x238) or Sherry Barrett (520) 670-4617 of my staff.

/s/ Steven L. Spangle

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
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