



September 19, 2018

Public Comments Processing

Attn: FWS-HQ-ES-2018-0006

FWS-HQ-ES-2018-0007

FWS-HQ-ES-2018-0009

U.S. Fish & Wildlife Service, MS: BPHC

5275 Leesburg Pike, Falls Church, VA 22041-3803

Dear Sir/Madam:

The National Association of State Foresters (NASF) is pleased to provide comments on the three above referenced proposed rule changes under the Endangered Species Act (ESA). NASF is comprised of the heads of the forestry agencies for all fifty states, the US territories and the District of Columbia. We provide protection for and promote the proper management of state-owned, locally-owned and privately-owned forest land. We frequently collaborate in the management and protection of federally-owned lands as well.

Forests provide habitat for a host of rare, threatened or endangered species of plants and animals. They also serve to ensure important water quality and quantity requirements for aquatic species. That being the case, NASF has a significant interest in seeing that the ESA is implemented in a way that efficiently and effectively protects species of concern. Attached is an NASF position statement entitled *Improving the Effectiveness of the Endangered Species Act* that was adopted by the membership in 2015. We note below that these proposed rule changes align well with some of the recommendations included in our position statement.

1) “Revisions of the Regulations for Listing Species” Docket Number FWS-HQ-ES-2018-0006

The Listing Process and Designation of Critical Habitat are two areas where our position statement spells out specific recommendations. As such, NASF supports the Services’ proposed rule changes that would:

- Allow for economic consequences to be publicly communicated as part of listing decisions while acknowledging that the decisions must still only be based on best available science as to status of the species
- Clarify that the determination as to whether a species is threatened, endangered, or neither threatened nor endangered, should use the same standard for both listing or delisting considerations.



- Require that the term “foreseeable future” (e.g.....likely to become endangered in the foreseeable future) be described case-by-case using the best available data and taking into account relevant environmental variability, such as oceanographic cycles (particularly important for anadromous fisheries listings)
- Add to the list of circumstances where it would not be prudent to declare an area critical habitat. Amendments made to the same regulations in 2016¹ acknowledged situations like white-nose syndrome where species decline doesn’t really have a significant habitat cause. This proposal adds other situations which are beyond reasonable control and for which critical habitat designation would have no practical benefit for species conservation.
- Tighten criteria for when “Unoccupied Areas” can be designated critical habitat, specifically only
 - o Where occupied areas are inadequate, or
 - o Where occupied areas would result in less efficient species conservation

**2) “Revisions of the Regulations for Prohibitions to Threatened Wildlife and Plants”
Docket Number FWS-HQ-ES-2018-0007**

We support the proposed change in rule that would provide that threatened species are no longer extended the same prohibitions as endangered species from a regulatory standpoint in the absence of a species-specific 4(d) rule. Finalizing species specific 4(d) rules concurrent with final listings will also be helpful as 4(d) rules for a given species can be designed to use existing state level conservation systems and state developed protocols such as each state’s published “Best Management Practices” for water quality protection.

3) “Revisions of Regulations for Interagency Cooperation” Docket Number FWS-HQ-ES-2018-0009

Changes to the Section 7 consultation process is another area where our members have made recommendations. We believe proposed rule changes that simplify, streamline and shorten the timeframe of consultation activities would be welcome modifications and we support:

- Changing wording around the definition of “Destruction or Adverse Modification” of critical habitat to indicate that this impact should be assessed at an appropriately larger scale versus at a smaller (i.e. project) scale.
- Codifying the concept of Programmatic Consultations that address an agency’s multiple actions on a program-wide or regional basis.

¹ 81 FR 7413, 02/11/2016, *Listing Endangered and Threatened Species and Designating Critical Habitat; Implementing Changes to the Regulations for Designating Critical Habitat*



- Precluding the use of consultation where the proposed action:
 - o Will not affect listed species or critical habitat; or
 - o Involves species where effects are primarily manifested through global processes; and
 - Cannot be reliably predicted or measured at the scale of a listed species' current range, or
 - Would result at most in an extremely small and insignificant impact on a listed species or critical habitat, or
 - Are such that the potential risk of harm to a listed species or critical habitat is remote, or
 - Result in effects to listed species or critical habitat that are either wholly beneficial or are not capable of being measured or detected in a manner that permits meaningful evaluation.
- Clarifying that the duty to reinitiate consultation does not apply to an existing programmatic land management plan prepared pursuant to the Federal Land Policy Management Act (FLPMA), or the National Forest Management Act (NFMA), when a new species is listed or new critical habitat is designated.

In summary NASF supports the proposed rule changes described above, and believes they will lead to effective implementation of the Endangered Species Act. We look forward to the adoption of this package of proposed rules and are available to provide information as needed and consult on impacts of the rules to the state forestry agencies.

Sincerely,

George Geissler
NASF President
State Forester of Washington

Attachment: 2015-02-NASF-ESA-Policy-Statement