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Comments: Major concern is that the Agencies had in past introduced critical habitat restrictions without affording small entities notice and an opportunity to comment as required by the Administrative Procedure Act (APA) and the RFA. Court cases have held that the Service must undertake informal rulemaking to establish critical habitat before imposing survey and consultation requirements or use restrictions on land that is not occupied by endangered species. the APA and RFA require the Fish and Wildlife Service to afford the public an opportunity to review potential regulatory actions and provide meaningful comment. Performing an IRFA and FRFA requires the agency to consider whether regulation of small entities is needed to achieve the regulatory goals they have announced. Upon completion of a public comment period, and a public hearing in the case of critical habitat designations, the Fish and Wildlife Service must articulate clear legal, policy, and factual reasons for any decision to introduce regulatory burdens on small entities. Without conducting this analysis of regulatory burdens and less-burdensome alternatives, agencies risk over-regulating small entities, when their regulatory goals can usually be achieved without imposing excessive burdens on small entities. Office of Advocacy has publicly commented in past years that the agencies economic analyses appeared insufficient to serve as the factual basis for certifications of proposed rules. One example is the proposed designation of critical habitat for the pygmy owl published by the Service on November 27, 2002. It was learned that the Agency had not incorporated the concerns of small ranchers, miners, home builders, and others into its threshold analysis as to whether the rule would affect small businesses. Small cattle ranchers expressed concern that the proposed critical habitat designation would restrict their ability to protect themselves against wildfire risks through prescribed burns, install necessary watering facilities for cattle in dry conditions, rotate grazing sections, and increase the size of their herds to normal levels once the current major drought has lifted. The Fish and Wildlife Service did not address these concerns in its proposed rule or supporting economic analysis.