

Pygmy Paper

A hushed endangered-species report puts the feds on the hot seat

By Tim Vanderpool

Pro-wildlife groups recently got their hands on an interesting document from the U.S. Fish and Wildlife Service. This tidy, forceful research paper by agency biologists argues that the ferruginous pygmy owl deserves continued protection as an endangered species.

Unfortunately, the paper was sequestered away until conservation groups finally received copies through back channels and the federal Freedom of Information Act. Either way, many observers expect the report to be fully ignored, since it's contrary to the Bush administration's drive to shrink the Endangered Species List.

The lesson here? Never let good science get in the way of pro-business politics.

The document, titled "White Paper: Significance of the Western Population(s) of the Cactus Ferruginous Pygmy-Owl" was issued in December 2003--mere months after a Federal Ninth District Circuit Court decision favoring SAHBA. In that ruling, judges described FWS' 1997 listing of the owl as "arbitrary and capricious." In other words, said the court, agency officials hadn't proven Arizona's version of the pygmy to be fully distinct from its cousin in other states and Mexico.

Agency biologists responded with the

"White Paper." Reportedly generated by FWS staffers in Tucson, it boosts arguments that Arizona's pygmy owl displayed sufficient "discreteness"--or was distinct enough--to deserve special protection. And though there's been talk of plumping Arizona's population with owls from Sonora, the paper notes that land clearing and invasive plant species are wreaking habitat upon their habitat in Mexico.

In addition, the paper notes that pygmy owls aren't protected by law in Mexico. (Indeed, a recent study by UA researchers Robert Steidl and Aaron Flesch found that male pygmy owl populations in Northern Sonora decreased to 28 in 2004, down from 55 only four years earlier.) "Based on this new information," says the paper, "the argument for discreteness based on differences in conservation status is stronger today than it was in 1997," when the bird was first listed as endangered.

No surprise, then, that federal officials didn't exactly trumpet this report.

"We knew the paper existed," says Jenny Neeley of the Defenders of Wildlife's Tucson office. "But we just couldn't seem to get our hands on it." That's until a FWS staffer mentioned it during court proceedings in January. Defenders filed a Freedom of Information Act request soon after.

Neeley says such shell games illustrate attempts by upper FWS managers to "ig-

nore the best available science" when making decisions. "They want to take the most narrow interpretations, even if they aren't supported by science."

She may be right. In December 2003--the very same month that their own field biologists issued the "White Paper"--FWS officials actually filed in court to remove the owl from the endangered species list, citing the earlier "arbitrary and capricious" ruling. The move came only six years after FWS itself had imposed the listing, during the Clinton administration.

U.S. District Judge Susan Bolton eventually refused the agency request, noting that pygmy owls in Arizona "might suffer irreparable harm" if left unprotected. Then in February, the U.S. Justice Department announced that it also was considering removing the owl from the list.

It seems the beleaguered pygmy owl just can't get a break. Nor can Fish and Wildlife field researchers, who increasingly see their work undone by political meddling. According to a November survey circulated among 1,400 agency biologists, ecologists and botanists, nearly half report having "been directed, for nonscientific reasons, to refrain from making ... findings that are protective of species." For every five agency scientists, at least one has been "directed to inappropriately exclude or alter technical in-

formation from a USFWS scientific document," the survey said.

The FWS' Region 2--which includes Southern Arizona--could be the poster boy for this assault on science. In a January memo, Regional Director Dale Hall directed his agency staff to limit the inclusion of the most recent research in decisions regarding endangered animals and plants. Instead, said Hall, only the research in place when the species was first listed can be used. This means that the new information contained in the pygmy owl "White paper"--no matter how valid--can't be used.

The director's stance fits well with a pattern firmly established under the Bush Administration, which has added an average of only 9.5 species per year to the list. That compares with 59 annually under the first President Bush, and 65 under President Clinton.

Meanwhile, during the past decade, pygmy owl populations on Tucson's northwest side have declined from 12 adult owls and a pair of fledglings in 1996 to only two adults and no nests in 2005.

But Hall has also has critics in high places. Among them is Ralph Morgenweck, his counterpart who oversees the Mountain-Prairie Region. Six weeks after Hall's memo, Morgenweck wrote a stinging rebuttal, saying that such a position "could run counter to the purpose of the Endangered Species Act," and "may contradict our direction to use the best available science in endangered species decisions in some cases."

Still, by squelching the "White Paper," Hall seems determined to de-list the wee pygmy owl. But Region 2 spokeswoman Elizabeth Slown says the "White Paper" was only kept under wraps because it was "pre-decisional--we still had to decide how we were going to answer the court. And actually, we still haven't (decided that)."

Slown also describes the white paper "as very good science." She's not certain, however, if the report will hold any heft when Dale Hall finally answers the court's "arbitrary and capricious" ruling--an answer that could come within months.

"The judge doesn't care if there is one pygmy owl or 500 in Arizona," she says. "That's not really the question. The question is that we didn't articulate well, at the beginning, (whether) the Arizona population is crucial to the survival of the entire ferruginous pygmy owl population." While the paper "shows that pygmy owls in Arizona are in very bad shape, it doesn't necessarily show that pygmy owls in the more temperate regions are in the same straits as they are in Arizona."

Well, actually it does. "The Arizona population represents a peripheral population," says the paper, "the loss of which could result in the reduction of genetic variability, which in turn would reduce the species ability to adapt to changing environmental conditions and increase the likelihood of extinction."

Still, even an owl de-listing won't end the battle, according to one local biologist.

"I suspect there would be a petition to sue from the Center for Biodiversity and Defenders of Wildlife to emergency list it," says Bruce Pavlick. He's natural resources division manager with The Harris Environmental Group, Inc., a Tucson-based natural and cultural resources consulting firm. Pavlick emphasizes that he's speaking only for himself, and not his for company. But he predicts the owl "would be emergency listed very quickly in that case. And then (Fish and Wildlife) will be able to use the data since 1997.

"That data strongly suggests that the population here in Arizona--if it can be shown as a distinct segment--is a lot worse off than we ever thought," he says.