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August 8, 2022

Lisa Ellis
Acting Chief, Division of Restoration and Recovery
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: Docket No.: FWS-HQ-ES-2021-0033

Dear Ms. Ellis,

The National Cotton Council (NCC) appreciates the opportunity to provide the following comments to the Fish and Wildlife Services (FWS) proposed rule (docket referenced above) “Endangered and Threatened Wildlife and Plants; Designation of Experimental Population.”

The National Cotton Council (NCC) is the central organization of the United States cotton industry. Its members include producers, ginner, cottonseed processors and merchandizers, merchants, cooperatives, warehousemen, and textile manufacturers. A majority of the industry is concentrated in 17 cotton-producing states stretching from California to Virginia. U.S. cotton producers cultivate between 10 and 14 million acres of cotton with production averaging 12 to 20 million 480-lb bales annually. The downstream manufacturers of cotton apparel and home furnishings are located in virtually every state. Farms and businesses directly involved in the production, distribution and processing of cotton employ more than 115,000 workers and produce direct business revenue of more than \$22 billion. Annual cotton production is valued at more than \$5.5 billion at the farm gate, the point at which the producer markets the crop. Accounting for the ripple effect of cotton through the broader economy, direct and indirect employment surpasses 265,000 workers with economic activity of almost \$75 billion. In addition to the cotton fiber, cottonseed products are used for livestock feed and cottonseed oil is used as an ingredient in food products as well as being a premium cooking oil.

The NCC opposes FWS proposed change and disagrees with the assertion “These minor changes are not intended to alter the substance or scope of the regulation.” The NCC believes the proposed changes, while perhaps minor in altering language, contain significant expansion of the scope of the regulation. The elimination of “historical range” in order for FWS to introduce experimental species into “habitat” will dramatically enhance the lands directly impacted as well as adjacent private lands that will border experimental species release. Many of these lands are small business farms, some owned by minorities and other underserved producers. NCC asserts FWS must acknowledge such impacts and meet the requirements of the Regulatory Flexibility Act to describe the effects on small entities.

The proposed elimination of “historical range” to allow the introduction of species outside of the historical range of habitat appears to expand the scope of the legislation beyond Congressional intent. The NCC notes Congressional language made numerous references to habitat range at the time of listing. The NCC believes Congress clearly identified the responsibility of FWS to identify the habitat range, and further confined authority within the habitat range.

The NCC argues FWS should not proceed with such changes prior to finalizing the definition of habitat, which is significantly associated with the proposed rule. One cannot legitimately consider the impact of this proposed rule without a clear definition of habitat.

The NCC believes subsequent proposed changes require expanded explanation, such as removal of “natural” and “suitable” to replace with “is necessary to support one or more life history stages.” It is understood that water may support the egg and tadpole stage of a frog while the remaining life may be spent, in part or wholly, in terrestrial habitat, however, the language remains vague and could be misconstrued to grant FWS authority to release any species at any location as long as one life stage could survive. Such action would have no benefit to the survival of a species but would subject numerous locations to regulatory restrictions associated with the released species.

The NCC opposes the proposed language changes that remove “Natural” as it implies a biological association not constructed by humans. The NCC does not believe “nonexperimental” conveys the same or similar meaning. Further, the NCC believes “Natural” aligns with Congressional intent related to species habitat at the time of listing.

The NCC does not find adequate justification that this rule does not have significant taking implications (E.O. 12630). As discussed with the request to comply with the Regulatory Flexibility Act, this proposed rule implies a great expansion of locations that FWS could decide to utilize for experimental populations, thereby impacting adjacent lands that would become subject to new regulatory action for a species not known to have previously been present in the area.

The NCC urges FWS to withdraw this proposed rule, formalize a definition of habitat, comply with the Regulatory Flexibility Act including descriptions of how “taking” will be avoided, retain terminology that implies a biologically significant association not intentionally devised by humans, draft a clear version of the rule with expanded clarification, and re-submit as a proposed rule.

The NCC appreciates the opportunity to provide these comments and welcomes further discussion desired by FWS. The NCC appreciates the challenge to develop clear language that addresses needs but does not lend to being misconstrued – which often results in litigation outside the intent of the language.

Regards,

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

Steve Hensley
Senior Scientist, Regulatory and Environmental Issues