

September 4, 2020

Public Comments Processing
Attention: FWS-HQ-ES-2020-0047
U.S. Fish and Wildlife
MS: PRB(3W)
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Comments on Proposal to Add a Definition of “Habitat” to Regulations that Implement Section 4 of the Endangered Species Act (ESA)

Dear Sir or Madam:

Thank you for the opportunity to comment on the proposed regulatory definition of the term “habitat” as a term used in the context of critical habitat designations. While the intent is to broaden the definition of habitat beyond critical habitat, we believe it does the opposite. Currently, critical habitat is defined as:

“(i) The specific areas within the geographical area occupied by the species, at the time it is listed ... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed ... upon a determination by the Secretary that such areas are essential for the conservation of the species.”

The new proposal would define “habitat” as “the physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with *existing* [emphasis added] attributes that have the capacity to support individuals of the species.”

The proposal also includes an alternative definition: “the physical places that individuals of a species use to carry out one or more life processes. Habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently *exist* [emphasis added].”

Including “existing” and “exist” narrow both the proposed and alternate definitions from the critical habitat definition. We question whether further definition of critical habitat is needed. However, if it is, it should be broadened to encompass the historical and potential future range, as well as areas essential to its habitat. For example, many species exist only in small portions of their historic range due to habitat loss and fragmentation, and species threatened by climate change may need to migrate to new areas if their currently occupied habitat is destroyed. Allowing for protection of these historic and new locations will be critical for the conservation of many species, and thus should be included in the definition of habitat. Other species may



depend on areas outside of their occupied range for survival, such as uplands needed to ensure water quality and quantity of subterranean and/or downstream sites. The habitat definition should also allow for transitory species that depend on habitat succession, and migratory species that occupy more than one habitat type.

For these reasons, we suggest the following revised language to help broaden the definition of habitat and allow for species protections from the threats they face in a rapidly changing environment:

“the physical places that a species depends on to carry out one or more life processes including breeding, feeding, and sheltering. Habitat includes, but is not limited to, areas where the species may not presently exist but has necessary attributes to support, or potentially support, the species presently or in the future.”

Thank you again for the opportunity to comment,

A handwritten signature in black ink that reads "Sherri L. Kuhl". The signature is written in a cursive, flowing style.

Sherri L. Kuhl, Division Manager
Wildland Conservation Division

ec: Kimberlee Harvey, Balcones Canyonlands Conservation Plan Secretary