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Cactus Ferruginous Pygmy-owl's Eligibility for Endangered Species Act Protection Revisited

The U.S. Fish and Wildlife Service (Service) has published a proposal to remove the cactus ferruginous pygmy-owl from the list of threatened and endangered species in response to a Ninth Circuit Court of Appeals' opinion. The court found that while the Arizona-based owls are discrete from other pygmy-owls, the Service did not adequately articulate that they are of sufficient biological and ecological significance to the whole pygmy-owl subspecies to qualify for listing as a distinct population segment. In addition to this proposed delisting rule, the Service will also withdraw its proposal to designate critical habitat for the pygmy owl.

The District Court of Arizona ordered the Service to reconsider the owl's eligibility for endangered status as a distinct population segment, consistent with the Ninth Circuit Court of Appeals' ruling. The owl remains under Endangered Species Act protection.

The Service listed only the owls in Arizona as endangered in 1997, rather than including the entire subspecies of cactus ferruginous pygmy-owls, which are located through Mexico's west coast states and a portion of the east coast of Mexico and Texas.

"Our reevaluation indicates the Arizona population doesn't meet the court's standards," said Joy Nicholopoulos, Fish and Wildlife Service Southwest Assistant Regional Director. "The proposal represents an opportunity for us to receive information from the public, interested groups and organizations."

The Court determined that the owl's endangered status was not supported by a demonstration of biological and ecological 'significance.' Under its Policy Regarding the Recognition of Distinct Vertebrate Population Segments, the Service scrutinizes a variety of considerations when determining 'significance,' including:

- Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon.
- Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon.
- Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or

- Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

While the proposed rule, published in today's *Federal Register*, recommends removing the owl from the list of endangered species and voiding its proposed critical habitat designation, it also solicits any new information that would have a bearing on the final decision.

"The Service initiated its review of the Arizona population consistent with the Ninth Circuit's ruling, our policy and the best available science," said Nicholopoulos. "Ultimately, we'll base our final decision on biological information, laws and standards as well as all information received in the next 60 days."

If the pygmy-owl were removed from the list of endangered species, the Service would not complete the proposed critical habitat designation or a recovery plan for the species but would continue to conduct surveys. Other federal agencies would be relieved of their responsibilities under the Endangered Species Act. The owls would receive protection under the Migratory Bird Treaty Act which prohibits the taking (killing, pursuit, or harassment) of pygmy-owls or the possession of its parts (feathers, eggs, etc.). The Service would continue working with county officials, local officials and concerned parties on cooperative conservation measures for the owl and rare species found in the same area as pygmy-owls.

Written comments should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021-4951 or by facsimile to 602/242-2513. Electronic comments can be submitted to: http://cfpo_comments@fws.gov. The deadline for comments is October 2, 2005. The deadline for requesting a public hearing on the proposal is September 17, 2005

The U.S. Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 544 national wildlife refuges, thousands of small wetlands and other special management areas. It also operates 69 national fish hatcheries, 63 Fish and Wildlife Management offices and 81 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Assistance program, which distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

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Maps, photos and other information about the pygmy-owl are available at <http://arizonaes.fws.gov>.