



THE WILDLIFE SOCIETY

Leaders in Wildlife Science, Management and Conservation

10 December 2021

Public Comments Processing
Attention: FWS-HQ-ES-2019-0115
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041– 3803

RE: Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat [Docket No. FWS-HQ-ES-2019-0115]

Dear U.S. Fish and Wildlife Service,

The Wildlife Society appreciates the U.S. Fish and Wildlife Service's proposal to rescind the final rule entitled "Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat," which was published on December 18, 2020, and became effective on January 19, 2021.

Founded in 1937, The Wildlife Society and our network of affiliated chapters and sections represent over 15,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitat through science-based management and conservation.

One of the stated purposes of the Endangered Species Act is to provide a means "whereby the ecosystems upon which [listed species] depend may be conserved" (16 U.S.C. 1531(b)). Critical habitat designations for these listed species are a central component of the ESA's ability to conserve the ecosystem.

The Secretary of the Interior has the ability to exclude areas from critical habitat designation when the benefits of exclusion (economic, national security, or other impacts) outweigh the benefits of inclusion (conservation of the species), unless excluding the area will result in the extinction of the species. Exclusions have the potential to dramatically impact a species' survival and recovery, and therefore warrant judiciousness in their use.

We thank you for your proposal to rescind the recent modifications to the implementation of the critical habitat exclusion analysis process under the ESA. **We agree that the Final Rule published in January unduly constrains the Service's discretion in administering the Act, potentially limiting or undermining the Service's role as the expert agency, as well as its ability to further the conservation of endangered and threatened species through designation of critical habitat.**

During the comment period in late 2020, The Wildlife Society submitted comments citing several concerns about the rule, including (1) the undue influence that the changes would give to third-party stakeholders and the information that they submit, (2) the rule's exclusion of the National Marine Fisheries Service without any explanation or justification, and (3) the lack of sufficient agency resources to implement the changes.

We agree with your assessment that the Final Rule is problematic because it gives outside parties undue weight in guiding the Secretary's statutory authority to exclude areas from critical habitat designations. In our comments, The Wildlife Society noted that outside third parties with varying degrees of financial or other interest in an area, including an area of federally-managed land, could use the Final Rule to slow down the designation process.

Further, because the Final Rule allows the agency to consider new critical habitat exclusion proposals following the public comment period on a proposed designation of critical habitat, the public may not have the opportunity to comment on information brought forward by a third party.

We also agree that the Final Rule does not accomplish the goal of providing clarity and transparency, especially given that it would result in the Service using different processes and standards than those applied under the ESA by the National Marine Fisheries Service. Consistency among the two federal agencies charged with enforcing this key conservation law is vital, and any instance in which different processes are used or standards applied should be sufficiently justified. The 2020 proposal failed to provide any such justification.

We renew here our concern regarding the agency's resources for critical habitat analysis. The Final Rule would have placed a significant burden on the already resource-limited USFWS Ecological Services program with mandated engagement on third party information received. As the agency notes, any resources expended on undertaking, and then potentially defending, unnecessary exclusion analyses for one species would reduce the Service's capacity to make listing and critical habitat decisions to protect other species.

Returning to the previous regulation will lessen these concerns, although we note that the process remains back-logged and in need of additional support. **We encourage the administration to consider the funding necessary for the Ecological Services program to identify species facing extinction, reduce threats to their populations, and return species back to the public trust responsibilities of states and tribes.**

During future implementation of the exclusion analysis process, **we also urge the Administration to work closely with state and tribal natural resource agencies to determine the best available information on a targeted habitat.** State and tribal agency professionals can provide vital on-the-ground input as to the viability of a targeted habitat, and can more effectively work towards buy-in with locally based stakeholders.

Thank you for the opportunity to provide these comments. The Wildlife Society commends the Service for reconsidering the changes to critical habitat designation and proposing the rescission of the critical habitat Final Rule issued earlier this year. Please contact Caroline Murphy, AWB®, government relations manager at The Wildlife Society (cmurphy@wildlife.org; 301-968-1903), with any questions regarding the comments outlined above.

Sincerely,



Gordon R. Batcheller, CWB®
President, The Wildlife Society