

Public Comment Processing, Attention: 1018–AT50  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive, Suite 222  
Arlington, VA 22203.

RE: Proposed Interagency Cooperation Under the Endangered Species Act regulatory changes

Dear Sir or Madam:

On behalf of the undersigned organizations and the over 3 million members and activists we represent, we are writing to oppose the proposed regulations that would weaken the Endangered Species Act by excluding thousands of federal activities from scientific review and by removing the checks and balances currently in place under the Endangered Species Act. We respectfully submit the following comments on the proposed Interagency Cooperation Under the Endangered Species Act regulatory changes. We ask you to reject these regulations and to extend the public comment period to allow adequate public and Congressional input in these drastic changes to one of our nation's landmark conservation laws.

### **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 humpback whale. These regulations would dramatically weaken the federal government's commitment to protect endangered species and their habitat.

### **Include scientists in decision-making process**

The Endangered Species Act requires decisions to be based on the best available science. One of the most troubling aspects of the regulation change is that it moves the ultimate decision making power out of the hands of wildlife agency biologists. Decisions may be made by agency personnel that may have mission goals and motives sometimes in opposition to protecting endangered species. Rather than improve scientific independence within the agencies, this regulatory change would severely limit the ability of experts in the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to review actions of federal agencies that could harm endangered and threatened species.

### **Restore consultation and checks and balances**

Section 7 consultations are an important part of the Endangered Species Act, as they require federal agencies to consult with experts at the U.S. Fish and Wildlife Service or National Marine Fisheries Service when evaluating federal actions, permits or funding decision such as a dam, mining lease, logging sale or development. The proposed regulations remove this important scientific review by allowing federal agencies to decide for themselves whether to consult on an action.

An audit by the Fish and Wildlife Service and National Marine Fisheries Service found that self-governed action agencies violate the Endangered Species Act 62 percent of the time. This clearly demonstrates that when expert agency scientists are removed from the consultation, accurate evaluations are unlikely to occur. Our experience shows that formal and informal consultations under the Endangered Species Act are necessary to protect species and the habitat upon which they depend. Only the wildlife agencies have the personnel and expertise to evaluate the biological impacts of land use actions. Therefore, the federal government must maintain a strong oversight and a system of checks and balances to review federal projects that may have any negative impact on a protected

species.

Section 7 of the Endangered Species Act very clearly requires federal agencies to consult with Secretary to “insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat....” The Department’s proposed rule plainly violates both the letter and spirit of the statute.

### **Remove arbitrary deadline for informal consultations**

The 60-day deadline for informal consultations is arbitrary, without any scientific or administrative justification whatsoever, and must be eliminated. The U.S. Fish and Wildlife Service or National Marine Fisheries Service require adequate time to review the effects of a project on a species and its habitat. They also use their expertise to provide useful suggestions on mitigating threats posed by the project. The short deadline very seriously undermines the ability of these agencies to fulfill their statutory responsibilities to protect species under the Endangered Species Act.

### **Reject limiting definition of 'essential cause'**

The proposed redefinition of 'effects of an action' is far too limiting. In particular, limiting consultations to actions that are just the “essential cause” of the effect ignores potential cumulative effects of multiple projects such as numerous timber sales or mining leases in a species’ habitat. The proposed regulations would exclude from the definition of indirect effect anything “more than just likely to occur.” If for any reason and because of any proposed activity, an effect is likely to occur, it must be evaluated. These proposed changes should be rejected as unduly and very seriously limiting protections for species and their habitat from indirect effects of federal actions.

### **Do not ignore global warming impacts on species**

Despite the fact that endangered species are some of the most at risk from the effects of global warming, the proposed regulations would remove our nation’s responsibility to protect species from any of the impacts of global warming. This would block the Fish and Wildlife Service from integrating global warming into the Endangered Species Act consultation process. Our nation’s endangered species – and all Americans – need our government to generate and implement solutions to global warming, not bend our laws to ignore it.

### **Allow for Adequate Public and Congressional Input**

These proposed regulations were released with a totally 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 anything approaching adequate public involvement. We urge you to extend the comment period to 120 days and allow for e-mail and fax submissions.

For the reasons above, we urge you to reject this proposed rule that would weaken 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. This letter is also complemented by detailed comments already filed by professional scientific societies, including the Society for Conservation Biology, The Wildlife Society and the Ornithological Council who agree with us that adopting the proposed regulations would violate the ESA, and potentially other laws. Thank you for your consideration of these comments.

Sincerely,

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