



October 8, 2020

Submitted via online portal

Public Comments Processing
Attn: FWS-HQ-ES-2019-0115
U.S. Fish and Wildlife Service, MS:JAO/1N
5275 Leesburg Pike,
Falls Church, VA 22041-3803

**Re: Comments on Proposed Rule; Regulations for Designation Critical Habitat,
85 Fed. Reg. 55,398 – Docket No.: FWS-HQ-ES-2019-0115**

Dear Mr. Frazer:

Across a variety of landscapes, American producers play a pivotal role in the management of hundreds of millions of acres of both private and public lands throughout the United States. As groups representing members who produce food and fiber on private, state, and federal lands, the Public Lands Council (PLC), the National Cattlemen's Beef Association (NCBA), the American Sheep Industry Association (ASI) appreciate the attention paid by the U.S. Fish and Wildlife (FWS or "Service") in efforts to clarify and improve the Endangered Species Act (ESA or "Act"). Accordingly, we wish to provide comment on excluding areas of critical habitat pursuant to Section 4(b)(2) of the Act, as proposed.

The PLC is the sole national association whose singular focus is to represent the interests of approximately 22,000 cattle and sheep producers who hold federal grazing permits throughout the West, NCBA is the nation's oldest and largest trade association representing cattle producers, and ASI is the national organization representing the interests of more than 100,000 sheep producers located throughout the United States. These organizations are actively engaged in the management of terrestrial and aquatic ecosystems that provide space, protection, and food for thousands of species, both those endangered and those with robust populations. These comments below are not intended to supplant or supersede any separate or individual comments submitted by the undersigned groups and are instead intended to provide targeted perspective about the role grazing activities play in the cultivation and maintenance of ecosystems nationwide.

"Credible Information" Threshold

As groups who collectively represent the interests of ranchers whose operations often interact with, rely upon, and improve Federal lands, we appreciate the Service's consideration of the ability to apply exclusions of critical habitat on lands under Federal management. Critical habitat determinations have significant implications for land managers and users of those landscapes, so further clarity in the designation process and a facility for the Service to consider information that may be outside the Service's immediate expertise is welcome. It is clear the Service must

consider economic impacts, among other impacts, during a proposed designation, and the producers we represent are uniquely positioned to provide substantive and compelling information of that nature for the Service's consideration. We believe the Service's two-factor assessment for determination of credibility, (1) whether the proponent has provided factual information as part of the request, and (2) whether that factual information is meaningful in determining impacts in the analysis of an exclusion, is nearly certain to be subjective. To that end, we request additional clarity on how the Service will assess credibility, including the level to which issue relevance, origin, likely evolution (as in the case of ongoing scientific analysis), and reasonability will be part of the Service's determination process.

In applying this facility, the information provided by the producers we represent is likely to be disparate, due in part to the wide variety of economic, ecologic, and production variations among agriculture operations. As producers with strong ties to and long histories with the public and private lands impacted by critical habitat designations, public lands ranchers are uniquely qualified to speak to both the ecological needs of a potential designation and the economic impact such a designation may have. Due to the variety of factors the Service must consider as part of a designation, we urge the Service to give appropriate deference to producers' historic expertise and highly-specific information.

Consideration of factors for exclusions

Referenced above, the Act provides for a number of factors to be considered during the process to designate critical habitat. In the proposed rule, the Service identifies that the Secretary will weigh each of these factors against the "conservation value" of a particular area. Public lands ranchers provide a number of conservation values on the landscape: decreased risk of catastrophic wildfire, firsthand knowledge of ecological conditions to inform adaptive management, nimble tools to address invasive species populations, and cultivation of native forage to improve forb and soil health, among many others. These values are compounded, as public lands ranchers often provide water developments and enable the existence and persistence of riparian ecosystems that may be outside the direct jurisdiction of the associated Federal authority. To that end, we urge the Service to both more specifically identify the use and analysis of "conservation value" in this determination, and recognize the dynamic conservation value performed by permittees that would be impinged if critical habitat were to be designated.

Comparison of attributes to areas that may be part of the designation may fail to account for land ownership, land management, and ecological realities that may be incredibly variable even across a relatively small geographic area. Further clarity is needed about how the Service will consider, weight, and assign the potential conservation value of an area, and how the Service will include the critical information provided by producers who have a dynamic and ongoing relationship with quickly-evolving landscapes. We agree that if the Service determines the factors supporting exclusion outweigh the benefits of including an area in the designation, the exclusion should be compulsory. This is simply a common-sense adaptation of a benefits analysis to ensure the Service does not intentionally – or unintentionally – disincentivize producer involvement in the critical habitat designation process.

Symmetry across FWS/NMFS

We thank the Service for taking steps to ensure critical habitat designations are responsive to on-the-ground needs of communities, habitats, and species through this proposed rule. Because the Service is not the only agency to implement the ESA, we urge the Service to work with the National Marine Fisheries Service to adopt a symmetrical regulation to ensure consistent application across jurisdictions and landscapes. Symmetrical or substantively similar processes across the agencies would reduce inconsistent resource management and avoid duplicative – and potentially conflicting – agency processes. Both agencies must be nimble to adapt to emerging science and to emerging landscape and species needs while providing regulatory certainty and consistency for regulated parties and implementing authorities.

We thank you for the opportunity to provide supplementary comments and look forward to ongoing dialogue about improvements to the Act and its implementation.

Sincerely,

American Sheep Industry Association
National Cattlemen's Beef Association
Public Lands Council