



Nevada Association of Counties

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Public Comments Processing

Attn: FWS-R1-ES-2018-0033

Division of Policy, Performance and Management Programs

US Fish and Wildlife Service, MS; BPHC

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Falls Church, VA 22041-3803

Via eRulemaking Portal: www.regulations.gov [Docket No. FWS-R1-ES-2018-0033]

David M. Roemer, Deputy Superintendent

Redwood National Park

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Crescent City, CA 95531

RE: Nevada Association of Counties (NACO) Comments to the Fish and Wildlife Service's Proposed Rule for Establishment of a Nonessential Experimental Population of the California Condor in the Pacific Northwest [Docket No. FWS-R1-ES-2018-0033] and Northern California Condor Restoration Program Environmental Assessment

To Whom it May Concern:

As the state association for all 17 of Nevada's counties, the Nevada Association of Counties (NACO) greatly appreciates the opportunity to provide comment on the US Fish and Wildlife Service's Proposed Rule for establishment of a nonessential experimental population of the California Condor in the Pacific Northwest [Docket No. FWS-R1-ES-2018-0033]. These comments also pertain to the Northern California Condor Restoration Program Environmental Assessment, and as such a copy has been provided to Redwood National Park. The proposed Nonessential Experimental Population (NEP) designation has the potential to affect three of NACO's associated counties in northwestern Nevada: Washoe, Pershing and Humboldt.

The above-listed counties provide critical administrative and emergency functions for their respective communities. These counties also rely on socioeconomic drivers provided by both private and public lands within the NEP Area. As such, NACO requests that any consideration of the proposed rule accounts for the need to continue delivery of these essential services and potential impacts to the socioeconomics of the affected counties.

In general, NACO appreciates the intent of the Proposed Rule to establish a NEP in Northern California but has remaining questions and concerns with the Proposed Rule and plan at this time.

NACO favors the approach a NEP designation under section 10(j) of the Endangered Species Act of 1973, as amended [Action Alternative 1 in the Northern California Condor Restoration Program Environmental Assessment (EA)] over a simple reintroduction with condors in the population treated as endangered species for the purposes of section 7 of the ESA [Action Alternative 2 in the EA]. NACO would like to better understand the differences between these two approaches as well as the disposition of condors that may move out of the designated NEP Area. To this end, NACO would be happy to facilitate a meeting between the US Fish and Wildlife Service and the affected Nevada counties.

NACO also has concerns with the general lack of Nevada specific information in both the Proposed Rule and EA. These concerns will be further enumerated below, but of primary concern is the potential impact to critical county services including administrative and emergency functions as well as socioeconomic impacts due to restrictions placed on key economic sectors. The proposed 10(j) rule discusses that current land uses such as grazing and use of existing roads / trails would not be considered a significant visual or noise disturbance; however, the rule is silent on other critical activities (county administrative and emergency functions, mining, agriculture, etc.). Subsequently, NACO is concerned with the potential socioeconomic impact to the three effected Nevada counties. The Proposed Rule states that *small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county or other municipality* [Page 13599, Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)]. However, if County administrative functions or socioeconomics are negatively affected this statement is invalid. Upon review of the EA, there is currently no socioeconomic analysis or data for Nevada. NACO views this as a major deficiency in both the EA and the Proposed Rule and is willing to assist with providing pertinent information and background for appropriate analysis.

The Proposed Rule requested specific comments regarding the following areas:

The proposed geographic boundary of the NEP:

- Per "Figure 2: Project Area," in the EA, there is no "modeled condor habitat (feeding or nesting)" in Nevada. Please clarify if this is due to a lack of suitable habitat or if the model was not run for the Nevada portion of the proposed NEP Area.
- Page 13590, "Historical Range" section discusses historical observations and indicates that around the time of *Euro-American colonization... condors ...were apparently restricted to the area west of the Rocky Mountains and were infrequently encountered east of the Cascade or Sierra Nevada mountain ranges*. This is likely due to a lack of foraging resource as most of Nevada tends not to be a highly productive ecosystem given its desert environment. At present, most forage in Nevada would be concentrated around areas of potential conflict: farms and ranches, along roadways, hunter harvest, etc.
- Given the above, NACO would question the viability of establishing permanent populations of birds in the Nevada portion of the NEP Area but understands the area could facilitate transitory birds on occasion. NACO requests additional detail be provided regarding how unoccupied habitat within the Nevada portion of the NEP Area would be treated under the 10(j) proposal (would restrictions be applied in the absence of birds being present, and consultation required) versus if transitory birds are found versus if a breeding pair becomes established. NACO would suggest no restrictions being placed on current activities until and unless a breed pair becomes established.

Information pertaining to the California condor as it relates to the proposed reintroduction effort:



- Given the above information about historic populations, and the lack of modeled habitat in Nevada, and the background in the Proposed Rule regarding current wild and captive populations, NACO supports a population designation as a nonessential, experimental under Section 10(j) rather than the new population being treated as an endangered population under Section 7.

- NACO is still seeking clarification (see above section) on details of the 10(j) designation, and associated stipulations, for the NEP Area within Nevada. Without those clarifications, NACO cannot support inclusion of this area at this time based on the potential of an individual traveling into the area within the next 20 years. NACO supports the protections offered by the 10(j) designation as it relates to accidental take but is not clear on the potential impacts to land use and socioeconomics based on the 'limited' regulations that accompany such a designation.

- For the reasons enumerated above, primarily limited available habitat and limited historic distributions of condors in Nevada, NACO supports NOT designating critical habitat within Nevada and does NOT support reintroduction sites located within Nevada.

Effects of the proposed reintroduction on other native species and the ecosystem:

- The proposed NEP Area overlaps with Greater Sage-grouse habitat in northeast California and northwestern Nevada, yet NACO did not see an analysis of this species in the Proposed Rule or the EA. This deficiency should be resolved.

The adequacy of the proposed regulations for the NEP:

- At present, there is no information regarding how condors that leave the designated NEP Area will be handled. Would those condors be considered "endangered" and left to their own fate? Would they be captured and returned to the NEP Area? Please provide clarification as to how this scenario would be managed.

- Page 13589, paragraph 1, of the Proposed Rule states that *under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules (emphasis added)*. Based on this requirement, NACO would ask that the Fish and Wildlife Service consult with NACO and the affected Nevada counties (Humboldt, Pershing and Washoe) before the rule is finalized.

- Per Page 13589, paragraph 4, of the Proposed Rule, it appears that the 10(j) stipulations would NOT apply to condors within the Sheldon National Wildlife Refuge, which is a concern to NACO as well as Humboldt and Washoe Counties where the Refuge is located. Please clarify and clearly articulate how condors in the Sheldon NWR would be managed under the ESA.

- Page 13595, paragraph 10, describes a Memorandum of Understanding between 16 parties; however, the list of parties does not appear to represent any Nevada entities. This speaks to the need for additional consultation prior to finalization of the rule.

- Page 13595, last paragraph, states that *we will not request further regulation of lead ammunition for this proposed experimental population*. NACO supports this approach as hunting and associated recreational use is an important socioeconomic driver in the Nevada portion of the NEP Area.

- Page 13596, paragraph 11, of the Proposed Rule states that *If we adopt the 10(j) rule as proposed, most incidental take of California condors within the experimental population are would be allowed, provided that the take is unintentional and not due to negligent conduct*. NACO supports the allowance for incidental take but would like to see more detail on what sorts of



take are classified under “most” and also what sorts of actions would be determined to be “negligent”.

- Page 13599, paragraph 2, (1) states that *this rule would not “significantly or uniquely” affect small governments*. However, NACO has not seen any analysis or exceptions made for County administrative and emergency functions. Critical administrative functions include but are not limited to: operation and maintenance of infrastructure such as communications sites, roads, gravel pits, and drinking/storm/wastewater system. Critical emergency functions include but are not limited to: wildland fire fighting, law enforcement, search and rescue, flood management, and emergency repair of infrastructure. Further, NACO has not seen any economic analysis in either the Proposed Rule or EA that discuss potential economic impacts in Nevada. If critical economic drivers such as agriculture, mining, renewable energy development or public land recreation are curtailed in the affected counties, then there is a potential for significant impacts (\$100 million or more) to State or County government. NACO is working with the University of Nevada, Reno to establish socioeconomic baseline data for projects that may affect public land use. NACO would be happy to facilitate a contact between the USFWS and appropriate representatives at UNR to conduct an appropriate socioeconomic analysis.

- Page 13600, (iii) states that *We do not intend to change the status of this non-essential population unless: (A) The California condor is recovered and subsequently removed from the list in § 17.11(h) in accordance with the Act; or (B) The reintroduction is not successful and the regulations in this paragraph (i) are revoked*. NACO supports the intent not to change the status of the species, but please clarify if there is any timeframe associated with this ‘intent.’ For instance, in the background section of the Proposed Rule there is discussion as to the foreseeable future being 20 years. Will this rule and stated “intent” be reconsidered after 20 years? What other outcomes may warrant reconsideration of the stated “intent?”

- Page 3600, (iv) states that *Legal actions or other circumstance may compel a change in this nonessential experimental population’s legal status to essential, threatened, or endangered, or compel the Service to designate critical habitat for the California condor within the experimental population area defined in this rule. If this happens, all California condors will be removed from the area and this experimental population rule will be revoked, unless the participating parties in the reintroduction effort agree that the condors should remain in the wild*. NACO appreciates the protocol to remove all individuals if the population’s legal status is changed; however, NACO is also very concerned about the participating parties’ ability to override this action. This is of particular concern because there are no Nevada-based ‘participating parties’ currently signed onto the MOU. If the affected local governments in Nevada were invited to sign on and had the authority to override any future changes to the Proposed Rule, this may alleviate this concern. However, more detail is needed in terms of how the mechanism of this approach would work (i.e., would this decision be based on vote of the participating parties, would each party have veto authority over the decision, could a given party ‘opt out’ of any future decision, etc.).

- Page 13601, (v) states that *we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(c)(ii)*. NACO would reiterate its support for this approach.

- Page 13601 (2) describes what take of California condor is allowed in the NEP Area. NACO appreciates the specific inclusion of lawful activities such as hunting, ranching, driving and recreational activities. However, NACO would like to see a more extensive list of standard activities that would fall under this category. NACO specifically requests a revised list that includes, but may not be limited to:

- Existing authorized uses of private and public lands;



- Administrative and emergency functions carried out by the local, State or Federal government; and,
- Normal agricultural practices.
- Page 13601, (ii)(C) discusses that authorized parties, including the Nevada Department of Wildlife, may *relocate California condors that have moved outside the experimental population area*. NACO supports this provision but would like more detail on whether or not this is the standard protocol for condors that move out of the NEP Area. NACO would support this being the standard protocol.
- Page 13601 (3) discusses the take of condors that is not allowed, including significant visual or noise disturbance within 656 ft (200 m) of an active nest. NACO appreciates that fuel treatment activities carried out by State or Federal agencies are exempt from this provision. However, administrative and emergency function carried out by local, State or Federal agencies should also be exempt as there are a host of critical services that counties provide (i.e., fire protection / suppression, search and rescue, critical communications, transportation, etc.). NACO also appreciates the clarification that livestock grazing and use of existing roads and trails would not be considered "...a significant visual or noise disturbance". However, existing authorized activities (i.e., rights-of-way across public lands, mining or renewable energy project, exploration, etc.) should also be exempt as should existing infrastructure (i.e., power lines, communications towers, water infrastructure) that serves a public purpose.

NACO is not opposed to the reintroduction of California condors in northern California. NACO supports the general concept of a nonessential experimental population and the 10(j) rule. However, unless more detail and specifics listed above are provided, NACO cannot support the NEP Area extending into Nevada. Without additional details in the rule and assurances that counties will be allowed to continue carrying out essential services and that there will not be a substantial socioeconomic impact, NACO cannot support establishment of the Nevada segment of the NEP Area. NACO would be happy to discuss these comments and concerns further with the Service and would be happy to facilitate a meeting with the affected counties.

Thank you for considering these comments. If there is any additional information NACO can provide, or questions NACO can provide answers to, please do not hesitate to contact me at dstapleton@nvnaco.org.

Respectfully,



Dagny Stapleton
Executive Director

DS/jld

CC: Tony Wasley, Director, Nevada Department of Wildlife
Lee Ann Carranza, Deputy Field Supervisor, U.S. Fish and Wildlife Service

