



Public Comments Processing  
 Attn: FWS-HQ-ES-2020-0047  
 U.S. Fish & Wildlife Service  
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 5275 Leesburg Pike  
 Falls Church, VA 22041-3803

**Docket No: FWS-HQ-ES-2020-0047**

**Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat**

The National Association of State Foresters (NASF) is pleased to provide comments on the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the agencies) Proposed Rule to define “habitat” in the agencies regulations for implementing section 4 of the Endangered Species Act (ESA) of 1973.

NASF is composed of the directors of forestry agencies in the states, U.S. territories, and District of Columbia. Our members manage and protect state and private forests, which encompass nearly two-thirds of the nation's forests, as well as partner with federal agencies through authorities like Good Neighbor Authority in managing and protecting the nation’s federal forests, and supports the goal of protecting threatened and endangered species. In many cases, the ecosystems involved in implementing the ESA are forested landscapes. ESA implementation plays a substantial role in how many forests are protected and managed in the United States. Therefore, NASF has a substantial interest in the law’s provisions and how they are implemented.

NASF supports the first sentence in the agencies proposed definition of habitat: *“The physical places that individuals of a species depend upon to carry out one or more life processes.”* Using the wording, “depend upon” narrows the definition over “use”, which we believe is more consistent with the purpose of the ESA and the concept of “critical habitat.” If a species simply uses habitat, but does not necessarily depend upon it, it would be hard to argue in support of designating “critical habitat”.

Additionally, NASF supports the language in the second sentence of the alternative proposed definition: *“Habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist.”* Recovery and conservation of a species would logically lead to an

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expansion of that population and a need for more habitable space, thus making it appropriate to define “habitat” as including currently unoccupied areas. However, NASF believes it would be inappropriate for federal agencies to designate uninhabited areas as “habitat” or “critical habitat” which would have to be substantially modified or altered from their current condition in order to meet the habitat needs of a species.

NASF supports incorporating aspects of the proposed definition as well as the alternative definition of habitat, as the agencies formulate the Final Rule to define “habitat”. Accordingly, we recommend defining “habitat” in the agencies regulations for implementing section 4 of the ESA as follows:

*“The physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist.”*

NASF appreciates the agencies efforts to define “habitat” under the regulations for implementing the ESA. Providing a standard definition for “habitat” under ESA would provide private landowners—and all other land managers—with a clearer understanding of how the law is implemented. Thank you for the opportunity to provide feedback and for your consideration of our comments.

Sincerely,



Greg Josten  
NASF President  
South Dakota State Forester