

March 8, 2012

TO: Tina Campbell, Chief
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, MS 2042
Arlington, VA 22203
Attn: FWS-R9-ES-2011-0031

RE: Comments on a draft policy on interpretation of the phrase “significant portion of its range” in the Endangered Species Act’s definitions of “endangered species” and “threatened species.”

Dear Ms. Campbell:

As conservation scientists, we are writing to comment on the draft policy on interpretation of the phrase “significant portion of its range” (“SPOIR”) proposed by the U.S. Fish and Wildlife Service and National Marine Fisheries Service.¹ By modifying the definition of an endangered species to include “any species which is in danger of extinction throughout all or a significant portion of its range,” the SPOIR provision makes clear that a species need not be at risk of worldwide extinction to qualify for Endangered Species Act protection. This ensures that species are protected before they are on the brink of extinction and serves the broad purposes of the Endangered Species Act, including protecting the ecosystems upon which endangered species depend. We are concerned that if finalized, the draft policy will sharply limit the application of the SPOIR language and will thus result in fewer imperiled species getting the protection they need to survive and recover.

In particular, we are concerned about the proposed definition of significant, which specifies that a portion of range can only be considered significant if loss of the species from that portion would threaten the species as a whole. This definition fails to provide a meaningful distinction between a species that is endangered in a SPOIR and a species that is endangered in all of its range, which will likely result in species that are endangered in portions of their range not receiving protection.

We are further concerned about the draft policy’s determination that only current and not historic range can be considered when determining whether a species is endangered in a SPOIR. Such an approach amounts to a shifting baseline whereby a species is considered secure only because loss of populations and range is ignored, and has been extensively criticized in the scientific literature.²

¹ U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration. 2011. Draft Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species.” Federal Register, V. 76: 76991.

² See Waples, R. S., P. B. Adams, J. Bohnsack, and B. L. Taylor. 2008. Legal viability, societal values, and SPOIR: response to D’Elia et al. *Conservation Biology* **22**:1075–1077.

The Endangered Species Act is our strongest law for protecting species and ecosystems, but the tremendous protections of the Act apply only to those species that have been recognized as threatened or endangered. In this context interpretation of the phrase “significant portion of its range” is of critical importance. We ask that you rescind the proposed policy and replace it with a policy that includes a broad definition of significance that does not require risk to the species as a whole and allows for consideration of both historic and current range. When determining the significance of a portion of range, we suggest that a number of factors could be considered, including the size of the overall portion where the species is endangered and whether it supports unique habitats utilized by the species, unique adaptations, or important genetic diversity, as well as other factors.

Sincerely,

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