

# OCEAN CONSERVATION RESEARCH



*Science and technology serving the sea*

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Gary Frazer  
Assistant Director for Endangered Species  
Ecological Services Program  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
Falls Church, VA 22041

Samuel D. Rauch, III  
Deputy Assistant Administrator for Regulatory Programs  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Comments on “Proposed Revisions to Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat.” Doc. FWS-HQ-ES-2020-0047

To Whom it may concern;

I have combed through the proposed changes a few times to tease out the incentive and need for the change on the term “habitat.” It would be nice to know what specific situations or conditions are driving this proposed change. But given this administration’s disdain for wildlife conservation and environmental protections, I can only assume that the purpose of the proposed changes is to create favorable conditions for industry to occupy natural habitats.

Bearing in mind that the Endangered Species Act (ESA) has proven quite successful, my recommendation is that the Act remain unaltered. This success has hinged on a simple remit: “The ultimate goal of the Endangered Species Act is the conservation of the ecosystem on which all species, whether endangered or not, depend for survival.”<sup>1</sup> Complicating this goal with contorted definitions of fundamental terms strays from this remit.

But taking matters in hand; a pretty thorough definition of “habitat” can be found in Ryan 2019 “A habitat is an ecological or environmental area that is inhabited by a particular species of animal, plant, or other type of organism. The term typically refers to the zone

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<sup>1</sup> H.R. REP. No. 95-1625, at 16 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9466

in which the organism lives *and where it can find food, shelter, protection, and mates for reproduction.*"<sup>2</sup> (Italics mine).

This definition does state that habitat is “where an organism lives,” but does not make any distinction about habitability, or exclusions of habitats where an organism does not live, but could, if there were habitat features that would provide food, shelter, protection, and mates for reproduction.

But the proposed change to include the clause “only where the necessary attributes to support the species presently exist” would suggest that “habitat” would not include areas where habitat restoration for conservation purposes has, or could occur. This would hobble a very useful tool in wildlife conservation – the conservation easement.

There are abundant cases where stressed or compromised habitat has been restored or altered in a manner that would provide critical habitat for endangered species, and where the species has recovered well. These easements can also be used as a tool to compensate for habitat sacrificed to human enterprise – such as roads or other infrastructure projects. So the clause containing the term “presently exist” is harmful, not helpful for the intended purpose of the ESA.

Regarding the distinction between the use of the phrase “depend on,” or “use;” I believe a more useful phrase would be “can dwell,” so that the sentence would read “The physical places that individuals of a species can dwell to carry out one or more life processes.” This would open up the subject habitat to the possibility of restoration, or to natural migrations of the endangered species in response to changing habitats due to climate change, or other natural or anthropogenic causes.

So my first suggestion is to not change the Endangered Species Act because it has proven quite successful. But should a more concise definition for “habitat” be required, I suggest that Ryan’s definition be used, and any exclusions predicated on time, circumstance, and geography be excluded from the definition.

Sincerely,



Michael Stocker  
Director,  
Ocean Conservation Research

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<sup>2</sup> Thomas, Ryan (2019). "Fundamental of Ecology". [Marine Biology: An Ecological Approach](#) (reprint ed.). Waltham Abbey, Essex: Scientific e-Resources (published 2020). p. 86