

Act of 1974 (25 U.S.C. 1544); Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105-262); and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106-79). This rule will apply to all DoD contractors that have the clause at FAR 52.226-1 incorporated into their contracts. The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements, and does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a beneficial effect on small business concerns, because small businesses are now eligible to receive incentive payments for the use of Indian organizations and Indian-owned economic enterprises as subcontractors.

DoD has submitted a copy of the analysis to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the analysis from the address specified herein. Comments are invited. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99-D300 in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 226

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 226 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 226 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Sections 226.103 and 226.104 are revised to read as follows:

#### 226.103 Procedures.

(f) The contracting officer must submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics) (OUSD (AT&L) SADBU), 1777 North Kent Street, Suite 9100, Arlington, VA

22209. Upon receipt of funding from OUSD (AT&L) SADBU, the contracting officer must issue a contract modification to add the Indian incentive funding for payment of the contractor's request for adjustment as described at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

#### 226.104 Contract clause.

(1) The contracting officer must use the clause at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that—

(i) Do not use FAR part 12 procedures; and

(ii) (A) Are for supplies or services valued at \$500,000 or more; or

(B) Are for construction valued at \$1,000,000 or more.

(2) The contracting officer may use the clause at FAR 52.226-1 in any solicitation or contract if, in the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Revise Critical Habitat for Alabama Beach Mouse, Perdido Key Beach Mouse, and Choctawhatchee Beach Mouse

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the Fish and Wildlife Service, announce a 90-day finding on a petition to revise critical habitat for the Alabama beach mouse (*Peromyscus polionotus ammobates*), Perdido Key beach mouse (*P. p. trissyllepsis*), and Choctawhatchee beach mouse (*P. p. allophrys*), under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the petition presents substantial information indicating that revising critical habitat for these three species may be warranted.

**DATES:** The finding announced in this notice was made on October 14, 1999. Send your comments and materials to

reach us on or before January 18, 2000. We may not consider comments received after the above date in making our decision for the 12-month finding.

**ADDRESSES:** Send information, comments, or questions to the Field Supervisor, U.S. Fish and Wildlife Service, 1612 June Avenue, Panama City, Florida 32405, or Field Supervisor, P.O. Box 1190, 1208-B main Street, Daphne, Alabama 36526. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above Panama City, Florida, address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gail A. Carmody, Field Supervisor, at the above Panama City, Florida, address or telephone 850/769-0552 or Mr. Larry Goldman, Field Supervisor, at the above Daphne, Alabama, address or telephone 334/441-5181.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 4(b)(3)(D)(i) of the Act and our listing regulations (50 CFR 424.14 (c)(1)), require that we make a finding on whether a petition to revise critical habitat of a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition, and we are to publish the finding promptly in the **Federal Register**. Our regulations (50 CFR 424.14 (c)(2)(i)) further require that, in making a finding on a petition to add critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved.

On May 8, 1998, we published Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited

number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

On February 2, 1999, the Sierra Club and Biodiversity Legal Foundation submitted a petition to us to revise the critical habitat designation for three endangered species: Alabama beach mouse, Perdido Key beach mouse, and the Choctawhatchee beach mouse. We received the petition on February 8, 1999. On February 11, 1999, we sent a letter to Mr. Eric Huber, Earthjustice Legal Defense Fund, Inc., acknowledging receipt of the petition. Mr. Huber submitted additional information on April 16, 1999. We sent a letter to Mr. Huber acknowledging receipt of this information on May 12, 1999.

The petition requested that critical habitat be revised for the three beach mouse subspecies mentioned above. The petitioner asserted that the current designated critical habitat is now inadequate and that coastal development has previously destroyed and continues to destroy part of the habitat. The petitioner asserted that designation of the secondary and scrub dunes as critical habitat is supported by substantial scientific evidence. He further stated that this scientific information, gathered since the listing of the three subspecies of beach mice, indicated that currently designated critical habitat encompassing the primary dunes should also include the secondary and scrub dunes. The petitioner also asserted that the current designation of critical habitat does not provide for conservation of the three subspecies in accordance with the statutory requirements of the Act. As part of conservation of the subspecies, secondary and scrub dunes are essential as refugia during and after storms. In addition, the petitioner stated that scientific evidence has shown that secondary and scrub dunes are now known to provide biological and physical constituent elements as defined under critical habitat for the beach mouse subspecies. These secondary and scrub habitats, therefore, require special management consideration and protection. The petitioner provided further information

concerning current threats to these habitats from residential development. The petitioner did not provide specific locations for areas to be included in the critical habitat but referred to subspecies range wide habitats that are secondary or scrub dunes that could be on private or public lands.

On November 5, 1991, we received a petition from the Alabama Conservancy to revise critical habitat for the Perdido Key beach mouse through an emergency rule. The area to be added included lands north of Highway 182 at the northwestern end of Perdido Key, Baldwin County, Alabama. The petitioner maintained that this action was necessary to prevent the permanent loss of crucial habitat for the species. The area included both public and private lands. The petitioner asserted that private development would cause the loss of important habitat for the Perdido Key beach mouse and cited a biological opinion, prepared by us in accordance with section 7 of the Act, as evidence for this assertion. We made a 90-day finding that the petition presented substantial information, indicating that revision of critical habitat for the Perdido Key beach mouse may be warranted. We published a notice announcing our finding in the **Federal Register** on November 24, 1992 (57 FR 5521). We also found that the request to revise the critical habitat designation through an emergency rule was unjustified. We subsequently made a 12-month finding on the petition and described how we were to proceed with the critical habitat revision for the Perdido Key beach mouse. We published a notice announcing our finding in the **Federal Register** on June 18, 1993 (58 FR 33606). We determined that the petitioned action was warranted but would be delayed until other higher priority actions to amend the Lists of Threatened and Endangered Wildlife and Plants had been completed.

Since the listing of the three gulf coast beach mouse subspecies, we have been funding, seeking, and soliciting information regarding their status, life history, and ecology. We also participated in and funded conservation efforts including habitat protection and recovery, reintroductions, and predator control. These efforts have expanded and refined our knowledge about critical habitat for the three beach

mouse subspecies. We have issued 15 section 10(a)(1)(B) incidental take permits (13 for the Alabama beach mouse, 1 for the Perdido Key beach mouse, and 1 for the Choctawhatchee beach mouse). Mitigation and monitoring required for these permits also contributed to our database regarding critical habitat.

We have reviewed the petition, the information provided in the petition, other literature, and information available in our files. Based on the best scientific and commercial information available, we find the petition presents substantial information that revision of critical habitat for the Alabama beach mouse may be warranted. We also find that if additional secondary and scrub dunes may also be required for Alabama beach mouse critical habitat, then these habitats may be required for the Perdido Key beach mouse and the Choctawhatchee beach mouse since they are ecologically equivalent subspecies. The petition supports much of the information already present in our files. Available information and data indicate that secondary and scrub dune habitat may be essential to the survival and recovery of all three subspecies. Therefore, we find that there is substantial information to indicate that the petitioned action may be warranted.

We solicit information, including additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties, concerning revision of the critical habitat for the Alabama beach mouse, Perdido Key beach mouse, and the Choctawhatchee beach mouse.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), we will prepare a 12-month finding.

Author:

The primary author of this document is Lorna Patrick, Panama City Field Office (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 14, 1999.

**Jamie Rappaport Clark,**  
Director, Fish and Wildlife Service.

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