

RECOMMENDED GUIDANCE FOR PRIVATE LANDOWNERS CONCERNING THE CACTUS FERRUGINOUS PYGMY-OWL

March 2000

The following recommendations¹ are offered by the U.S. Fish and Wildlife Service (FWS) to assist private landowners in minimizing their risk of inadvertently “taking²” the endangered cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) and violating Section 9 of the Endangered Species Act (ESA).

On August 13, 1998, the FWS published a notice of availability and the opening of a 30-day public comment period for a proposed survey protocol and the accompanying “Private Landowner Take Guidance for the Pygmy-owl³.” This comment period was extended on September 15, 1998⁴ and again on November 20, 1998⁵, closing on March 14, 1999 to allow interested parties additional time to provide input. During this seven month period, we received many comments from Federal and State agencies, local jurisdictions, independent consultants, and private individuals on both the proposed protocol and take guidance. We reviewed these comments and revised the proposed landowner take guidance and the accompanying survey protocol, incorporating changes we believed were appropriate. We also received technical input from the Arizona Game and Fish Department (AGFD) in developing these recommendations. We thank all of those who commented for their assistance in helping us develop the following landowner guidance recommendations.

These recommendations apply only to those areas that support suitable pygmy-owl habitat in south-central Arizona. Suitable habitat is defined as areas below 4,000 feet in elevation characterized by one or more of the following vegetation communities:

1. **riparian vegetation** (such as cottonwoods, willows, mesquites, ash, or other trees growing along watercourses);
2. **Sonoran desertscrub**, particularly areas containing saguaro cactus or other columnar

¹U.S. Fish and Wildlife Service. 2000. Recommended guidance for private landowners concerning the cactus ferruginous pygmy-owl

²defined under Section 9 of the Endangered Species Act as harming, harassing, injuring, or killing a listed species

³published in the *Federal Register* (63 FR 43362)

⁴published in the *Federal Register*(63 FR 49539)

⁵published in the *Federal Register* (63 FR 64449)

cactus [8 feet or taller], with ironwood, mesquites, palo verde or other trees in association with at least some shrubs (acacia, prickly pear, desert hackberry, greythorn, etc.), and ground cover (triangle leaf bursage, burro weed, grasses, etc.); or

3. **semi-desert grassland** with drainages containing mesquite, hackberry, cottonwood, willow, ash, etc.

Any of these three areas without saguaros, but which contain the appropriate trees and lower-level cover, are considered suitable if there are individual trees with a trunk diameter of 6 inches or greater measured at 4.5 feet above the ground. Urban areas (see map for excluded areas within the Tucson and Phoenix metropolitan areas) and areas currently devoid of saguaros, other columnar cactus, or trees (such as agricultural fields) are excluded. Furthermore, this guidance only applies to actions on private lands that do not involve Federal funds, actions or permits. Federal agencies have additional responsibilities under the ESA (Section 7) and this may require the private landowner seeking Federal funds or permits for an action on private lands to take additional steps to address possible effects to the pygmy-owl.

We have identified three zones (delineated on attached maps) based on the degree of potential risk for a private or Federal entity to “take” a pygmy-owl. All three zones contain suitable pygmy-owl habitat, and are delineated according to our knowledge of their locations. Zones 1 and 2 include areas that are within the current range of the pygmy-owl and Zone 3 is within the historic range of the species. Clearing or disturbance of vegetation affecting suitable pygmy-owl habitat in Zone 1 would generally have a high risk of taking a pygmy-owl, activities in Zone 2 would be at moderate risk, and activities in Zone 3 would be a lower risk. Maps showing these zones are available from your local planning and zoning department, FWS⁶, or AGFD⁷.

The following recommendations apply to all areas that meet the suitable habitat criteria regardless of whether the activity is occurring within, or outside of, the designated Critical Habitat boundary⁸ for the pygmy-owl.

To reflect the most current distribution of the species, the zone boundaries may change over time as new pygmy-owl location information is gathered. Zone boundaries will be adjusted no more than once during the calendar year to add newly documented locations or delete areas no longer suitable as habitat for pygmy-owls. If modification is necessary, the boundaries will be adjusted prior to the beginning of the January through June survey season.

⁶Arizona Ecological Services Office (Phoenix - 602/640-2720 or Tucson - 520/670-4860)

⁷AGFD, Region 5 - Tucson - 520/628-5376

⁸as published in the *Federal Register* on July 12, 1999 (64 FR 37419)

We recommend conducting surveys when private actions without a Federal nexus⁹ removes pygmy-owl habitat in Zones 1 and 2. In Zone 3, no surveys are recommended for strictly private actions. Unlike private landowners, Federal agencies have additional responsibilities under the ESA (Section 7) and we recommend they contact the FWS before undertaking any actions or issuing permits that might affect the pygmy-owl or its habitat in any zone, regardless of whether or not an owl is currently located in the area.

The current pygmy-owl survey protocol¹⁰ will remain in effect until a revised survey protocol¹¹ is made available by a notice in the *Federal Register*. Surveys conducted prior to the effective date of the revised protocol according to either the Corman (1993 and 1995) protocol or the proposed protocol as published in the August 13, 1998 *Federal Register* (63 FR 43362) may be counted as year one of the two-year survey recommendation, if surveys were conducted in consecutive breeding seasons.

ZONE 1 AREAS WITHIN THE CURRENT RANGE OF THE PYGMY-OWL WITH A HIGH POTENTIAL FOR OCCUPANCY

Currently, this zone is located within portions of Pima and southern Pinal Counties in southern Arizona, and encompasses all recent¹² pygmy-owl locations (see current maps available from FWS, AGFD, or local planning and zoning departments).

We recommend that all private landowners in this zone that are planning to remove any of the vegetation components of suitable habitat, choose one of the following three options to minimize the risk of taking a pygmy-owl and violating Section 9 of the ESA:

1. Coordinate with the FWS to develop your property in a manner that avoids any negative effects to the pygmy-owl¹³; or
2. Proceed as if pygmy-owls are present and develop a Habitat Conservation Plan (HCP) so your activity can proceed, with any modifications necessary to minimize and mitigate effects or taking of an owl. The FWS is responsible for approving these plans and

⁹any action or project occurring on Federal lands or other lands that involves Federal funds, actions, or authorizations.

¹⁰Corman 1993 and revised in 1995

¹¹Cactus ferruginous pygmy-owl survey protocol (AGFD and FWS 2000)

¹²since January 1, 1993

¹³such as development that avoids adverse impacts to suitable habitat and occurs outside of the breeding season

issuing an incidental take permit¹⁴ for proposed activities. Please contact the FWS for assistance if you are considering developing an HCP; or

3. Survey your property to determine if an owl is present (see guidance below):

If you choose to survey your property, we recommend three surveys be conducted each year, for two consecutive years before any vegetation suitable for pygmy-owls is disturbed (see revised survey protocol for proper timing and spacing).

Upon the adoption of a revised survey protocol, we recommend that all surveys be conducted between January 1 and June 30 in accordance with the timing and spacing guidelines described in the revised protocol and by a person with the necessary experience and surveyor permits from the FWS. Contact the FWS for a list of persons with these credentials. Survey results from the two consecutive year effort will be valid from the last survey of the second year of surveys through December 31 of that calendar year. This will provide a six to ten month window for vegetation clearing activities. If vegetation clearing is not completed in that time frame and suitable habitat is still present on January 1, we recommend that three additional surveys be completed during the following survey season (January through June) before further land clearing of suitable habitat occurs.

Annual surveys (three survey visits conducted during the breeding season) using the revised survey protocol would be recommended for each additional year beyond the initial two-year recommended protocol until land clearing is completed. If a pygmy-owl is located, contact the FWS immediately for guidance.

ZONE 2 AREAS WITHIN THE CURRENT RANGE OF THE PYGMY-OWL WITH A MODERATE POTENTIAL FOR OCCUPANCY

This zone includes the currently known range of the pygmy-owl within Pima and southern Pinal counties, excluding those areas designated as Zone 1 (see current maps available from FWS, AGFD, or local planning and zoning departments). We expect to have pygmy-owls from Zone 1 dispersing into suitable habitat in Zone 2 and a greater likelihood of documenting new pygmy-owl locations in Zone 2 than in Zone 3. We recommend that all private landowners in this zone that are planning to remove any of the vegetation components of suitable habitat choose one of the following three options to reduce the risk of taking a pygmy-owl and violating Section 9 of the ESA:

1. Coordinate with the FWS to develop your property in a manner that avoids any negative

¹⁴an exemption under Section 10(a)(1)(B) of the ESA to take a listed species that is incidental to the action, is legal, and does not result jeopardize the continued existence of the listed species

effects to the pygmy-owl; or

2. Survey your property to determine if an owl is present (see guidance below), or
3. Proceed as if pygmy-owls are present and develop a HCP so your activity can proceed, with any modifications necessary to minimize and mitigate effects or taking of an owl. The FWS is responsible for approving these plans and issuing an incidental take permit for proposed activities. Please contact the FWS for assistance if you are considering developing an HCP.

If you choose to survey your property for pygmy-owls, we recommend one of the two following survey options based upon the type of development proposed. If a pygmy-owl is located, contact the FWS immediately for guidance.

a) A single-family residence:

We recommend landowners building a single-family residence¹⁵ conduct surveys within a one-calendar year period. This recommendation is based on the low likelihood of take of a pygmy-owl in this zone from a small-scale action such as construction of a single-family residence. We recommend a one calendar year survey protocol consisting of three to five surveys, prior to land clearing activities. Three surveys are recommended between January 1 and June 30 and, if land clearing is not completed between the time the third spring survey is completed and September 14, two additional surveys are recommended between September 15 and October 31 (see revised survey protocol for specified timing and spacing). Spring surveys are conducted when breeding birds are thought to be most responsive, and the fall surveys could determine if dispersing birds have moved into the area. Limited AGFD data indicate that dispersing birds tend to establish new territories in the fall and remain there through the winter and into the following breeding season.

If land clearing is not completed between completion of the second fall survey and December 31, we recommend the one-year survey protocol be reinitiated if suitable habitat for pygmy-owls is still present and is proposed for removal or disturbance.

- b) All other developments such as multiple (two or more) residential developments, commercial developments, public works, etc.:

We recommend that the two-year survey protocol identified for Zone 1 be

¹⁵a single-family residence can include a guesthouse

completed for activities that remove or disturb suitable habitat. Survey results will be valid from the last survey during the second year of surveys until December 31 of that same calendar year. After January 1, we recommend additional surveys if suitable habitat for pygmy-owls is still present and is proposed for removal or disturbance.

ZONE 3 AREAS WITHIN THE HISTORIC RANGE OF THE PYGMY-OWL WITH A LOW POTENTIAL OF OCCUPANCY

This zone includes portions of Santa Cruz, Gila, Graham, Maricopa, Cochise, and Pinal counties in Arizona (see current maps available from FWS, AGFD, or local planning and zoning departments). This area is based on the historical distribution of this species and the presence of suitable habitat. We are not recommending pygmy-owl surveys for private actions on private land that have no Federal nexus in Zone 3. This recommendation is based on the low likelihood of take of a pygmy-owl in this zone. We recommend that governmental agencies¹⁶ take the lead in conducting surveys within suitable habitat in this zone to help determine if pygmy-owls are present.

For any land-clearing activities in Zone 3 affecting suitable pygmy-owl habitat, and involving private landowner actions that have a Federal nexus, consultation under Section 7 of the ESA may be required and the FWS may recommend that surveys be conducted.

If other activities¹⁷ with a Federal nexus are proposed in Zones 1, 2, or 3 that could affect the pygmy-owl but do not involve the clearing of land, please contact the FWS for specific survey protocol guidance.

NOTE: The FWS believes that following the above survey recommendations will greatly reduce the likelihood that your activity would result in take of the endangered cactus ferruginous pygmy-owl. However, no survey protocol is 100 percent effective and some risk remains that a pygmy-owl will be missed or will show up after surveys are completed. If a pygmy-owl is detected on your property at any time, even if you have conducted the surveys as recommended and the results were negative, you will need to contact the FWS immediately for assistance in helping you to comply with the ESA.

¹⁶Federal, State, county, or local municipalities and jurisdictions

¹⁷such as livestock grazing, blasting, recreation, ORV use, low-level flight, loud noises, etc.