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**Submitted via online portal**

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U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, D.C. 20240

Samuel D. Rauch III  
National Marine Fisheries Service  
Office of Protected Resources  
1315 East-West Highway  
Silver Spring, M.D. 20910

**Re: Comments on Proposed Rule; Regulatory Definition of “Habitat” Pursuant to Endangered Species Act, 85 Fed. Reg. 47,333 (Aug. 5, 2020) – Docket No.: FWS-HQ-ES-2020-0047**

Dear Mssrs. Frazer and Rauch:

American livestock 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) with our respective affiliates wish to provide comment on the U.S. Fish and Wildlife (FWS) and National Marine Fisheries Service’s (NMFS), herein, the “Services”, proposed definition of “habitat” under the Endangered Species Act (ESA) or “Act”.

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, as well as our undersigned affiliates, 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.

***No new regulatory burden***

As the Services seek to define habitat for the first time under the Act, we urge them to rely on scientific guidance to describe ecosystem attributes that do not result in additional regulatory burden under the Act. Collectively, the Services have regulatory mechanisms to designate critical habitat for species protected under the Act. In defining “habitat” under the Act, it is imperative the Services distinguish between what can be described as general “habitat” and what may be

designated, through the regulatory process, as “critical habitat”. These terms are both biologically and conceptually distinct, and the Services must create clear parameters for the implications of “habitat” under the law. “Critical habitat” determinations and subsequent designations should be far more narrow and targeted, given the statute’s requirement that critical habitat is “essential to the conservation” of threatened and endangered species, not simply where these species occur. “Critical habitat” is also accompanied by a series of stringent management requirements that are imposed upon the owner and manager, even when the designation occurs on private land. Such regulatory burden would be inappropriate and incongruent with an identification of “habitat”.

In short, the description of a species’ habitat must not be used as justification for the Services to regulate themselves into a position of authority across broad swaths of lands and waters where the agencies would otherwise have no authority. Identification of habitat should not be used as justification to delay investigations or projects, as has been the case when agencies have delayed or been delayed in making critical habitat determinations in the past.

### ***Habitat must be a current, persistent state***

The undersigned groups recognize the complexity that accompanies defining a term that, for the history of the Act, has been described, rather than defined. Historically, “habitat” has been used to describe the geographic area where a species “is”, based on specific genetic and biological needs within an available landscape. Suitable habitats and species’ preference has changed over time, something the Services must continue to recognize when distinguishing between “(historic) range” and “habitat”. In determining what may be considered “habitat”, the Services must assess the ecosystem as it *is*, not as it *was* or as it *could be*. Equally, the Services must account for current conditions that may be temporal or fleeting. For an area to be considered “habitat”, the conditions that make the ecosystem suitable for use of a species must be able to persist in a way that does not require static management. For example, a producer cultivating a hay crop may utilize flood irrigation that would draw species to that geographic area for a specific period of time that does not persist outside of the hay growing season. The identification of that area as “habitat” would be inaccurate and would be likely to affect the objective identification of conservation needs if the species concerned required active conservation under the Act.

Further, “habitat” must not include historic conditions that no longer exist. The undersigned groups routinely support the Services in exploring and adopting new and evolving science, and believe that any data used by the Services to inform subsequent regulatory efforts (as in the designation of “critical habitat”) must rely on on-the-ground realities. For these reasons, the undersigned groups prefer the definition to describe what “is” currently, rather than a prospective “includes”.

### ***Ranchers are key to habitat persistence***

Ranchers are proactive land managers and make daily decisions about land management practices to optimize resource health and productivity. Each of these decisions are based on current conditions and the needs of the resource at a point in time. Both in seeking to define “habitat” and in the subsequent utilization of the definition, the Services must recognize ranchers’ role in land management and the persistence of habitat conditions. In returning to the previous discussion of additional regulatory burden, any definition must not impose a new

regulatory burden or authority, nor should the definition seek to disincentivize ongoing practices that allow “habitat” to exist. In determining what a “habitat” may be, the Services must recognize the ongoing conditions that provide for the existence of that habitat and provide an environment that has been determined to be suitable by the species in question. Grazing activities serve as a fuels management treatment to prevent catastrophic wildfire, control invasive species, and provide deposition of organic matter and positive soil disturbance that create desirable conditions for species under the Services’ purview. Ranchers make range and water improvements, including but not limited to: water features, riparian improvements, and management in forb density (as in the case of pinyon juniper management) that are all active, positive impacts on ecosystems that create the potential for that ecosystem to become habitat. These ongoing management activities must be recognized as part of the current conditions that allow “habitat” to exist, and any activity or regulatory conclusions following from a “habitat” identification should not rescind, discourage, or disincentivize the ability of good land managers to persist in their management activities.

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  
Association of National Grasslands  
Arkansas Cattlemen’s Association  
Arizona Cattle Growers’ Association  
California Cattlemen’s Association  
Colorado Wool Growers Association  
Colorado Cattlemen’s Association  
Idaho Cattle Association  
Idaho Wool Growers Association  
Indiana Sheep Association  
Kansas Livestock Association  
Maryland Cattlemen’s Association  
Montana Stockgrowers Association  
Montana Public Lands Council  
Montana Association of State Grazing Districts  
Montana Wool Growers Association  
Nevada Cattlemen’s Association  
New Mexico Cattle Growers Association  
North Dakota Lamb and Wool Producers Association  
Ohio Cattlemen’s Association  
Ohio Sheep Improvement Association  
Oklahoma Cattlemen’s Association  
South Dakota Cattlemen’s Association

South Dakota Public Lands Council  
South Dakota Sheep Growers Association  
Texas and Southwestern Cattle Raisers Association  
Texas Sheep and Goat Raisers Association  
Utah Wool Growers Association  
Wyoming Stock Growers Association  
Wyoming State Grazing Board  
Wyoming Wool Growers Association