

September 4, 2008

Public Comments Processing
Attn: FWS-R9-ES-2008-0063
Division of Policy and Directives Management Services
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Re: Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants

CC: Secretary Kempthorne, Secretary Gutierrez, Mr. Lyle Laverty, Mr. James Lecky, Chairwomen Boxer and Feinstein, Chairmen Rahall and Dicks

Dear Sir or Madam:

On behalf of the undersigned organizations and the millions of members we represent, we are writing to oppose the proposed rule Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants. The stated purpose of the proposed rule is to enhance the clarity of the lists of endangered and threatened species, not to make any changes in listing standards or any species listings. However, the proposed rule actually would effectuate significant and substantive changes to the long-settled understanding of how the Endangered Species Act applies to species that have been designated as “endangered” or “threatened.”

Do not weaken the Endangered Species Act

The Endangered Species Act is the safety net for our nation’s wildlife, fish and plants on the brink of extinction. It has been successful in protecting hundreds of endangered species, including the bald eagle, grizzly bear and pacific salmon. These regulations may dramatically limit the habitat protection for endangered species.

Ensure habitat protection for endangered species

Scientists tell us that one of the best ways to protect endangered species is to protect the habitat where they live. The proposed rule changes the formatting of the lists of threatened and endangered species and narrowly defines “the geographic area where the species is listed for purposes of the Act.” This deceptively simple change could be interpreted to limit the area that endangered species will be protected only to their current range, which is usually drastically smaller than their historic range. By limiting protection to only currently occupied habitat, the proposed rule would very seriously hamper Congress’ statutory requirement, to provide adequate protection and recovery of our nation’s endangered species.

Rather than just affecting formatting, the proposed rule also changes the explanation of the “historic range” column entries in the lists of threatened and endangered wildlife and plants to undo the long-standing practice of treating all members of any species,

subspecies or population on those lists as subject to the prohibitions of the Act. Instead, the proposed regulations would treat only those members of the taxon within the geographic area described in the new “where listed” column of the lists as subject to the prohibitions of the Act. These changes could result in an enormous cut in the amount of protection imperiled species receive because these species would be covered by the Endangered Species Act only within those habitat areas that both are large enough to be deemed a significant portion of the species’ range and where the species are determined to be either threatened or endangered within that portion.

Solicitor’s Opinion inconsistent with Endangered Species Act

The proposed format revisions could be interpreted as an effort to codify the legal conclusions of a Solicitor’s Opinion dated March 16, 2007, which argues that the Fish and Wildlife Service must only consider and protect the current range of endangered species. That opinion also reversed more than thirty years of Endangered Species Act implementation and understanding, without any opportunity for public input, by finding that any entity eligible for listing under the Endangered Species Act (i.e., a species, subspecies, or vertebrate “distinct population segment”) is to be given the protection of the Act in only some of the places it occurs. For nearly 35 years prior to the Solicitor’s opinion, any entity that met the Endangered Species Act’s definition of an “endangered species” or a “threatened species” received the Act’s protection wherever it occurred. Limiting protection of endangered species to a species current range or to only some of the places in which they occur would put tremendous obstacles in the way of their recovery — and in some cases would prevent recovery altogether. If the proposed amendment is trying to codify the Solicitor’s position, it is doing so surreptitiously. The proposal never mentions the Solicitor’s opinion, the controversy surrounding it, or any intention to codify it.

Allow for Adequate Public and Congressional Input

These proposed regulations were released with an inadequate 30-day public comment period. The abbreviated timeline and restrictive commenting options raise serious concerns that the Department of the Interior is attempting to rewrite a bedrock environmental statute without allowing for adequate public involvement, particularly given the proposed rule’s failure to address its regulatory impact. We urge you to provide such an explanation and extend the comment period to one hundred and twenty days, allowing the public adequate time to review this proposal. We request you make it easier to submit comments by allowing for e-mail and fax submissions.

We urge you to withdraw this proposed rule or re-propose it to avoid weakening protections for our nation’s endangered species and their habitat. This letter will be supplemented by additional comments from several of the undersigned organizations on this proposed rule that will address our concerns in further detail. Thank you for your consideration of these comments.

Sincerely,

Endangered Species Coalition
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Washington, DC

Union of Concerned Scientists
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