

Code Billing Code 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Petition to List the Bald Eagle as a
Distinct Population Segment, List the Population as Endangered, and Designate Critical
Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day
finding on a petition to reclassify the bald eagle (Haliaeetus leucocephalus) as a distinct
population segment, list the population segment as endangered, and designate critical
habitat for the population segment under the Endangered Species Act of 1973, as
amended (Act). We find that the petition does not provide substantial scientific or
commercial information indicating that the petitioned action may be warranted.
Therefore, we will not be initiating a further status review in response to this petition.

SURNAME	
William	7/10/06
Acting ARD, S. Jacobson	
Arden	7.10.06
B. Tuggle	ARD MBSP - 7-14-06
6/2	Acting RD-R-2

MSH 8/9/06

ASFOP
Verley 8/9/06

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SURNAME	
5/10/06	7/10/06
Acting R.D.S.	Jacobson
7/10/06	7-10-06
Acting R.D.S.	Acting R.D.S.
6/2	8-18-06

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Petition to List the Bald Eagle as a Distinct Population Segment, List the Population as Endangered, and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the bald eagle (Haliaeetus leucocephalus) as a distinct population segment, list the population segment as endangered, and designate critical habitat for the population segment under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not provide substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we will not be initiating a further status review in response to this petition.

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PDM

FILE COPY SURNAME	DATE
SLW	7/26/06

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Petition to List the Sonoran Desert
 Population of the Bald Eagle as a Distinct Population Segment, List the Population as
 Endangered, and Designate Critical Habitat

Segment? That Distinct?

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day
 finding on a petition to reclassify the Sonoran Desert population of the bald eagle
 (Haliaeetus leucocephalus) in Arizona and New Mexico as a distinct population segment,
 list the ^{that distinct} population segment as endangered, and designate critical habitat for the ^{that}
 distinct population segment under the Endangered Species Act of 1973, as amended (Act). On
 the basis of a review of the information contained within the petition, we find the petition
 does not provide substantial scientific or commercial information indicating the

Isn't this a proper name?

[ATTORNEY-CLIENT PRIVILEGED COMMUNICATION]

SUMMARY RESULTS OF LEGAL REVIEW OF
DRAFT SECTION 4 (ESA) DOCUMENTS

DESCRIPTION OF DRAFT DOCUMENT : Sonoran bald eagle 90-day finding

REVIEWING OFFICE: Fish & Wildlife Branch, Division of Parks and Wildlife

DATE OF RECEIPT: August ⁴, 2006

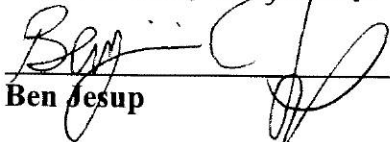
RESULTS OF LEGAL REVIEW:

 x The draft document is legally sufficient IF the following revisions are made.

1. The regulatory mechanisms section contrasts the difference between protection provided under the current 48-state listing and the petitioned endangered Sonoran listing. However, it does not acknowledge that the eagle has been proposed for delisting. Arguably, when determining whether a species should be listed as endangered, existing regulatory mechanisms should not be considered to include listing as threatened. In any case, given that delisting is already proposed, the finding should include an analysis of whether the petition included substantial information on this issue if no other listing were in place.
2. In numerous places, subconclusions on issues are framed in language that does not perfectly match the standard for a 90-day finding (*substantial information* that the petitioned action *may* be warranted) or of an endangered species. We have had courts invalidate determinations based upon the Service's failure to make the precise statutory finding required. Therefore, it is imperative to frame the conclusion in the exact statutory language (it can be so as applied to the eagle, but must use the exact key phrases word for word). I have noted many instances of this on the attached pages, but I may have missed some of the early ones, so do a thorough check.

See also largely non-substantive marginal comments. In addition, as Janet pointed out earlier, it may be helpful to add at least a little detail about the MBTA, Eagle Act, etc., in addition to cross-referencing the other recent FR documents, particularly if those protections in any way differ in application to this population of eagles because of there biology, numbers, regional environmental or threats, etc.

This summary is issued by:



Ben Jesup

Date: August 7, 2006

OK (with these comments)
B Roth
8/7/06

Note: Any Solicitor's Office "surname" attaches only to the draft that was submitted for review, unless subsequent amendments are specifically referred for follow-up review.

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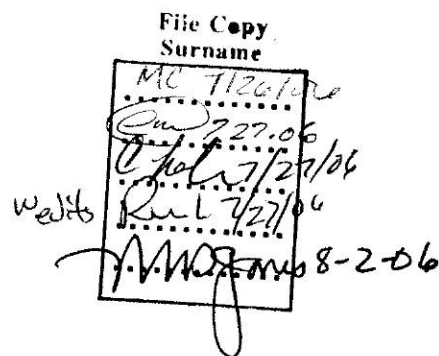
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Petition to List the Sonoran Desert Population of the Bald Eagle as a Distinct Population Segment, List that Distinct Population Segment as Endangered, and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the Sonoran Desert population of the bald eagle (Haliaeetus leucocephalus) in Arizona as a distinct population segment, list that distinct population segment as endangered, and designate critical habitat for that distinct population segment under the Endangered Species Act of 1973, as amended (Act). On the basis of a review of the information contained within the petition, we find that the petition does not provide substantial scientific or commercial information indicating that



Author

The primary authors of this notice are the staff of the Arizona Ecological Services Office (see ADDRESSES).

Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: 8/21/06

H. Dale Hall

H. Dale Hall

Director, Fish and Wildlife Service

~~[Endangered and Threatened Wildlife and Plants; Petition to List the Sonoran Desert Population of the Bald Eagle as a Distinct Population Segment, List that Distinct Population Segment as Endangered, and Designate Critical Habitat]~~