

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition To Revise Critical Habitat for Perdido Key Beach Mouse**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month determination of how it intends to proceed on a petition to revise critical habitat for the Perdido Key beach mouse, pursuant to the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service has determined that the petitioned action is warranted but will be delayed until other higher priority actions to amend the lists of Endangered and Threatened Wildlife and Plants have been taken.

DATES: The finding announced in this notice was made on May 23, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Assistant Field Supervisor at the above address or telephone 904/232-2580.

SUPPLEMENTARY INFORMATION:**Background**

Section 4(b)(3)(D)(ii) of the Act and the Service's listing regulations (50 CFR 424.14(c)(3)) require the Service, after receiving a petition to revise critical habitat presenting substantial information indicating that the requested revision may be warranted, to determine how it intends to proceed with the requested revision within 12 months, and to promptly publish notice of such intention in the *Federal Register*.

The Perdido Key Beach mouse (*Peromyscus polionotus trissyllepsis*) is a small, grayish-brown mouse restricted to coastal dunes on Perdido Key in Baldwin County, Alabama and Escambia County, Florida. It was listed as an endangered species, pursuant to

the Endangered Species Act of 1973, as amended (Act), on June 6, 1985 (50 FR 23872), due to loss of coastal habitat from human development. One area in Alabama (the Perdido Key unit of Gulf State Park) and two areas in Florida were concurrently designated as critical habitat for the species.

On November 5, 1991, The Alabama Conservancy petitioned the Service to revise critical habitat for the Perdido Key beach mouse, through an emergency rule, to include lands north of Highway 182 at the northwestern end of Perdido Key, Baldwin County, Alabama. The petitioner maintained that this was necessary to prevent the permanent loss of crucial habitat for the species. The area in question includes both privately owned and State (Gulf State Park) 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 the Service pursuant to Section 7 of the Endangered Species Act, as evidence for this assertion.

Section 4(b)(3)(D)(i) of the Act, and the Service's listing regulations (50 CFR 424.14(c)(1)) require that with respect to petitions to revise critical habitat, the Service, to the maximum extent practicable, make a finding within 90 days as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Service's listing regulations (50 CFR 424.14(c)(2)(i)) further require that, in making a finding on a petition to add critical habitat, the Service shall 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.

After considering the petition and other available information, the Service found that the requested action to add lands north of Highway 182 and west of the Ono Island Bridge to critical habitat for the Perdido Key beach mouse may be warranted (57 FR 55219, November 24, 1992).

12-Month Determination of Intent

The information presented in the 90-day finding continues to be valid for the Service's 12-month finding. Despite the recent clearing of portions of the private lands in this area, there remains habitat north of Highway 182 that is occupied by beach mice and is also essential as a refugium from storms overwashing the designated critical habitat south of Highway 182. The Alabama Cooperative

Fish and Wildlife Research Unit (Dr. Nicholas Holler, pers. comm., December 15, 1992) found tracks throughout the area north of Highway 182 in 1988, and trapped two beach mice. On March 8, 1992, staff of the Service's Daphne, Alabama Field Office trapped beach mice on State lands north of Highway 182 and west of the Ono Island Bridge. Personnel of the Alabama Cooperative Fish and Wildlife Research Unit (Dr. Holler, pers. comm., December 15, 1992) also trapped Perdido Key beach mice on the State lands during the summer and fall of 1992, capturing 12 mice and 23 mice, respectively. Mice were captured up to the boundary of adjacent private land, and there was as good or better habitat on some of the private land as on State land, indicating that beach mice do occur on uncleared private land in the area. All available evidence indicates that the area north of Highway 182 supports a viable beach mouse population.

In a memorandum dated March 30, 1992, the supervisor of the Daphne Field Office reemphasized the importance of areas north of the highway as habitat for the Perdido Key beach mouse, indicating that both State lands and uncleared private lands north of Highway 182 supported sea oats (*Uniola paniculata*) a primary food source for beach mice, and that the habitat was similar in appearance to habitat already designated for the Perdido Key Beach mouse south of Highway 182. There remain approximately 151.5 acres of uncleared land north of Highway 182, 132.5 of which either support or are likely to support beach mice. The area petitioned to be added to already designated critical habitat contains physical and biological features essential to the conservation of the Perdido Key beach mouse, and that may require special management.

Based on the above information, the Service finds that the petition to add lands north of Highway 182 and west of the Ono Island Bridge is warranted but precluded by work on numerous candidate species with high listing priority. On September 21, 1983, the Service published its priority system for listing species under the Act (48 FR 43098-43105). The system considers three factors (magnitude of threat, immediacy of threat, and taxonomic distinctiveness) in assigning species numerical priorities on a scale of 1 to 12. Although the priority system does not address critical habitat, the Service believes that the priority of revising critical habitat for the Perdido Key beach mouse is lower than actions to list category 1 species (species for which the

Service has adequate information to proceed with listing) that are under a high magnitude of imminent threat.

The Service already reviews Federal actions that may affect the Perdido Key beach mouse through the jeopardy standard of Section 7 of the Endangered Species Act (see discussion of Section 7 below). Revising critical habitat would not appreciably increase this protection.

Section 4(b)(7) of the Act and the Service's listing regulations (50 CFR 424.20) provide for the issuance of emergency regulations, for no longer than 240 days, effective immediately upon publication in the **Federal Register**, to respond to any emergency posing a significant threat to the well-being of any species of fish and wildlife or plants. Although emergency action is not petitionable under Section 4(b)(3) of the Endangered Species Act, such action is subject to consideration under the Administrative Procedure Act. The Service finds that an emergency response to this petition is unjustified, for the following reasons. Section 7 of the Act applies only to Federal agency actions; only Federal agencies are required to insure that their actions are

not likely to jeopardize the continued existence of listed species or adversely modify critical habitat of such species. Therefore, inclusion of the State and private lands north of Highway 182 in designated critical habitat would not potentially affect use or development of these lands unless Federal permitting or funding were involved. If such agency involvement occurs, the Section 7 jeopardy standard still applies whether or not critical habitat is designated.

In the case of the Biological Opinion referenced in the petition, the Service made not only a jeopardy finding in an area outside of designated critical habitat, but found that the subject project would adversely modify nearby designated critical habitat. It is likely that similar projects in the area north of Highway 182 would also result in jeopardy/adverse modification Biological Opinions. Section 7 protection for habitat north of the designated critical habitat already exists, and there is no apparent regulatory benefit from revising critical habitat of the Perdido Key beach mouse on an emergency basis. Section 9 of the

Act currently also prohibits take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of Perdido Key beach mice, both within and outside designated critical habitat.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: May 27, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.
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