

STATE OF ALASKA

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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March 8, 2012

Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
MS 2042
Arlington, VA 22203

Re: FWS-R9-ES-2011-0031 - Draft Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act

Dear Sirs;

The Citizens' Advisory Commission on Federal Areas (CACFA) has reviewed the proposed draft policy on interpretation of the phrase "Significant Portion of Its Range" (SPR) in the Endangered Species Act's (ESA) Definitions of "Endangered Species" and "Threatened Species." We offer the following comments for consideration in finalizing the policy.

The original goal and primary objective of the ESA was to prevent the extinction of imperiled plant and animal life. There are a number of successful recoveries, such as the bald eagle and grizzly bear, which can be attributed in part to the ESA as well as other conservation strategies and recovery measures. The Alaska populations of both these species were thriving and were never seriously considered for listing even when they were listed as endangered in other parts of their natural range.

Today's ESA, which is a combination of amendments to the original statute, supplemented by policies and regulations that change as each successive administration reinterprets its provisions and responds to an endless series of lawsuits and court decisions, is a law considerably different from what Congress intended when it passed the ESA in 1973. We have only to point to the 16 pages of background information, consisting of more than 20,000 words needed to explain a draft policy of less than 400 words as an indication of the regulatory and legal chaos that currently surrounds the administration of the Endangered Species Act. It is less flexible, less science based, less objective and too often misused to list species such as the polar bear that do not meet the criteria necessary for listing.

As we understand the proposed policy, it requires that if a species is found to be endangered or threatened in only a significant portion of its range, the entire species will be listed and the provisions of the ESA applied across the species' entire range. Our primary concern is that the implementation of the proposed policy will result in the unnecessary or inappropriate listing of a species or subspecies in Alaska.

By requiring a range-wide listing of a species if it is determined to be endangered or threatened in only a significant portion of its range, even when healthy populations are found in other portions of its range, the policy could trigger unnecessary restrictions on a wide range of management actions and development activities. These restrictions would adversely affect the ability of the State of Alaska to manage its fish and wildlife resources for the benefit of its citizens, as well as hinder or even prevent the development of its mineral, oil and gas and timber resources.

Alaska occupies a unique position with respect to the application of the ESA. This is in part due to its solitary geographic relationship with the contiguous 48 states, but also because of its great size, diverse ecosystems and intact habitats. Ranges for species like the grizzly bear, the grey wolf and the bald eagle extend from Alaska, through Canada and into the contiguous 48 states. These ranges are enormous and encompass areas with varying degrees of human development and interaction, climate variations, different ecosystems and varying species population densities. Due to a wide variety of factors, there are areas within these ranges where the species are stable or growing and areas where populations remain low or are absent. Applying ESA restrictions to a portion of a species' range that is as geographically isolated as Alaska provides no benefits for populations segments in other portions of the range.

It is in those areas where a species is in jeopardy that the ESA was intended to function. Whether perceived or real, application of the Act or the listing of a species as threatened or endangered brings negative consequences to land uses, harvest of fish and game, and adverse impacts to the economics of natural resource development. It makes no sense for the restrictions or prohibitions of the ESA to be applied to a portion of a species' range where populations are healthy. Implementation of the ESA should remain flexible enough to respond to different conditions and avoid imposition of restrictive measures in those areas of a species' range where populations are healthy and thriving.

The Commission does agree with the portion of the policy that states that if a species is not endangered or threatened throughout all of its range, but is endangered or threatened within a significant portion of its range and the population is a valid distinct population segment (DPS), then the DPS will be listed rather than the entire species or subspecies. This is critical for Alaska, for the reasons we discussed above. There are a number of species whose populations are healthy in Alaska, but in jeopardy in the contiguous 48 states.

Having the flexibility to list those populations separately as distinct populations segments will prevent the improper application of ESA restrictions on healthy populations in Alaska. Listing of the entire range of a species determined to be endangered or threatened in only a portion of its range must be scientifically justifiable as being critical to its survival. Listing of a species,

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subspecies or distinct populations segments as endangered or threatened must be the minimum necessary to assure its survival.

The Commission appreciates the opportunity to comment on this policy. If there are questions about our comments, or if we need to clarify anything, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Stan Leaphart". The signature is written in a cursive, flowing style.

Stan Leaphart
Executive Director