



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

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Public Comments Processing  
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Division of Policy and Directives Management Services  
U.S. Fish and Wildlife Service  
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Arlington, VA 22203

**Re: Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants**

The following comments from the Union of Concerned Scientists (UCS) Scientific Integrity Program are in regards to the proposed amendments to the formats of the lists of endangered and threatened wildlife and plants, published on August 5, 2008 (73 FR 45383).

UCS is concerned that the proposed changes, despite the preamble text that “none of the proposed changes are regulatory in nature,” are an attempt to codify the March 16, 2007 opinion of the Solicitor of the Department of the Interior. The drastic changes in ESA implementation suggested by this opinion have never been formally published in the Federal Register, have not received public comment, and have not undergone scientific review. Vague and limiting language in the proposed changes to the listing formats opens the door to legitimizing the execution of this legal opinion. The Department of the Interior should rescind these proposed changes until it has addressed in a clear and transparent way the intent of the modifications and their relation to the Solicitor’s opinion. Any further proposals of this sort should include at least 60 days of public comment and field hearings.

*The Solicitor’s Opinion*

The Endangered Species Act defines an endangered species as “any species which is in danger of extinction in all or a significant portion of its range” (16 U.S.C. Section 1532(6)). Consideration of “range” for listing purposes has always included the historic range of the species, as science insists that the conservation of species is inextricably linked to having adequate amounts of suitable habitat to maintain self-sufficient populations. In the Solicitor’s opinion, the Solicitor argued that the U.S. Fish and Wildlife Service must only consider the *current* range of imperiled species when studying whether or not to list a species. The Solicitor further suggested that if the species is found to be threatened or endangered in a significant portion of its current range, it is entitled to be listed only in that portion of its range

This opinion reverses more than thirty years of Endangered Species Act implementation, contradicts the current listing of many species, runs contrary to the intent of Congress, and prevents the listing of endangered species to be based solely on the “best scientific and commercial data available,” as required by the Act.

Congress clearly intended for imperiled species to receive adequate protections to ensure their conservation and eventual recovery. As stated in the Act, the purposes of the Endangered Species

Act are to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and “to provide a program for the conservation for such endangered species and threatened species.” Congress further included the requirement to designate critical habitat, providing the means to protect areas from which a species had already been extirpated. Implementation of the Solicitor’s opinion opens the real possibility that areas essential to the conservation of a species would be left out of the range in which it is protected. It further adds artificial limitations of the science that listing biologists can use when considering of a candidate for listing. Listing species only in their current range will preclude the recovery of many species which currently occupy insufficient territory to stabilize and grow their populations. Essentially, implementation of the Solicitor’s opinion would turn the list of endangered and threatened species into an extinction watch list instead of species conservation list.

### *The Proposed Amendments*

Without ever mentioning the Solicitor’s opinion, the proposed revisions to the format of the endangered and threatened species list would enact the opinion by adding a new column with the heading “where listed” and by significantly restricting the importance of the column entitled “historical range.” The “where listed” column is defined as the one which “sets forth the geographic area where the species is listed for purposes of the Act,” meaning that members of the species occurring outside of the “where listed” range will not receive the protections of the Endangered Species Act. The amendments designate historical range as “for informational purposes only” and “does not imply any application... of the prohibitions of the act.” This reinforces that listed species will only receive protections in the area in designated in the “where listed” column.

The Union of Concerned Scientists believes that the proposed amendments are a disingenuous attempt to seal the Solicitor’s opinion into the federal regulations governing the implementation of the Endangered Species Act. This is being done with no opportunity for a forthright discussion among the public as to the effects of the changes. In addition, the current comment period is vastly insufficient for changes of this magnitude. The Department of Interior should withdraw these proposed changes and engage in an open discussion with legislators, scientists, and citizens to improve the clarity of the format of the endangered species lists without compromising its protections at the same time.

Sincerely,



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About UCS: The Union of Concerned Scientists is a leading science-based nonprofit working for a healthy environment and a safer world. The UCS Scientific Integrity Program mobilizes scientists and citizens alike to defend science from political interference and restore scientific integrity in federal policy making.