



United States Department of the Interior
Fish and Wildlife Service

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In Reply Refer To:

AESO/SE
2-21-96-F-160

November 16, 1998

MEMORANDUM

TO: Field Office Manager, Bureau of Land Management, Tucson, Arizona

FROM: Field Supervisor

SUBJECT: Biological Opinion on the Safford/Tucson Field Offices' Grazing Program: Receipt of Annual Monitoring Report and Amendment of the Incidental Take Statement for Cactus Ferruginous Pygmy-owl

On October 2, 1998, we requested that you: (1) provide a monitoring report from the Tucson Field Office, which was required by the subject September 26, 1997, Biological Opinion's Terms and Conditions; and (2) request amendment of the Biological Opinion in order to replace the Biological Opinion's Term and Condition 1.b. for the cactus ferruginous pygmy-owl with an alternative that incorporates potential modifications of grazing decisions based on monitoring information as discussed by Bureau of Land Management and U.S. Fish and Wildlife Service field staff.

The current status of these two issues is as follows:

Monitoring report: Our receipt of the Annual Monitoring Report attached to your November 3, 1998, memorandum satisfies the requirement of the Terms and Conditions relative to the yearly monitoring report for 1998.

Amendment of the Biological Opinion: The Biological Opinion is hereby amended to replace Term and Condition 1.b. for the cactus ferruginous pygmy-owl with the following:

On suitable pygmy-owl habitat (≥ 24 habitat rating) in the Balcom, Owl Head, Guild Wash, Clafin, and Cross Triangle allotments, utilization shall not exceed 30 percent, as recommended by Holecheck (1988). Regular monitoring shall occur to determine utilization rates. A monitoring plan shall be developed by the BLM and approved by the Service within 45 days of the date of this amendment of the Biological Opinion. Grazing may continue under these conditions at least until completion of the study described in (c)(3) of the mitigation measures in the Biological Opinion. If the study shows that grazing removes key habitat elements of the pygmy-owl, cattle shall be removed from those areas with habitat rating ≥ 24 . The BLM is encouraged to reinitiate consultation or request an amendment to the

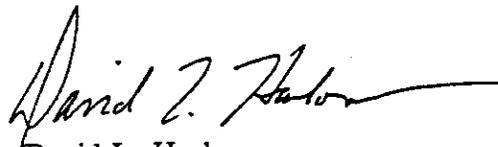
Biological Opinion if the study presents new information that grazing activities affect the pygmy-owl in a manner different from that described in the Biological Opinion, or that removal of grazing is not necessary to minimize take.

We would like to clarify certain statements in our October 2, 1998, memorandum concerning coverage for potential section 9 violations. It was not our intent to imply that any section 9 violations had occurred. Our statements on the subject were only to remind you that the section 7 exemptions to the section 9 take prohibitions apply when the agency is in compliance with the Terms and Conditions of an Incidental Take Statement. Our standard language included in Incidental Take Statements is, in part, repeated here for your information:

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 Act provided that such taking is in compliance with the Terms and Conditions of this Incidental Take Statement.

The action agency has a continuing duty to regulate the activity covered by this incidental take statement. If the agency (1) fails to assume and implement Terms and Conditions or (2) fails to require the applicant to adhere to the Terms and Conditions of the Incidental Take Statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the agency or applicant must report the progress of the action and its impact on the species to the Service as specified in the Incidental Take Statement.

Please direct any questions to Angie Brooks or Jim Rorabaugh of my staff. Thank you for your ongoing efforts to protect endangered species.



David L. Harlow

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (Attn: Steve Chambers)
Office of the Regional Solicitor, Albuquerque, NM (Attn: Beverly Ohline)
Office of the Field Solicitor, Phoenix, AZ (Attn: Richard Greenfield)
Field Office Manager, Safford Field Office, Bureau of Land Management, Safford, AZ
State Director, Bureau of Land Management, Phoenix, AZ