

OCEAN CONSERVATION RESEARCH



Science and technology serving the sea

October 8, 2020

U.S. Fish and Wildlife Service,
Department of the Interior,
Washington, DC 20240

Re: FWS-HQ-ES-2019-0115 proposed revisions to critical habitat designations under the Endangered Species Act.

To whom it may concern,

We will be including our comments specifically about the proposed revisions to the process for excluding areas of critical habitat under section 4(b)(2) of the Endangered Species Act (ESA), but I would first like to provide two procedural points:

I have been providing public comments to proposed actions under the National Environmental Act (NEPA) for 20 years. I still have one of the first Environmental Impact Statements (EIS) I worked on.¹

This document was in two volumes, the first volume was the EIS, the second volume was a compendium of all public comments. Each was ~1000 pages, printed in paper, which was easy to work with. My Volume 1 (the EIS) is dog-eared and page-split, with "sticky notes," marked up, and highlighted paragraphs and pages.

It was soon thereafter that the release of EISs for public comment migrated over to PDF format. This was a wise move for the sake of resource conservation, and labor of the Government Printing Office. The PDF's could be marked up, and commented on in the margins, and highlighted - in preparation for giving a through and informed critique.

But at some point in the last number of years, the PDFs of the proposed actions have been "locked" for security reasons. This is extremely annoying, because we need to transfer text we are interested in to an unlocked document - losing context to the pagination of the original document, as well as the links to the originating or reference documents.

I see absolutely no purpose to this convention other than to interfere with easily working with the documents. Please release public review PDFs in unlocked format.

¹ Department of the Navy, Chief of Naval Operations, January 2001 "Final Overseas Environmental Impact Statement and Environmental Impact Statement for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar."

Secondly, the proposed revisions are discussed at length in the document in the Federal Register² but try as I might, I was not able to find the actual document with the proposed wording. Not knowing the actual proposed wording limits the focus of my comments, in fact, the FWS only providing the description of the comments seems to serve as a subterfuge. Given the clear hostility that this administration has to conservation of wildlife and its necessary habitat, this annoyance is not surprising.

On August 5, 2020, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) proposed two definitions of the word “habitat.” Both of these proposed definitions limited the agency’s ability to designate and regulate habitats for the purpose of restoration, or the need for buffer or expansion of habitats to accommodate habitat displacement or compromise due to climate change or other. We provided comments on these proposed revisions, which I have amended to this document.

On September 4, 2020, the FWS issued the proposed revisions to Section 4(b)(2) of the Endangered Species Act, expanding the FWS Secretary’s ability to exclude “Critical Habitat” under quite a number of paragraphs. Repeating, again, that I was not able to find the actual text of the proposed revisions, in the discussion in the Federal Register, each one of these proposed revisions inures to the Secretary’s discretion to exclude, rather than to include designations of “critical habitat.”

The Endangered Species Act already gives the Secretary broad discretion to both exclude and include Critical Habitat designations in consideration of actions on Federal Land. This has served the purpose of the Endangered Species Act (ESA) well, given that 99% of listed species under the ESA are surviving, and in many cases – such as the Bald Eagle, our National Bird, have recovered over much of their ranges.

So it is clear that the ESA, and the regulatory tools used to bring threatened and endangered plants and animals back from imminent extinction are working.

But we are now facing a broader threat; due to human-caused climate disruption, our entire planet is rolling into the sixth mass extinction. This is not due to individual threatened animals losing habitat, this is due to a systems collapse that has been brought about by the same sort of thinking that is driving the proposed revisions to the designation of Critical Habitat.

And what characterizes this thinking? Throughout the discussion of the proposed expansion of the discretion the Secretary would have to exclude critical habitat, the phrase “[if] the benefits of exclusion outweigh the benefits of inclusion” shows up often.

² “Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act” 81 FR pages 7226-7248; 50 CFR 424

But benefits of inclusion cannot be weighed against “benefits of exclusion” because the benefits of exclusion would include – in fact will likely be weighed predominantly in economic terms, and benefits of inclusion would rarely have a clear economic basis – unless the endangered species and the critical habitat contributes to the touristic or recreational value of the habitat – which infers an economic value for the habitat being disrupted by human activities.

This is simply a false economy. It implies that all habitats, and the species that dwell in them only have a measurable economic value. And leaving “cost/benefits analysis” in this false economy up to the sorts of scoundrels that the current administration has enlisted to run the agencies is a recipe for the failure of the ESA.

And in these unstable times, where entire ecosystems are collapsing, it is not just the “listed” species that are at risk, it is all of us on the planet.

The Act that the FWS is proposing to revise is named "The Endangered Species Act" for a reason, it is not named "The Imperiled Corporations Act." Performing a "cost benefits analysis” that has money on one side of the scale, and an endangered species on the other side is a completely synthesized metric which has no place in our efforts to maintain a healthy, livable planet.

We implore you not to revise the definition of “critical habitat” under to tainted value system of monetary economics.

Sincerely,

A handwritten signature in black ink that reads "Michael Stocker". The signature is written in a cursive, flowing style.

Michael Stocker,
Director

