



Nevada Association of Counties

304 South Minnesota Street

Carson City, NV 89703

775-883-7863

www.nvnaco.org

September 21, 2018

Bridget Fahey
U.S. Fish and Wildlife Service
Division of conservation and Classification
5275 Leesburg Pike
Falls Church, VA 22041-3803
(703) 358-2171

RE: Input from the Nevada Association of Counties Pursuant to the U.S. Fish and Wildlife Service Proposed Rule Revising the Regulations for Implementing Prohibitions to Threatened Wildlife and Plants of the Endangered Species Act

Dear Ms. Fahey,

The Nevada Association of Counties ("NACO") greatly appreciates the opportunity to provide input on the U.S. Fish and Wildlife Service's proposed rule to revise regulations that implement the Endangered Species Act of 1973, as amended, prohibitions to threatened wildlife and plants (Docket No. FWS-HQ-ES-2018-0007). NACO works with counties to adopt and maintain local, regional, state and national cooperation which will result in a positive influence on public policy and optimize the management of county resources.

Wildlife and habitat conservation are important to counties. Local communities both value and depend on the natural resources and ecosystems that are within and around them. It is NACO's belief that ESA reform should focus on promoting on the ground results and habitat restoration that recognizes efficiency as well as the importance of local government planning to conservation. Listing decisions should be based on verifiable science, consistent protocols and require engagement with state and local governments. It is from this perspective that NACO, on behalf of Nevada's 17 counties, is providing input on the U.S. Fish and Wildlife Service proposed reform of the regulations implementing the ESA. NACO kindly requests the U.S. Fish and Wildlife Service consider the following discussion in their assessment.

NACO supports the U.S. Fish and Wildlife Service's (USFWS) decision to provide protective regulations to threatened wildlife and plants through species-specific rules, thereby eliminating the application of prohibitions described in 50 CFR 17.21 to threatened species according to 50 CFR 17.31 and 50 CFR 17.71. Eliminating the 4d blanket rule currently being implemented by the U.S. Fish and Wildlife Service would allow for protective regulations that are custom-made for the conservation needs of each threatened species. The National Marine Fisheries Service (NMFS) is already promulgating effective species-specific rules which outline appropriate prohibitions and protections tailored to each species. The use of species-specific rules by USFWS will not only align the ESA implementation policies of NMFS, providing much needed clarification, but will also provide a valuable and effective tool for land managers.

This change would provide much needed differentiation between the classifications of “threatened” and “endangered” species which has largely been absent in the implementation of the ESA. This differentiation is important because it will result in better prioritization of conservation efforts for listed species and provide the groundwork for all stakeholders to determine the appropriate when, where, and how of effective conservation efforts for all listed species.

In addition, NACO supports regulatory text that outlines an appropriate timeline for promulgating species-specific rules for newly listed or reclassified threatened species. A major goal (if not *the* major goal) of the ESA is to conserve endangered and threatened species and the environments and ecosystems on which they depend¹. It is understood then, that certain protective regulations will apply when a species is added to the list as threatened or endangered. If the prohibitions for endangered species no longer apply to threatened species, a species-specific rule should be promulgated concurrently with the listing or re-classification of threatened species. This should be specifically called out in the regulatory text to ensure there is no delay or confusion regarding species-specific rules. At the time of the listing, USFWS should have already performed all necessary steps required to list the species: assessing the current status of the species (i.e. “candidate” species), review of relevant biological information, and review of the magnitude of threat(s) to the species. These steps provide the framework for a threatened species’ rule and the protective regulations therein. If the information has already been reviewed sufficiently to determine a listing is warranted, USFWS should be required to promulgate these rules concurrently with the listing.

NACO again appreciates the opportunity to provide input at this early juncture, and looks forward to working with the U.S. Fish and Wildlife Service as they propose and finalize an update to the regulations implementing the ESA. The Endangered Species Act of 1973 is an incredibly valuable and relevant conservation tool and species specific rules for threatened species will outline the best conservation methods and processes, based on rigorous review of the available data – resulting in clear and effective management of listed species.

Thank you for considering these important issues. If you have any questions, please do not hesitate to contact me at dstapleton@nvnaco.org, or by phone at (775) 883-7863.

Respectfully,



Dagny Stapleton
Executive Director

¹ 16 U.S.C. § 1531(b)





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Craig Aubrey
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(703) 358-2442

Cathy Tortorici
ESA Interagency Cooperation Division
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910
(301) 427-8495

RE: Input from the Nevada Association of Counties Pursuant to the U.S. Fish and Wildlife Service and National Marine Fisheries Service, National Oceanic and Atmospheric Administration Proposed Rule Amending Regulations that Implement Section 7 of the Endangered Species Act of 1973, as amended

Dear Mr. Aubrey & Ms. Tortorici,

The Nevada Association of Counties ("NACO") greatly appreciates the opportunity to provide input on the U.S. Fish and Wildlife Service and National Marine Fisheries Service (collectively, "Services") proposed rule to amend regulations that implement section 7 of the Endangered Species Act of 1973, as amended (ESA), interagency cooperation (Docket No. FWS-HQ-ES-2018-0009). NACO works with counties to adopt and maintain local, regional, state and national cooperation which will result in a positive influence on public policy and optimize the management of county resources.

Wildlife and habitat conservation are important to counties. Local communities both value and depend on the natural resources and ecosystems that are within and around them. It is NACO's belief that ESA reform should focus on promoting on the ground results and habitat restoration that recognizes efficiency as well as the importance of local government planning to conservation. Listing decisions should be based on verifiable science, consistent protocols and require engagement with state and local governments. It is from this perspective that NACO, on behalf of Nevada's 17 counties, is providing input on the Services' proposed reform of the regulations implementing the ESA. NACO kindly requests the Services consider the following discussion in their assessment.

NACO supports the Services' proposal to expedite the consultation process for actions that would have minimal adverse effects on listed species but would otherwise normally require regular formal consultation. At times Nevada's counties have been stuck in lengthy environmental review and permitting processes on rights of way, roads, and other infrastructure vital to providing county services.

An Executive Order signed by the President on March 28, 2017, titled "Promoting Energy Independence and Economic Growth" and subsequent Secretarial Order 3349 issued on March 29, 2017, orders agencies to reexamine practices "to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families."¹ NACO recognizes and appreciates the intrinsic value of biodiversity and recognizes the critical role the ESA has in sustaining biodiversity and species conservation; however, providing an expedited consultation process would ensure species conservation while also maintaining economically healthy communities, and ensuring local governments can efficiently provide the services upon which their residents rely.

NACO again appreciates the opportunity to provide input at this early juncture, and looks forward to working with the Service as they propose and finalize an update to the regulations implementing Section 7 of the ESA. The ESA is an incredibly valuable and relevant conservation tool; however, the formal consultation process can become lengthy, overwhelming and burdensome, so much so that local economies and jurisdictions can, and often do, suffer as a result. Providing more efficient and expedited processes and programmatic consultation for actions that would not result in major adverse effects to listed species, maintains the original intent of the ESA while allowing local communities to grow and flourish.

Thank you for considering these important issues. If you have any questions, please do not hesitate to contact me at dstapleton@nvnaco.org, or by phone at (775) 883-7863.

Respectfully,



Dagny Stapleton
Executive Director

¹ Executive Order 13783, 82 FR 16093, March 31, 2017





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Bridget Fahey
U.S. Fish and Wildlife Service
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(703) 358-2171

Samuel D. Rauch, III
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910
(301) 427-8403

RE: Input from the Nevada Association of Counties Pursuant to the U.S. Fish and Wildlife Service and National Marine Fisheries Service, National Oceanic and Atmospheric Administration Proposed Rule Revising the Regulations for Implementing Section 4 of the Endangered Species Act of 1973, as amended

Dear Ms. Fahey & Mr. Rauch,

The Nevada Association of Counties ("NACO") greatly appreciates the opportunity to provide input on the U.S. Fish and Wildlife Service and National Marine Fisheries Service (collectively, "Services") proposed rule to revise regulations that implement section 4, factors for listing species and designating critical habitat, of the Endangered Species Act of 1973, as amended (ESA) (Docket No. FWS-HQ-ES-2018-0006). NACO works with counties to adopt and maintain local, regional, state and national cooperation which will result in a positive influence on public policy and optimize the management of county resources.

Wildlife and habitat conservation are important to counties. Local communities both value and depend on the natural resources and ecosystems that are within and around them. It is NACO's belief that ESA reform should focus on promoting on the ground results and habitat restoration that recognizes efficiency as well as the importance of local government planning to conservation. Listing decisions should be based on verifiable science, consistent protocols and require engagement with state and local governments. It is from this perspective that NACO, on behalf of Nevada's 17 counties, is providing input on the Services' proposed reform of the regulations implementing the ESA. NACO kindly requests the Services consider the following discussion in their assessment.

NACO supports the Services' proposal to present economic information in proposals to list, delist, or reclassify species. At the local level, the decision to list, delist, or reclassify a species may have a very

significant impact on communities and local economies. NACO also suggests that the evaluation of economic impacts be required in the decision to list, delist, or reclassify a species.

An Executive Order signed by the President on March 28, 2017, titled "Promoting Energy Independence and Economic Growth" and subsequent Secretarial Order 3349 issued on March 29, 2017, orders agencies to reexamine practices "to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families"¹. NACO recognizes and appreciates the intrinsic value of biodiversity and the critical role that the ESA has in sustaining biodiversity and species conservation; however, presenting the economic impacts associated with such actions is also important. Making this information available creates a level of transparency that allows for State and local officials to consider and prepare for potential economic impacts associated with the decision to list, delist, or reclassify a threatened or endangered species. Having that information is also helpful to State and local officials who depend on local tax revenues to efficiently provide the necessary services communities need.

NACO also supports the Services' proposed changes to critical habitat designation for unoccupied areas. This is common sense – a species' current range should be the primary focus when determining critical habitat and designation of unoccupied areas should only occur when it has been determined, through rigorous scientific methods, that the current range is not sufficient to ensure conservation of the species. This would align the implementation regulations with the law. 'Critical habitat' is determined to be:

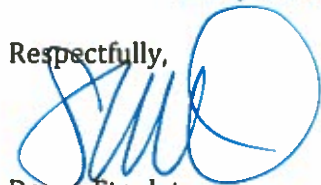
- (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management consideration or protection; and
- (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.²

The Secretary can only logically determine unoccupied areas are essential for the conservation of a species after first determining that occupied areas are not sufficient for those conservation efforts. This step-wise approach will provide clarity and reduce any broad, sweeping designations of critical habitat that are not effective for conservation and conflict with local land management.

NACO again appreciates the opportunity to provide input at this early juncture, and looks forward to working with the Service as they propose and finalize an update to the regulations implementing Section 4 of the ESA.

Thank you for considering these important issues. If you have any questions, please do not hesitate to contact me at dstapleton@nvnaco.org, or by phone at (775) 883-7863.

Respectfully,



Dagny Stapleton
Executive Director

¹ Executive Order 13783, 82 FR 16093, March 31, 2017

² 16 U.S.C. § 1532 (5)(A)

