DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period for Take Guidance and Survey Protocol for the Cactus Ferruginous Pygmy-owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension on two public comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the public comment period is extended until November 14, 1998 for take guidance and survey protocol for the cactus ferruginous pygmy-owl.

DATES: Written comments should be received by November 14, 1998.

ADDRESSES: Persons wishing to review either the cactus ferruginous pygmy-owl take guidance or survey protocol may access either at the world wide web site of the Southwest Region of the Service at http://ifw2es.fws.gov/arizona/, or obtain copies by contacting the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 or by calling the Field Office at (602) 640–2720. Documents will also be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30), U.S. Fish and Wildlife Service, Phoenix, Arizona. Written data or comments concerning the cactus ferruginous pygmy-owl take guidance or survey protocol should be submitted to the Field Supervisor, Arizona Ecological Services Field Office, Phoenix, Arizona (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Acting Field Supervisor, Arizona Ecological Services Field Office in Phoenix, Arizona at (602) 640–2720.

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl was listed by the Service as an endangered species in Arizona on March 10, 1997 (62 FR 10730), based on extensive population declines within its historic range in the state. The pygmy-owl, a small reddish-brown owl, nests in a cavity in a tree or large columnar cactus. The species was once common to abundant in riparian forests, mesquite-cottonwood woodlands, and desertscrub habitats in central and southern portions of the state. It is still considered a potential inhabitant of riparian areas, where this extremely limited vegetative community still occurs, and is found in upper Sonoran Desert habitats usually consisting of dense ironwood, mesquite, acacia, bursage, and saguaro cacti, with understory vegetation of smaller trees and shrubs.

On August 13, 1998 (63 FR 43362 and 43363) the service published notices of availability and opening of public comment period for survey protocol and taking guidance.

Take Guidance

Urban and suburban development within the remaining appropriate habitat of the pygmy-owl is ongoing. These and other actions may result in take of the species. The Endangered Species Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions that apply to all endangered and threatened wildlife, respectively. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect or to attempt any of these). Regulations at 50 CFR 17.3 define the terms ''harm'' and ''harass'' as used under the definition of ''take.'' ''Harm'' is defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification that impairs essential behavioral patterns, including breeding, feeding, or sheltering. ''Harass'' is defined as an intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, including, but not limited to, breeding, feeding, or sheltering.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

At the time of listing the owl, the Service provided a partial listing of activities that could potentially harm, harass, or otherwise take the pygmy-owl. These included—

(1) Removal of nest trees;

(2) Removal of a nest box in use by the pygmy-owl;

(3) Clearing or significant modification of occupied habitat, whether or not the nest tree is included;

(4) Sustained noise disturbance during the breeding season;

(5) Pursuit or harassment of individual birds;

(6) Frequent or lengthy low-level flights over occupied habitat during the breeding season;

(7) Severe overgrazing that results in the removal of understory vegetation.

In furtherance of the Service's policy to provide information concerning what activities may be considered take of the pygmy-owl, the Service is making available information to aid both Federal and non-Federal entities in determining when a take situation may occur.

Survey Protocol

The Fish and Wildlife Service (Service), in cooperation with the Arizona Game and Fish Department (Department), propose a survey protocol for determining the presence of the endangered cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within known historic range of the species in Arizona. The proposed survey protocol comes in two versions depending on its use: the first is for use in determining if cactus ferruginous pygmy-owls are present on specific project sites where an activity is proposed; the second is for use in gathering information on distribution, occurrence, and numbers of pygmy-owls over more extensive areas of its historic range in Arizona. This proposed protocol is founded on procedures established by the Arizona Game and Fish Department in 1993. The proposed protocol incorporates modifications found to be appropriate following 5 years of field application. Differences between the 1993 protocol and the current proposed protocol include a reduction in the survey period from 9 months (September through May) to 6 months (January through June); and an increase in surveys from one to three, with 30 days between each of the three surveys preferred, but a minimum of 15 days required. At least one survey must occur between February 15 and April 15. In reviewing determinations of pygmy owl presence or absence, the Service will require the implementation of the protocol for two consecutive years (rather than one year) prior to actions that may impact the owls or their habitats.

The existing protocol will remain in use (i.e., surveys from September through December this year will still be accepted through December 31, 1998). Use of the currently proposed protocol will be required from January 1, 1999, forward.

The Service and Department have submitted the protocol to recognized species and technical experts for peer review to ensure a scientifically sound basis for determination of the presence of the species within its known range.

The Service and the Department will regularly review and modify, as necessary, the survey protocol to ensure that the best available scientific information is incorporated into the prescribed methodology.

Overall Purpose

The Service is extending the public comment period to ensure that adequate time is available for the public to provide additional information to more adequately understand the occurrence and biology of the cactus ferruginous pygmy-owl in central and southern Arizona. Until more complete scientific information is available, the Service believes that the use of the take guidance document and the proposed survey protocol document will protect the pygmy-owl while allowing carefully considered development to proceed and will provide the most biologically valid data upon which to determine habitat use and occupancy by the pygmy-owl.

Author

The primary author of this document is Tom Gatz, Acting Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: September 8, 1998.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 090898D]

RIN 0648-AK12

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 51 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 51 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 51 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 51 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs). BSAI Amendment 51 would establish the following allocations and management measures for a 3-year period beginning in January 1999. Comments from the public are requested.

DATES: Comments on Amendments 51/51 must be submitted on or before November 16, 1998.

ADDRESSES: Comments on Amendments 51/51 should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 51/51 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for Amendments 51/51 are available from the North Pacific Fishery Management Council at 605 West 4th Ave., Room 306, Anchorage, AK 99501, telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document announcing that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

BSAI Amendment 51

At its June 1998 meeting, the Council voted 7–4 to adopt BSAI Amendment 51. This amendment, if approved, would make three significant changes to the existing BSAI inshore/offshore pollock allocation provisions: (1) Four percent of the BSAI pollock TAC, after subtraction of reserves, would be shifted to the inshore component resulting in a 39/61 inshore/offshore allocation split; (2) a portion of the inshore component Bering Sea B season allocation, equal to 2.5 percent of the BSAI pollock TAC after subtraction of reserves, would be set aside for small catcher vessels, and would become available on or about August 25 of each year; (3) catcher vessels delivering to the offshore component would be prohibited from fishing inside the CVOA during the B season from September 1 until the inshore component is closed to directed fishing. Amendment 51 would remain in effect for the years 1999 through 2001.

At its June 1998 meeting, the Council voted unanimously to adopt GOA Amendment 51. GOA Amendment 51, if approved, would allocate 100 percent of the GOA pollock TAC and 90 percent of the GOA Pacific cod TAC to vessels catching pollock and Pacific cod for processing by the inshore component. Ten percent of the GOA Pacific cod TAC would be allocated to vessels catching Pacific cod for processing by the offshore component.

A major concern identified during the preliminary review of Amendments 51/51 is that the economic analysis submitted by the Council does not provide a basis upon which to draw unambiguous conclusions about the probable net economic benefits of the competing alternatives. Treated in considerable detail in the document, the reasons for this deficiency pertain to basic data limitations that make conversion from gross to net economic measures impossible.

Completion of the preliminary review with publication of the notice of availability (NOA) for Amendments 51/51 does not mean that either of these two amendments will be approved.