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AESO/SE
02-21-94-F-192R3
02-21-85-F-069R1

June 21, 2004

Memorandum

To: Field Manager, Phoenix Field Office, Bureau of Land Management, Phoenix, AZ

From: Field Supervisor

Subject: Reinitiation of Formal Consultations and Conference: Plan Amendment for the Lower Gila South RMP (02-21-85-F-069) and an Amended Proposed Action for the Five Livestock Grazing Allotments in the Vicinity of Ajo, Arizona (02-21-94-F-192)

This responds to your May 12, 2004, memorandum to the Arizona Ecological Services Field Office requesting reinitiation of the Biological Opinions (BOs) for the Lower Gila South Resource Management Plan (RMP) dated March 27, 1998, and the Five Livestock Grazing Allotments in the Vicinity of Ajo, Arizona dated September 30, 2002, to be amended to discontinue livestock grazing on the Cameron Allotment and manage the area in a manner that emphasizes Sonoran pronghorn (*Antilocapra americana sonoriensis*) (SOPH) recovery and Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*) (CFPO) management. This document also constitutes a conference on proposed critical habitat for the CFPO.

BIOLOGICAL OPINION

Changes to the Descriptions of the Proposed Actions in the Biological Opinions

Lower Gila South RMP:

The Bureau of Land Management (BLM) is amending the Lower Gila South RMP to close the Cameron allotment (figure 1) to livestock grazing and acquire the range improvements from the permit holder. The range improvements include all wells, pipelines, storage tanks, dirt tanks, and fencing installed by the permittee. The BLM also states that future reactivation of the allotment is extremely unlikely, and would only be considered if threats to SOPH posed by livestock grazing were removed and the U.S. SOPH population was above 100 adults and increasing. Since BLM is acquiring the base waters, which are part of the range improvements, reactivation of the allotment would require that water be brought in

from outside or new water sources be constructed, and any remaining issues with SOPH and fences be resolved. Any reactivation of grazing on the allotment would require reinitiation of consultation and another RMP amendment.

Five Livestock Grazing Allotments in the Vicinity of Ajo, Arizona:

All four of the conservation measures for CFPO, as identified in the September 30, 2002, biological opinion will continue to be implemented on public lands in the Cameron allotment area.

In addition to closing the Cameron allotment to livestock grazing, BLM proposes the following amendments to the conservation measures for SOPH:

- 1) BLM will only authorize ephemeral grazing on the Coyote Flat, Childs, and Why allotments in accordance with ephemeral use criteria contained in the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration and when the following conditions are met.
 - a) In years where ephemeral plant production is geographically limited, ephemeral forage on the Coyote Flat, Childs, and Why allotments is not an important part of ephemeral forage available to pronghorn, either in terms of forage quality or acreage of green-up.
 - b) The U.S. Sonoran pronghorn population must be above 100 animals and increasing.
 - c) Prior to authorizing ephemeral grazing, BLM will work with us and the Arizona Game and Fish Department (AGFD) in evaluating the range conditions before ephemeral grazing is authorized.
 - d) BLM will reconsider the allowance of ephemeral grazing on these allotments in a revision to the current RMP for the entire area.
- 2) BLM will, in coordination with the Sonoran Pronghorn Recovery Team, install, operate, and maintain forage enhancement plots in at least two locations and as many as eight locations in pronghorn habitat. Design, site selection, prioritization, and implementation will be subject to Recovery Team oversight and funding availability.
- 3) BLM will continue to implement the drought policy developed in 2003 for the allotments in the Ajo area (Instructional memorandum AZ-020-03-003).
- 4) BLM will operate and maintain the four existing wells on the Cameron Allotment area for listed species management. Timing of the maintenance will be coordinated with the Sonoran Pronghorn Recovery Team to avoid adverse impacts and will also fully comply with the facility maintenance guidelines contained in the conservation measures for CFPO.

- 5) BLM will, in coordination with the SOPH Recovery Team, install, operate, and maintain ground-level drinking troughs at existing wells on the Cameron allotment area. Design, site selection, prioritization, and implementation will be coordinated with the SOPH Recovery Team and subject to funding availability.
- 6) BLM will remove all interior fences and cooperate with Organ Pipe Cactus National Monument (OPCNM) and Cabeza Prieta National Wildlife Refuge (CPNWR) in the removal of common boundary fences with the Cameron allotment area.
- 7) BLM, in coordination with AGFD and this office, will modify existing dirt tanks to minimize conditions conducive to biting midge propagation, subject to an evaluation of need and feasibility assessment.
- 8) BLM will continue to seek funding to complete the ongoing study on the potential of disease transmission from livestock to pronghorn.
- 9) BLM will identify areas of heavy recreational impacts and, to the extent practicable, initiate measures to rehabilitate these areas. Implementation will be subject to availability of funding.
- 10) BLM will continue to enforce a two-week camping limit and direct camping use to the Gunsite Wash area that is signed for camping.
- 11) BLM will continue to implement the seasonal closure to public access and use to the area west of SR 85 and south of the Darby Well/Scenic Loop Road/Chico Shunie Road, excluding the area signed for camping at Gunsite Wash, between March 15 - July 15 annually or as agreed upon by the SOPH Recovery Team. This closure will be carried forward into the land use plan being developed for the area.
- 12) BLM will consult with us concerning the efforts of designating open motorized vehicle routes on SOPH habitat during the land use planning effort for the Sonoran Desert National Monument – Phoenix South RMP.
- 13) BLM will continue to support the priority recovery items for Sonoran pronghorn as recommended by the SOPH Recovery Team.
- 14) BLM will provide an annual report to this office regarding the status of the conservation measures described in this document by February 1st of each year.

Sonoran Pronghorn

STATUS OF THE SPECIES

The status of the SOPH remains similar to that described in the April 29, 2004, Reinitiation #2-Biological and Conference Opinion for the International Boundary Vehicle Barrier on the

Organ Pipe Cactus National Monument (RBO – available on our website at <http://arizonaes.fws.gov>), except that recovery actions described in the Status of the Species have progressed. The semi-captive breeding facility has been built, and three Sonoran pronghorn, including two females from Sonora, Mexico, and one male from the U.S. population, have been placed in the facility. Additionally, six emergency waters have been built and filled with water, and four emergency forage-enhancement plots are completed and being watered.

ENVIRONMENTAL BASELINE

The environmental baseline is the same as described in the RBO, and is included herein by reference.

EFFECTS OF THE PROPOSED ACTION

Effects to pronghorn from the two proposed actions will result in the same possible impacts as described in the two BOs, except there will be fewer habitat or auditory/visual disturbance to SOPH than what was already anticipated in the BOs. In addition, SOPH habitat on the Cameron Allotment is expected to improve faster than under the original proposed action, and the likelihood of disease transfer from cattle to SOPH is further reduced. SOPH will also be able to move through the area more easily due to removal of interior and boundary fencing on the Cameron allotment. This will allow SOPH to move as needed to take advantage of seasonal forage availability and to avoid areas of drought and poor forage conditions.

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 BOs.

CONCLUSION

After reviewing the anticipated effects of the proposed actions and modified conservation measures for the Lower Gila South Resource Management Plan (RMP) and the Five Livestock Grazing Allotments in the Vicinity of Ajo, Arizona, the environmental baseline for the action area, the current status of the SOPH, and the cumulative effects, we affirm our previous conclusion in the BOs for those activities that the proposed action is not likely to jeopardize the continued existence of the Sonoran pronghorn. We base this determination on the following and our rationale from the original BOs:

- 1) In closing the Cameron allotment to grazing and making the changes detailed in the conservation measures, BLM is significantly reducing the effects of livestock grazing on SOPH. These prior effects of livestock grazing/fences discussed in the two BOs are no longer anticipated to occur on the allotment.

- 2) BLM also proposes to remove all the interior allotment fencing and assist OPCNM and CPNWR in the removal of the common boundary fences in conjunction with the Cameron allotment which will open the entire allotment up to easy access by Sonoran pronghorn migrating through the area going to summer drought areas and then returning to post-monsoon or winter habitats.
- 3) BLM has proposed to install and operate two forage-enhancement plots on the Cameron allotment for SOPH, and to implement an additional six forage-enhancement plots as funding permits. These will provide emergency drought forage for pronghorn and will expand the safety net for pronghorn fawns during the critical summer survival period.
- 4) BLM will operate and maintain the four existing wells on the Cameron allotment and also place ground-level drinking troughs near the existing wells as funding permits.

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 significantly reduce effects of livestock grazing in the Cameron allotment, we do not anticipate incidental take of SOPH as a result of the proposed action.

CONSERVATION RECOMMENDATIONS

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

Cactus Ferruginous Pygmy-Owl

The status of the CFPO remains the same as or similar to that described in the RBO and is included here by reference.

ENVIRONMENTAL BASELINE

The environmental baseline for the CFPO remains similar to that described in the RBO, and is included here by reference. We published a proposed rule to redesignate critical habitat in the Federal Register on November 27, 2002 (67 FR 71032). The proposal included approximately 1,208,000 acres in portions of Pima and Pinal counties, Arizona. Currently both the critical habitat and the listing of the CFPO are under litigation, however at this writing, the CFPO remains listed as endangered with proposed critical habitat. Populations of CFPO have declined in the last five years from 41 in 1999 to 21 in 2003. The surveys for CFPOs are still being compiled for 2004. Preliminary data show 17 owls reported in four general areas, which includes Organ Pipe Cactus National Monument. We believe that more owls exist in Arizona, but systematic surveys have not been conducted in all areas of potential habitat. In the Ajo block, critical habitat (CH) includes all of the Coyote and Why allotments, and the southern halves of the Cameron and Childs allotments.

EFFECTS OF THE PROPOSED ACTION

Implementing the action will result in the same possible impacts to the CFPO and its proposed critical habitat as described in the BOs, except that there may be additional reductions in auditory/visual disturbance during the breeding season. The revised action would affect proposed critical habitat in the Cameron allotment differently than what was described in the BOs (figure 2).

In the revised proposed actions, the BLM proposes to cease grazing on the Cameron allotment, one of the five Ajo Block livestock grazing allotments. The revised action will remove livestock use on the allotment, which will serve to maintain the suitable upland and wash habitats and no longer preclude the establishment of vegetation and other effects described in our BO, which will eventually allow development or enhancement of suitable habitat. Individual CFPOs that may be present now or in the future on the Cameron allotment would no longer be disturbed by livestock, and livestock damage to perennial vegetation on the Cameron allotment would cease. Effects to CFPO and CH on other allotments remain the same as described in our previous BOs.

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. Analyses of cumulative effects remain unchanged from the previous BOs.

CONCLUSION

The proposed changes to the BLM management of the Cameron allotment do not change our previous conclusion that the proposed action is not likely to jeopardize the continued existence of the CFPO. Neither is the proposed action likely to adversely modify or destroy proposed critical habitat. We base these conclusions on the rationale provided in the previous BOs and the following:

- 1) The BLM has proposed to continue to implement the four CFPO conservation measures in the original BO.
- 2) The proposed removal of livestock from the Cameron allotment will, over time, improve soil and vegetation conditions for CFPOs.
- 3) The proposed action will result in a reduction of auditory and visual disturbances through a reduction of vehicular traffic and activities associated with grazing operations.

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 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 CFPO based on the current project description.

CONSERVATION RECOMMENDATIONS

No additional conservation recommendations beyond those described in the BOs 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 conferencing on BLM's proposal to discontinue livestock grazing on the Cameron allotment, one of five livestock grazing allotments near Ajo. 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 a listed species or critical habitat not considered in this opinion; (4) a new species is listed or critical habitat designated that may be affected by the action; or (5) if the revised action is not implemented within 2 years, the effects of the action would be different than what are anticipated herein (50 CFR 402.16h). In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. If conservation measures or other aspects of the proposed action are not implemented as anticipated herein, including schedules for implementation, reinitiation may be warranted pursuant to 50 CFR 402.16(b).

You may request in writing that we confirm our conference opinion on CFPO critical habitat as a biological opinion issued through formal consultation if the proposed critical habitat is designated. If, after designation, we review the proposed action and find there are 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 for the project and no further section 7 consultation will be necessary, absent triggers for reinitiation, listed in the preceding paragraph.

Thank you and your staff for their efforts and assistance in completing this consultation and conference. We commend the BLM for this latest contribution to recovery of the SOPH and CFPO. Any questions or comments should be directed to Jim Rorabaugh (x238) or Mike Coffeen (x251) of my staff.

/s/ Steven L. Spangle

cc's w/ attachment:

Assistant Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ
Manager, Cabeza Prieta National Wildlife Refuge, Ajo, AZ
State Director, Bureau of Land Management, Phoenix, AZ

cc's w/o attachment:

Field Office Manager, Yuma Field Office, Bureau of Land Management, Yuma, AZ
Colonel James Uken, Barry M. Goldwater Executive Council, Luke Air Force Base, AZ
Park Superintendent, Organ Pipe Cactus NM, Ajo, AZ
Ronald Pearce, Director of Range Management, Marine Corps Air Station, Yuma, AZ
Selso Villegas, Director of Natural Resources, Tohono O'odham Nation, Sells, AZ
Justin Tade, Office of the Regional Solicitor, Department of the Interior, Albuquerque, NM

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LOCATION OF ALLOTMENTS UNDER STUDY

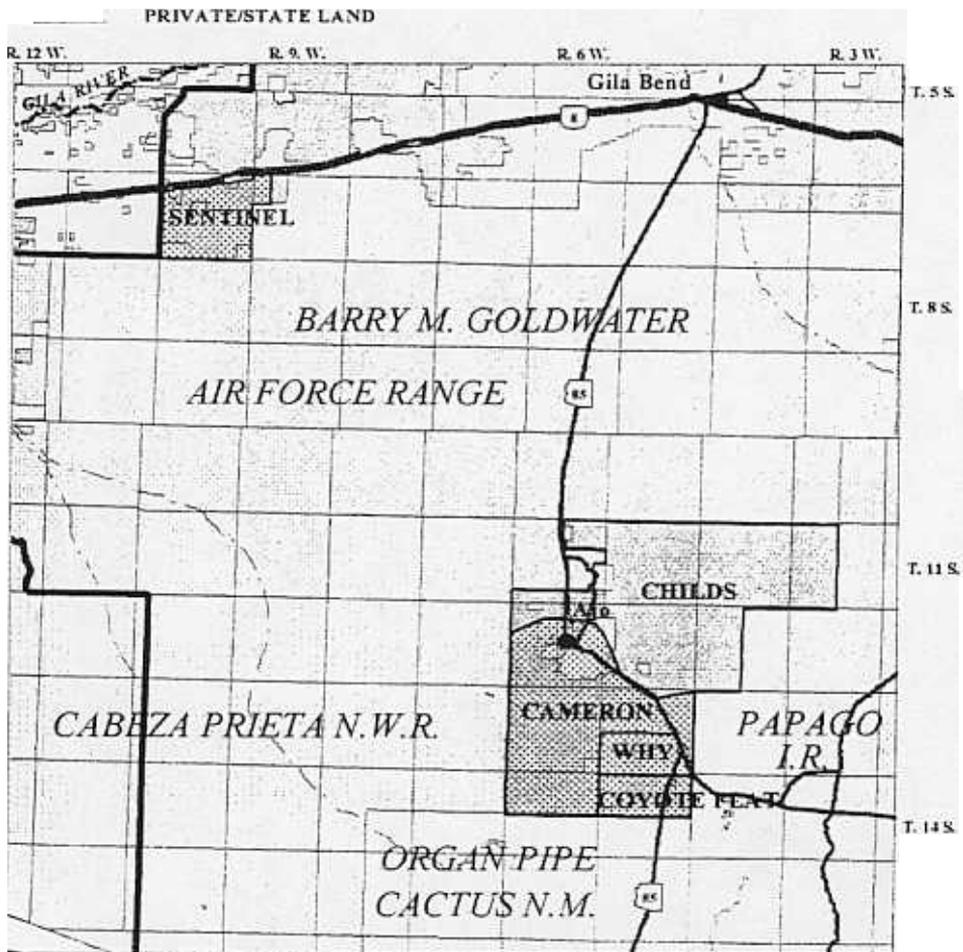


ALLOTMENTS UNDER STUDY

— LOWER GILA RESOURCE AREA BOUNDARY



BLM LAND

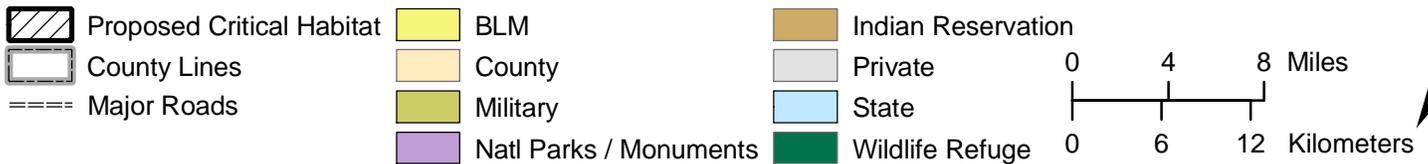
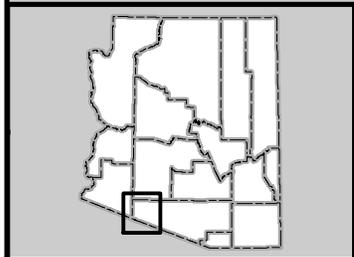
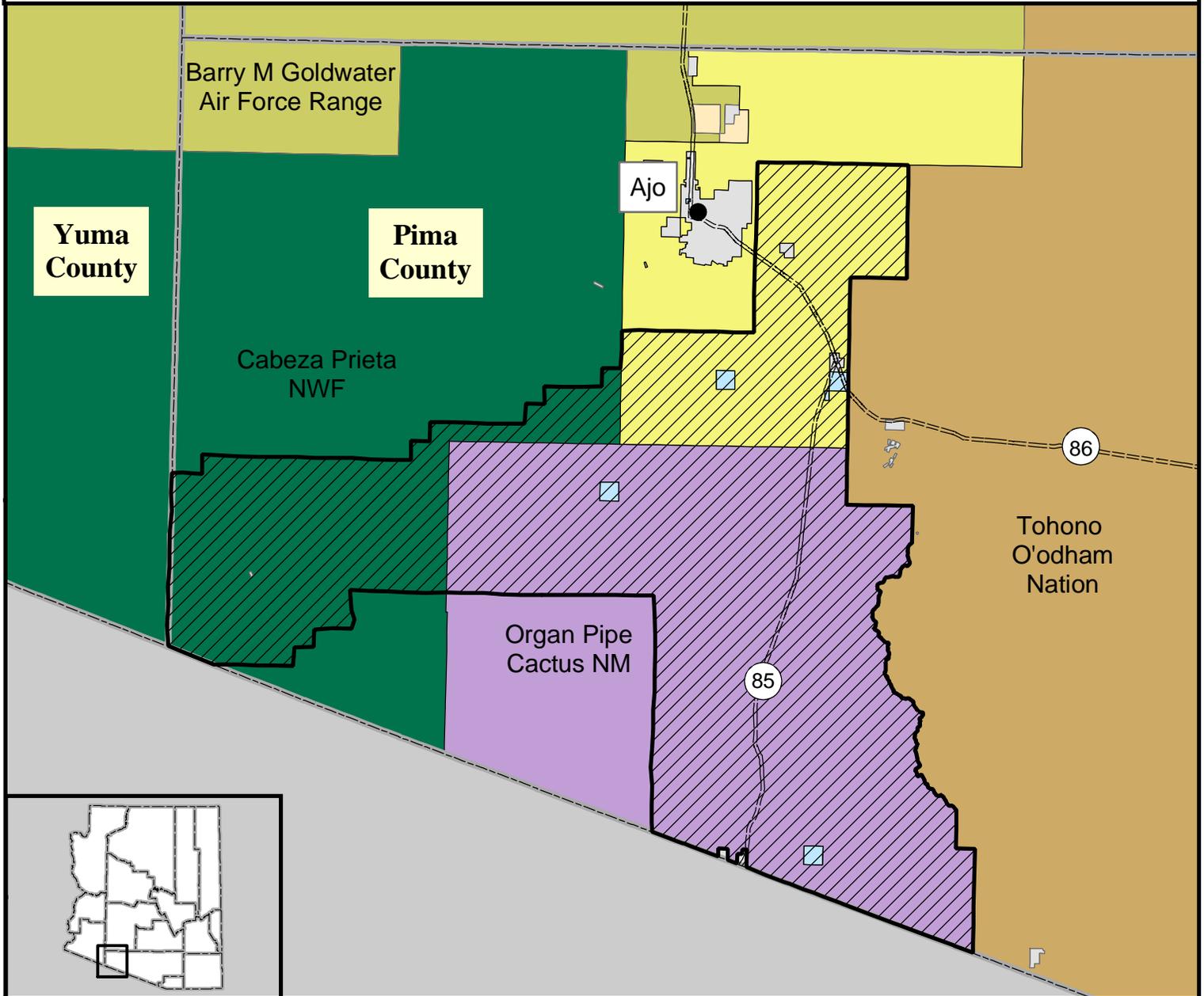


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Figure 1. Location of the Coyote Flat, Why, Cameron, Childs, and Sentinel grazing allotments as designated in the Bureau of Land Management's September 1995, "Biological Evaluation on Grazing Activities Within Sonoran Pronghorn Habitat."

Proposed Critical Habitat for Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

Unit 5



Use Constraints: This map is a graphical representation of cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) proposed critical habitat and is provided for illustrative purposes only. Refer to the legal descriptions in the regulation for the precise legal description of critical habitat. The map and the GIS coverages used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.



October 3, 2002