

**Subpart GGGa—[Amended]**

11. Section 60.590a is amended by adding paragraph (e) to read as follows:

**§ 60.590a Applicability and designation of affected facility.**

\* \* \* \* \*

(e) *Stay of standards.* Owners or operators are not required to comply with the definition of “process unit” in § 60.590 of this subpart until the EPA takes final action to require compliance and publishes a document in the **Federal Register**. While the definition of “process unit” is stayed, owners or operators should use the following definition:

*Process unit* means components assembled to produce intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates; a process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

**§ 60.591a [Amended]**

12. In § 60.591a, the definition of “process unit” is stayed from August 1, 2008 until further notice.

[FR Doc. E8–11384 Filed 5–30–08; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****42 CFR Part 5 and 51c**

RIN 0906–AA44

**Designation of Medically Underserved Populations and Health Professional Shortage Areas**

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** On April 21, 2008, HHS published a 30-day extension to the public comment period and provided clarification on the notice of proposed rulemaking, “Designation of Medically Underserved Populations and Health Professional Shortage Areas” (73 FR 21300). HHS and the Health Resources and Services Administration (HRSA) have received requests for a further extension to the comment period. In consideration of these requests, HHS is extending the comment period an additional 30 days, with a new closing date of June 30, 2008.

**DATES:** Written comments on this proposed rule must be submitted on or before June 30, 2008. Please refer to

**SUPPLEMENTARY INFORMATION** for additional information.

**FOR FURTHER INFORMATION CONTACT:** Andy Jordan, 301–594–0197.

**SUPPLEMENTARY INFORMATION:** During the public comment period, HRSA has encouraged State Primary Care Offices (PCOs) to apply the proposed methodology using their own State and local data to see how well it works in identifying areas in need in their States. HRSA has provided assistance, tools, and data to support States in their efforts and will continue to do so. In order to facilitate a better understanding of the proposed rule, HRSA provided PCOs with a calculator that applies the formulas proposed in the rule to determine designation, with data files, as well as with technical assistance in using the calculator. HRSA has also provided the names of PCOs who, with their expertise with different data sources, may be able to offer some technical assistance to their colleagues.

Dated: May 29, 2008.

**Elizabeth M. Duke,**  
*Administrator.*

[FR Doc. 08–1314 Filed 5–29–08; 2:55 pm]

BILLING CODE 4152–01–P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS–R2–ES–2008–0070; 1111 FY07 MO–B2]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Cactus Ferruginous Pygmy-Owl (*Glaucidium ridgwayi cactorum*) as Threatened or Endangered With Critical Habitat**

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the cactus ferruginous pygmy-owl (*Glaucidium ridgwayi cactorum*) (pygmy-owl) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the pygmy-owl may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species, and we will issue a 12-month finding on our determination as

to whether the petitioned action is warranted. To ensure that the status review of the pygmy-owl is comprehensive, we are soliciting information and data regarding this species. We will make a determination on critical habitat for this species if and when we initiate a listing action.

**DATES:** We made the finding announced in this document on June 2, 2008. To allow us adequate time to conduct this review, we request that information be submitted on or before August 1, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand delivery: Public Comments Processing, Attn: [FWS–R2–ES–2008–0070]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all submissions on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Steven Spangle, Field Supervisor, Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone 602/242–0210; facsimile 602/242–2513. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:****Information Solicited**

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the status of the pygmy-owl. We request any additional information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the pygmy-owl. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat; and threats to the species or its habitat. Specifically,

we are requesting input related to the genetics and taxonomy of ferruginous pygmy-owls, and the status, distribution, and threats to the pygmy-owl in Mexico.

If we determine that listing the pygmy-owl is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the pygmy-owl, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. Please note that submissions merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal

identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that a petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for "substantial information," as defined in the Code of Federal Regulations at 50 CFR 424.14(b), with regards to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." If we find that substantial information was presented, we are required to promptly commence a status review of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

On March 20, 2007, we received a formal petition dated March 15, 2007, from the Center for Biological Diversity and Defenders of Wildlife requesting that we list the pygmy-owl as a threatened or endangered species under the Act (CBD and DOW 2007). Additionally, the petition requested the designation of critical habitat concurrent with listing. The petition clearly identified itself as a petition and included the identification information, as required in 50 CFR 424.14(a). We sent

a letter to the petitioners dated June 25, 2007, stating that we were proceeding with a review of the petition.

The petitioners petitioned us on three potentially listable entities of the pygmy-owl: (1) The Arizona distinct population segment (DPS) of the pygmy-owl; (2) the Sonoran Desert DPS of the pygmy-owl; and (3) the western subspecies of the pygmy-owl, which they identified as *Glaucidium ridgwayi cactorum*. As an immediate action, the petitioners requested that we promulgate an emergency listing rule for the pygmy-owl. In our June 25, 2007, response letter to the petitioners, we stated our determination that emergency listing was not warranted for the pygmy-owl and that the designation of critical habitat would be considered if listing one of the proposed entities of the pygmy-owl was found to be warranted.

#### Previous Federal Actions

On May 26, 1992, a coalition of environmental organizations (Galvin *et al.* 1992) petitioned us to list the entire cactus ferruginous pygmy-owl subspecies as endangered under the Act. We published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045, March 9, 1993). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we proposed to list the pygmy-owl as endangered with critical habitat in Arizona and threatened in Texas (59 FR 63975, December 12, 1994). After a review of all comments received in response to the proposed rule, we published a final rule listing the Arizona DPS of the pygmy-owl as endangered (62 FR 10730, March 10, 1997). In that final rule, we determined that listing in Texas was not warranted and that critical habitat designation for the Arizona population was not prudent.

In September 1998, we formed the Cactus Ferruginous Pygmy-owl Recovery Team, comprised of biologists (pygmy-owl experts and raptor ecologists) and representatives from affected and interested parties (e.g., Federal and State agencies, local governments, the Tohono O'odham Nation, and private groups) to develop a pygmy-owl recovery plan.

On December 30, 1998, in response to an October 31, 1997, lawsuit filed in the District Court of Arizona by the Southwest Center for Biological Diversity, we proposed to designate critical habitat in Arizona for the

pygmy-owl (63 FR 71820). On April 15, 1999, we released a draft economic analysis of the proposed critical habitat designation and reopened a public comment period for 30 days (64 FR 18596). On July 12, 1999, we published our final critical habitat determination (64 FR 37419), essentially designating the same areas as were proposed.

On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of the Service's listing of the Arizona DPS of the pygmy-owl as an endangered species and the designation of its critical habitat. On September 21, 2001, the District Court upheld the listing of the pygmy-owl in Arizona but, at our request, and without otherwise ruling on the critical habitat issues, remanded the designation of critical habitat for preparation of a new economic analysis and other effects of the designation (*Natl. Ass'n of Home Builders v. Norton*, No. Civ.-00-0903-PHX-SRB). The District Court vacated the critical habitat designation during this remand. Subsequently, the District Court ordered that we submit a new proposed critical habitat rule to the **Federal Register** on or before November 15, 2002. On November 27, 2002, we published the proposed rule to designate critical habitat for the pygmy-owl (67 FR 71032) and opened a public comment period on the proposed rule and the draft economic analysis until February 25, 2003. We extended the comment period on February 25, 2003, until April 25, 2003 (68 FR 8730). We then reopened the comment period on April 28, 2003, until June 27, 2003 (68 FR 22353). Due to a lack of funding, work on the final rule to designate critical habitat for the pygmy-owl was suspended in April 2003.

On January 9, 2003, we published in the **Federal Register** (68 FR 1189) a notice of availability and opening of a public comment period (until April 9, 2003) for the draft pygmy-owl recovery plan. On April 30, 2003 (68 FR 23158), we reopened the public comment period on the recovery plan until June 30, 2003.

The plaintiffs appealed the District Court's ruling on the listing of the pygmy-owl as a distinct population segment in Arizona. On August 19, 2003, the Ninth Circuit Court of Appeals upheld the Service's determination that the Arizona pygmy-owl population was discrete, but found that the Service did not articulate a rational basis for finding that the Arizona pygmy-owl population was significant to its taxon (*Natl. Ass'n of Home Builders v. Norton*, 340 F.3d. at 852). The Ninth Circuit reversed the judgment of the District Court and

remanded the case to the District Court for further proceedings consistent with the Ninth Circuit's opinion.

On October 1, 2003, the intervenor-appellees (CBD and DOW) petitioned for a rehearing from the Ninth Circuit Court. That request was denied. On November 12, 2003, the plaintiffs filed a motion with the District Court seeking removal of the Arizona DPS listing based on the Ninth Circuit Court's ruling. On December 10, 2003, the Service filed a response agreeing that removal of the listing was appropriate. The response also indicated that the Service was undertaking an internal review of the current status of the pygmy-owl in the United States and Mexico and was engaged in ongoing surveys of the species. The interveners in the case opposed the plaintiffs' motion to remove the Arizona DPS listing and disputed the contention that the listing rule should be removed.

On June 25, 2004, the District Court of Arizona (CV 00-0903 PHX-SRB) remanded the listing rule to the Service for reconsideration consistent with the Ninth Circuit's ruling and ordered that the pygmy-owl listing should remain in place for the duration of the Service's deliberations. On January 31, 2005, pursuant to the District Court's order, we filed a status report with the District Court regarding our reconsideration of the listing rule for the pygmy-owl. As a result of our reconsideration, we published a proposed rule on August 3, 2005, to delist the pygmy-owl (70 FR 44547). On April 14, 2006, following public comment, we published a final rule removing the pygmy-owl from the Federal List of Endangered and Threatened Wildlife (71 FR 19452).

The interveners in the above lawsuit filed a request with the Arizona District Court for a temporary restraining order (denied by the District Court in May 2006) and a preliminary injunction to halt the delisting of the pygmy-owl and, concurrently, a lawsuit arguing that the delisting of the pygmy-owl was arbitrary and capricious. The Arizona District Court heard the case in October 2006 and issued an opinion on March 9, 2007, upholding the Federal delisting of the pygmy-owl and denying the request for a preliminary injunction. Defenders of Wildlife and the Center for Biological Diversity have appealed the District Court's decision, and the case is currently pending in the Ninth Circuit Court of Appeals (9th Cir. No. 07-15854).

#### *Species Information*

The pygmy-owl is in the order Strigiformes and the family Strigidae. It is a small bird, approximately 17

centimeters (6.75 inches) long. In Arizona, male pygmy-owls average 58 grams (g) (2.0 ounces (oz)) and females average 70 g (2.4 oz) (AGFD 2007, p. 2). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Color may vary, with some individuals being more grayish brown.

One of the primary issues presented by the petitioners is related to the taxonomy of the pygmy-owl. Until recently, we considered the cactus ferruginous pygmy-owl to occur from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon (Proudfoot and Johnson 2000, p. 4). The petitioners request a revised taxonomic consideration for the cactus ferruginous pygmy-owl based on Proudfoot *et al.* (2006a, p. 9; 2006b, p. 946) and König *et al.* (1999, pp. 160, 370-373), classifying it as *Glaucidium ridgwayi cactorum*. The revised consideration would include recognition of two subspecies in Mexico and the U.S., *G. r. cactorum* in western Mexico and Arizona and *G. r. ridgwayi* in eastern Mexico and Texas. We find this request to be reasonable, as Proudfoot and Johnson (2000, p. 4) indicate that a thorough taxonomic revision for the ferruginous pygmy-owl is needed. Other authors have also proposed the "ridgwayi" classification of the subspecies of pygmy-owl in question (Heidrich *et al.* 1995, pp. 37-39; Navarro-Sigüenza and Peterson 2004, p. 5).

The literature suggests that the taxonomy of the pygmy-owl has been inconsistent and ever-changing (Coues 1872, p. 370, Bendire 1888, p. 366; Fischer 1893, pp. 199-200; Gilman 1901, p. 145, Howell 1916, p. 211). The use of genetics (Proudfoot *et al.* 2006a; Proudfoot *et al.* 2006b), morphology, and vocalizations (König *et al.* 1999, pp. 160, 370-373; Heidrich *et al.* 1995, pp. 25-27) to clarify pygmy-owl taxonomy may provide the basis for taxonomic revision. The petitioners report that recent studies suggest that North and Central American ferruginous pygmy-owls fall into the species *ridgwayi*, and South American ferruginous pygmy-owls fall into the species *brasilianum* (Proudfoot 2006a, p. 9; König *et al.* 1999). Proudfoot (2006a, p. 9) further divides *ridgwayi* into two subspecies, one found in Arizona, Sonora, and Sinaloa (*Glaucidium ridgwayi cactorum*), and one found in Texas, Tamaulipas, and regions of South-Central Mexico (*Glaucidium ridgwayi ridgwayi*). This

finding addresses the petitioned subspecies *G. r. cactorum*, which the petitioners referred to as the cactus ferruginous pygmy-owl.

Some have suggested that the proposed taxonomic change should not be accepted until it is acknowledged by the American Ornithologist's Union (AOU) (Johnson and Carothers 2007, pp. 16–17). While the AOU checklist undergoes vigorous review, it presently does not list entries at the subspecies level and does not provide the most current information related to taxonomic classifications at this level (AOU 2007). The Service is not restricted to existing taxonomic checklists in determining a listable entity. Rather, the Service is required to use the best available scientific and commercial information. The information presented by Proudfoot (2006a, 2006b) is found in peer-reviewed professional journal articles, and the work of König *et al.* (1999) was published by a reputable institution. We judge these sources to be reliable with regard to the information they present. Information in our files supports the supposition of the petitioners that Proudfoot (2006a, 2006b), König *et al.* (1999), and Heidrich *et al.* (1995) represent the best available scientific information regarding the taxonomy of the pygmy-owl. We find that the petitioners have provided reliable and substantial scientific information that a taxonomic revision may be warranted.

Historically (i.e., late 1800s and early 1900s), pygmy-owls occupied areas of south-central Arizona—from New River, about 56 kilometers (km) (35 miles (mi)) north of Phoenix, south to the U.S./Mexico border, west to Agua Caliente near Gila Bend and Cabeza Prieta Tanks, and east to Tucson, and, rarely, the San Pedro River (Bent 1938, pp. 435–438; Monson and Phillips 1981, pp. 71–72; Johnson *et al.* 2003, pp. 390–391). The geographic area historically occupied by pygmy-owls in Arizona includes portions of Gila, Pima, Pinal, Maricopa, Graham, Santa Cruz, Cochise, Greenlee, and Yuma Counties. No pygmy-owls have been recorded in New Mexico (Hubbard 1978, p. 6) or from the lower Colorado River valley of both the United States (Rosenberg *et al.* 1991, pp. 206–210) and Mexico (van Rossem 1945, p. 111).

Currently, the known locations of pygmy-owls in Arizona are restricted to two counties, Pima and Pinal (USFWS 2007). As the petition contends (CBD and DOW 2007, p. 15) and our records support (Abbate *et al.* 1996, pp. 8–12; 1999, pp. 14–17; 2000, pp. 15–16; Johnson *et al.* 2003, p. 390), the current distribution of pygmy-owls within

Arizona is much reduced when compared to its historical distribution. Recent data indicate that there are fewer than 50 adult pygmy-owls and fewer than 10 nest sites in Arizona in any given year (Abbate *et al.* 2000, pp. 15–16).

The petitioners provide information indicating that pygmy-owl populations in Arizona and Sonora, Mexico are declining (CBD and DOW 2007, pp. 15–17). The information in our files is consistent with the population numbers reported in the petition. We judge the information regarding a decline in pygmy-owl numbers in northern Sonora (Flesch and Steidl 2006) to be substantial and reliable.

In Arizona, pygmy-owls rarely occur below 300 meters (m) (1,000 feet (ft)) or above 1,220 m (4,000 ft) (Proudfoot and Johnson 2000, p. 5), except perhaps during dispersal (AGFD 2007, p. 2). Historically, pygmy-owls were documented in cottonwood (*Populus fremontii*)-mesquite (*Prosopis* spp.) forest and mesquite woodland along the Gila and Salt rivers and major tributaries (Gilman 1909, pp. 148–149; Johnson *et al.* 1987). Currently, most pygmy-owls in southern Arizona are found in Sonoran desertscrub communities as described by Brown (1982, pp. 181–221). These communities include dense thickets bordering dry desert washes consisting of palo verde (*Cercidialia* spp.), ironwood (*Olneya tesota*), mesquite, acacia (*Acacia* spp.), and saguaro (*Carnegiea gigantea*) (Johnson and Haight 1985, p. 145; Millsap and Johnson 1988, p. 138). In the 1990s and early 2000s, pygmy-owls were also found in suburban areas containing exotic landscaping supported by irrigation (Abbate *et al.* 1996, p. 26). Pygmy-owls have also been located in semidesert and Sonoran savanna grasslands with washes (e.g., the Altar Valley) (Abbate *et al.* 2000, p. 27, Flesch 2003, pp. 153–156). Dominant tree species in riparian areas include mesquite, ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.).

In Mexico, the pygmy-owl occurs from sea level to 1,219 m (4,000 ft) (Friedmann *et al.* 1950, p. 145). It is a resident of primarily giant cactus associations, in western Sonora (van Rossem 1945, p. 111). It also occurs in desertscrub, tropical thornscrub, and tropical deciduous forest (Russell and Monson 1998, p. 141). The pygmy-owl is absent from tropical deciduous forest and higher vegetation zones in west Mexico, where it is replaced by *G. minutissimum* and *G. gnoma* (Schaldach 1963, p. 40). Flesch (2003, p. 37) reported that pygmy-owls occurred in the greatest numbers and highest

frequencies within the Arizona Upland subdivision of Sonoran desertscrub in northern Sonora, Mexico. Densities were greatest in the Plains of Sonora and lowest in Sinaloan Thornscrub. Density of owls was relatively high in the Central Gulf Coast, but frequency of occurrence was low. Semidesert grasslands were second only to Arizona Upland for frequency of occurrence of pygmy-owls in Sonora, Mexico.

### Threats Analysis

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information on threats to the pygmy-owl, as presented in the petition and other information available in our files at the time of the petition review, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

#### A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioners claim that numerous threats to pygmy-owl habitat occur in both Arizona and Sonora, Mexico, and that these threats have resulted in the loss and fragmentation of pygmy-owl habitat (CBD and DOW 2007, p. 18). As a result, pygmy-owls have been lost from portions of their range and are declining in abundance in the United States and Mexico (Phillips *et al.* 1964, p. 52; Johnson *et al.* 1979, p. 51; Hunter 1988, pp. 3–6; Millsap and Johnson 1988, pp. 137–139; Johnson *et al.* 2003, pp. 393–398; Flesch and Steidl 2006, pp. 869–870). The petitioners (CBD and DOW 2007, pp. 18–24) specifically identified riparian forest destruction, urban sprawl, woodcutting, vegetation clearing for agriculture, livestock grazing, border issues, and exotic plant species invasions as threats to the pygmy-owl (Ohmart 1994, pp. 276–281; Flesch 2003, p. 134; Abouhaider 1989, pp. 58–59; Burquez and Martinez-Yrizar

1997, pp. 383–388; Burquez-Montijo *et al.* 2002, pp. 134–138; Flesch and Steidl 2006, pp. 869–870).

The petitioners indicate that widespread destruction of riparian woodlands in Arizona and Sonora has occurred within the range of the pygmy-owl and has led to a subsequent decline in pygmy-owl abundance (CBD and DOW 2007, p. 19). They cite papers, also found in our files, estimating that between 85 and 90 percent of riparian bottomland forests in the southwestern United States have been modified or lost, and that these alterations and losses are attributable to woodcutting, urban and agricultural encroachment, water diversion and impoundment, channelization, groundwater pumping, livestock overgrazing, and hydrologic changes resulting from various land-use practices (Carothers 1977, pp. 2–3; Kusler 1985, p. 6; Jahrsdoerfer and Leslie 1988, pp. 17–36; USGAO 1988, p. 8; Szaro 1989, pp. 73–81; State of Arizona 1990, pp. 1–5; Bahre 1991, pp. 119–151). Information provided by the petitioners was found to be reliable and corroborated by information found in our files. Information from our files indicates that threats to riparian communities are also evident in Mexico. Deloya (1985, pp. 11–12) expressed concern over the declining trend of riparian ecosystems there and a lack of strategy to reverse it.

The petitioners state that continued population growth in both Arizona and Mexico will continue to contribute to the loss of important riparian resources. They cite specific examples of the San Pedro River in Arizona and the Rio Magdalena in Mexico, including Flesch and Steidl (2006b), who stated that the Rio Magdalena watershed had the largest human population of the watersheds they studied, which likely reduces habitat quality for the pygmy-owl (CBD and DOW 2007, p. 20).

The petition cites urban sprawl as a significant threat to pygmy-owls in both Arizona and Mexico (USFWS 2005, Burquez and Martinez-Yrizar 1997) (CBD and DOW, p. 20). Impacts to pygmy-owls and pygmy-owl habitat from urbanization are related to housing development, lighting, roads, traffic, predation by domestic pets, and the alteration of hydrologic patterns supporting important pygmy-owl habitat elements. Petitioners point out that low-density urban development may provide some benefit to pygmy-owl habitat elements and that pygmy-owls have occurred in these types of areas in the past. However, most recent urbanization in Arizona cannot be categorized as low density (AZ Daily Star 2006, p. B–1); therefore, it is

usually not beneficial to the pygmy-owl. In addition, the petitioners point out a concern that if the beneficial habitat elements in low-density developments attract pygmy-owls, these areas may act as population sinks (a population with a negative balance between productivity and mortality) if there is increased mortality from automobile and window collisions, pet predation, and other urban factors. Information in our files supports the petitioners' claims of increasing human population growth along the border in both Mexico and Arizona (AZ Daily Star 2000a, 2000b; Clement *et al.* 2003, p. 60; DES 1997, East Valley Tribune 2005; Ewing *et al.* 2005, pp. 7–16; PAG 2003; Pineiro 2001, p. 1). The impacts of urbanization on pygmy-owls and their habitat have been identified and discussed in numerous documents within our files (USFWS 2005b, 2005c, 2005d), and we find that the information presented by the petitioners is reliable.

According to the petition, the conversion of native vegetation to non-native grasses for livestock grazing represents a threat to pygmy-owl habitat in Arizona and Mexico. The petition states that the conversion to and invasion by buffelgrass (*Pennisetum ciliaris*) results in the direct loss and fragmentation of pygmy-owl habitat by eliminating large columnar cacti (nest substrates) and other vegetation required by pygmy-owls for nesting, perching, and cover; reduces prey availability; and increases fire frequency in a non-fire-adapted vegetation community (CBD and DOW 2007, p. 22). The petitioners point out that this threat is widespread (8–10 million acres (3.2–4 million hectares) in northern Mexico and the southwestern U.S.) and will likely result in permanent impacts to pygmy-owls and pygmy-owl habitat. They cite Van Devender and Dimmit (2000), who state that the introduction of buffelgrass into fire-intolerant desert communities results in a permanent conversion to a buffelgrass savanna with reduced plant cover and diversity (CBD and DOW 2007, p. 22). Information within our files supports the magnitude of this threat identified by the petitioners, and we find that the information presented is reliable. In some cases the conversion to buffelgrass has been so complete that consequences are irreversible in the short term (Burquez *et al.* 1998, p. 21). Talking about the potential extent of the threat of buffelgrass conversion in Sonora, Mexico, Arriaga *et al.* (2004, pp. 1507–1510) predict that buffelgrass could cover up to 53 percent of Sonora and affect 26 percent of the desert scrub, 12

percent of the mesquite woodlands, and 8 percent of the tropical deciduous forest. However, regional efforts to reduce the extent of buffelgrass are being initiated in southern Arizona.

The petition points out that the introduction of fire into non-fire-adapted communities, such as the Sonoran Desert, has significant effects on the native vegetation. The petitioners state that many desert trees, shrubs, and cacti, including saguaros, are not fire-adapted and cannot withstand fires. This is particularly significant in relation to the pygmy-owl because of effects to nest cavities and prey availability. As the conversion of native habitat to non-native plant communities is primarily a human-facilitated issue, and because many current fires are human-caused, the issue of fire in an environment of increasing non-native plant communities and increasing population growth is a legitimate threat to pygmy-owl habitat. The information available in our files corroborates the increased occurrence and severity of fires within the range of the pygmy-owl, and the significant conversion of native plant communities to non-native grassland savannahs in both the United States and Mexico.

The petitioners indicate that livestock grazing eliminates and modifies pygmy-owl habitat, especially in sensitive riparian areas (CBD and DOW 2007, p. 23). They contend that overgrazing results in the direct removal of riparian vegetation, changes channel morphology, and has been a primary factor in the loss of most riparian woodlands in the southwest. With specific regard to pygmy-owl habitat elements, our files indicate that overgrazing can affect saguaro (nest sites) recruitment (Abouhaidar 1989, pp. 58–59), cause a loss of riparian species diversity and cover (Belsky *et al.* 1999, pp. 425–428), and reduce prey diversity (Jones 1981, pp. 109–114; Krueper 1996, pp. 288–294). The threats to pygmy-owl habitat from livestock overgrazing as raised by the petitioners were found to be reliable based on information in our files. However, it is important to note that such effects are typically the result of overgrazing and not well-managed livestock grazing that occurs under an appropriate livestock-grazing system, which under certain conditions, can have beneficial effects to wildlife (Holochech *et al.* 1982, p. 208; Smith *et al.* 1996, p. 492). In addition, no studies specifically related to the effects of livestock grazing on pygmy-owls have been done.

The petitioners indicate that border activities can affect pygmy-owls and pygmy-owl habitat. In particular, they

point to the current construction of a wall along the U.S./Mexico border intended to impede illegal immigration and smuggling activities. They cite Flesch and Steidl (2007), who state that pygmy-owls often fly short distances just above the ground when crossing vegetation openings. The petitioners therefore claim that construction of the border wall will preclude movement of individuals between Arizona and Sonora. Our observations of pygmy-owl movements in the landscape indicate that tall fences, in association with a zone cleared of vegetation, would likely result in an impediment to pygmy-owl movements in that area, and could affect local movements within territories, as well as immigration and dispersal across the international border (Abbate *et al.* 1999, p. 28–29; Flesch and Steidl 2007, p. 35, Scott Richardson, personal observations). The effects to natural resources resulting from illegal border crossing and smuggling, and the response of enforcement agencies to such activities, such as the construction of fences, is documented in our files, and we find the information presented by the petitioners to be reliable (Cohn 2007, p. 96; Marris 2006, pp. 1–2).

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the habitat or range of the subspecies of ferruginous pygmy-owl defined in the petition. Information in our files identifies the top ten threats to the natural resources of the Sonoran bioregion, which includes many of the threats proposed by the petitioners and described above (Nabhan and Holdsworth 1998, pp. 1–3).

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

According to the petition, overutilization is not considered a major factor in pygmy-owl declines past or present.

#### *C. Disease or Predation*

The petition names a number of diseases or disease-related issues that could potentially affect the status of the pygmy-owl population throughout its range. These include hematozoa (blood parasites), trichomoniasis, external parasites, and West Nile Virus. Information in our files indicates that the information presented in the petition is reliable and that ectoparasites, in particular, represent

potential threats to pygmy-owl populations (Proudfoot *et al.* 2005, pp. 186–187; Proudfoot *et al.* 2006c, pp. 874–875). While little is known of the natural occurrence of disease within pygmy-owl populations (Proudfoot and Johnson 2000, p. 13), more is known regarding the occurrence of parasites (Proudfoot *et al.* 2005, p. 186; Proudfoot *et al.* 2006, p. 873). Proudfoot *et al.* (2005, p. 186) could not rule out that blood loss from external parasites, in combination with other factors, may have contributed to the loss of an entire clutch of pygmy-owls in Arizona. Serious disease problems have not been documented to date in pygmy-owl populations; however, should such an event occur, the population effects are clear given that fewer than 10 pygmy-owl nest sites are typically documented in Arizona on an annual basis (Abbate *et al.* 2000, pp. 15–16). The effects of an introduced virus, like the West Nile Virus, on pygmy-owls are of particular concern (Ganez *et al.* 2004, pp. 2135–2136).

The petitioners point out that predation on pygmy-owls has been documented throughout its range. Recently-fledged young are particularly vulnerable to predation, affecting the overall productivity of pygmy-owls in Arizona (Abbate *et al.* 1999, p. 50). With so few nests documented in Arizona, reduced productivity due to predation can have population-level effects. Predation occurs naturally within pygmy-owl populations; however, ongoing drought conditions contribute to increasing predation rates due to lack of vegetation cover and poor condition of individual pygmy-owls (USFWS 2004, AGFD unpublished data). Information in our files indicates that this information is reliable and that predation can affect the status of local pygmy-owl populations. Non-native predators may increase predation rates above natural levels. Introduced predators in urbanized areas, such as domestic cats, have been documented as pygmy-owl predators and are an ongoing threat to pygmy-owls and other wildlife as urbanization increases (Evans 1995, pp. 4–5; Coleman *et al.* 1997, pp. 2–3; Winter and Wallace 2006, p. 3).

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease, especially given the low population size of the pygmy-owl, and predation, particularly of fledglings.

#### *D. Inadequacy of Existing Regulatory Mechanisms*

The petition includes four levels of current regulation that the petitioners contend fall short in their protection of pygmy-owls and pygmy-owl habitat. The petitioners indicate that Federal laws such as the Migratory Bird Treaty Act and the National Environmental Policy Act do not require protection of pygmy-owl habitat. The Arizona Game and Fish Department includes the pygmy-owl as an endangered species on its Species of Special Concern list (AGFD 1996, p. 15), but this list does not afford the pygmy-owl any legal or regulatory protections. While State wildlife laws prohibit the illegal take of pygmy-owls, they do not address impacts to pygmy-owl habitat. Some local conservation mechanisms, such as habitat conservation plans, are in development in southern Arizona. These plans include conservation measures for pygmy-owls, but are several years from completion and, as drafts, do not afford the pygmy-owl any level of protection or conservation (although some pygmy-owl habitat has been conserved through acquisitions related to these plans). There are no regulations or laws in Mexico that provide any specific protection to pygmy-owl habitat. Based on the information in our files, the information presented by the petitioners regarding existing regulatory mechanisms is reliable.

#### *E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petition identifies two issues under this factor, genetic stochasticity and fire, that affect the continued existence of the pygmy-owl. The petitioners indicate that the incidence of inbreeding and the low genetic diversity within the pygmy-owl population may make the population susceptible to stochastic genetic events. Caughley and Gunn (1996, p. 166) are cited, noting that small populations can become extinct entirely by chance even when their members are healthy and the environment favorable (CBD and DOW 2007, p. 28). Information in our files supports the contention that there is low genetic variability within genetic samples obtained from pygmy-owls in the United States and northern Mexico (Proudfoot and Slack 2001, p. 5; Proudfoot *et al.* 2006a, p. 9), and that pairings within family groups have been documented in this same area (Abbate *et al.* 2000, p. 21).

The issue of fire and its effects on pygmy-owl habitat is related to the issue

of non-native plant species and is more appropriately discussed earlier in this document within the context of Factor A, rather than under Factor E.

#### **Distinct Vertebrate Population Segments and Significant Portion of the Range**

The petition asserts that the pygmy-owl occurs in two possible DPSs and implies that, as a subspecies, the pygmy-owl is also threatened or endangered throughout a significant portion of its range. We conclude that the petition presents substantial information that listing the entire subspecies may be warranted (see Finding below). Therefore, we have not specifically evaluated whether the petition provides substantial information with respect to the two potential DPSs outlined within the petition, or the extent to which the pygmy-owl is endangered or threatened throughout a significant portion of its range. An analysis of these additional entities will occur during the 12-month status review if we determine that listing of the entire subspecies is not warranted.

#### **Finding**

We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to evaluate the petition.

The petitioners presented substantial information indicating that the pygmy-owl may be threatened by Factors A, C, D, and E throughout the entire range of the subspecies defined in the petition in Arizona and northwest Mexico. The petitioners did not assert that Factor B is currently, or in the future, considered a threat to this species. Based on this review and evaluation, we find that the petition has presented substantial scientific or commercial information that listing the pygmy-owl throughout all or a portion of its range may be warranted due to current and future threats under Factors A, C, D, and E. As such, we are initiating a status review to determine whether listing the pygmy-owl under the Act is warranted. As part of our status review of the pygmy-owl, we will examine whether the purported subspecific designation is appropriate; whether the Arizona or Sonoran Desert

DPSs of the pygmy-owl warrant listing under the Act; or if the subspecies is in danger of extinction within a significant portion of its range. We will issue a 12-month finding as to whether any of the petitioned actions are warranted.

#### **References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Author**

The primary authors of this document are the staff of the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: May 20, 2008.

#### **Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

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