

SUPPLEMENTARY INFORMATION:**Background**

The Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) is a small, greyish-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 are 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.

The Biological Opinion in question addressed a consultation between the Service and the Mobile, Alabama, District Office of the U.S. Army Corps of Engineers (Corps), regarding a permit application to construct a bulkhead and piers east of Perdido pass and north of Highway 182 in Baldwin County, Alabama. Development plans also included a hotel, restaurant, lounge, and parking lot, totalling 8.3 acres. Section 7 of the Endangered Species Act requires Federal agencies to insure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any federally listed endangered or threatened species or adversely modify critical habitat of any such species. Corps permitting actions are a form of "authorization" and are therefore subject to section 7 of the Act.

The Corps' public notice (AL90-01551-N) stated that preliminary review indicated that the proposed activity would not affect federally listed species or their critical habitat, but noted that the project was in the vicinity of the Perdido Key beach mouse and that the Service would be consulted regarding potential adverse impacts. On December 11, 1990, the Service's Daphne, Alabama,

field office notified the Corps that the Perdido Key beach mouse would be affected by the proposed action and recommended that formal consultation pursuant to section 7 of the Act be initiated between the Service and the Corps. The Service also requested that additional information be provided on project impacts.

On December 14, 1990, the Service learned that some project activities were underway; on the same day the Corps requested that such activities cease until they had been addressed by the Corps and the Service. Several meetings and contacts took place among the parties. On February 14, 1991, the Corps requested formal section 7 consultation with the Service concerning the project, but did not provide additional impact information. On July 11, 1991, a biological consultant hired by the applicant advised the Corps that he had made detailed investigations of the applicant's property and several surrounding areas but found no evidence of beach mice on the applicant's property. He stated that the property was not prime habitat for beach mice and that they were not likely to be found there, but provided no details on how the area had been surveyed or trapped.

On July 24, 1991, the Service's Atlanta Regional Office issued a Biological Opinion that the proposed project would be likely to jeopardize the continued existence of the Perdido Key beach mouse and would also result in adverse modification of critical habitat for this species. The opinion was based on the following facts. The small remaining Perdido Key beach mouse population in this area is one of only two remaining populations of the subspecies. Even with no further loss of habitat, the population is already highly vulnerable to extinction. The proposed project would destroy habitat used by the Perdido Key beach mouse; and the indirect effects of human use, including the likely introduction of predators (house cats) and competitors (house mice) would adversely modify critical habitat. Development of this project would eliminate a primary refuge site for Perdido Key beach mice when storm waters overwash critical habitat to the south. The Biological Opinion provided no reasonable and prudent alternatives to allow the project to proceed without jeopardizing the Perdido Key beach mouse.

In a letter dated August 23, 1991, the applicant withdrew the Corps permit application. In a letter dated September 20, 1991, the applicant's attorney notified the Service and the Corps that the project would be started without

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Revise Critical Habitat for Perdido Key Beach Mouse**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to amend 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 may be warranted.

DATES: The finding announced in this notice was made in October 1992.

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: Mr. David J. Wesley, Field Supervisor at the above address or telephone 904/791-1580.

construction of the bulkhead and piers, and without a Corps permit. The property had apparently been cleared by November 1991.

90-Day Petition Finding

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 finds that the petition 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. Despite the recent clearing of portions of the private lands in this area, there remains habitat north of Highway 182 known to have been occupied by beach mice and essential as a refugium from storms overwashing the designated critical habitat south of Highway 182. Dr. Nicholas Holler of the Alabama Fish and Wildlife Research Unit, Auburn University, found tracks throughout the area in 1988, and trapped two beach mice. He believes that loss of this area would substantially increase the threat of extinction to the Florida Point population of the Perdido Key beach mouse (Dr. Nicholas Holler pers. comm.).

Further survey work was done on State lands north of Highway 182 on March 8 and 9, 1992, by biologists from the Service's Daphne, Alabama field office. Five Perdido Key beach mice were captured, confirming the presence of beach mice north of Highway 184. 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 critical habitat already designated for the Perdido Key beach

mouse south of Highway 184. There remain approximately 151.5 acres of uncleared land in the area in question, 132.5 of which either support or are likely to support beach mice. There are 12.8 acres of cleared private lands, which would probably return to natural vegetation if left undisturbed. The Service believes that 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.

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. In the present case, the Service finds that an emergency response to this petition is unjustified, for reasons presented below.

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 affect use or development of these lands unless Federal permitting or funding were involved. In such agency involvement occurs, the jeopardy standard still applies whether or not critical habitat is designated.

In the case of the Corps permit discussed above, the Service made not only a jeopardy finding in an area outside of designated critical habitat, but found that the 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. Therefore, 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.

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**. Accordingly, the Service will further evaluate the petition to revise the critical habitat of the Perdido Key beach mouse, make a final determination by November 4, 1992, and promptly publish the decision in the **Federal Register**.

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, and Transportation.

Dated: October 15, 1992.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service
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