



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR,  
FISH AND WILDLIFE SERVICE

*Wilson*  
*W*

In Reply Refer To:  
FWS/OES 110.5

*Py*

Mr. John R. McGuire  
Chief, Forest Service  
U.S. Department of Agriculture  
Washington, D.C. 20250

Dear Mr. <sup>John:</sup> McGuire:

As stated in our letter of November 29, 1978, to you, the Endangered Species Act Amendments of 1978 were signed into law by the President on November 10, 1978. All Endangered Species Program activities have been resumed and revisions to our new Interagency Cooperation Regulations are being developed to implement changes as required by the amendments. Reconsideration of the amendments since the November 29 letter has resulted in a determination that, pending publication of these new regulations, Section 7 consultation should be carried out according to the procedures in the present regulations, with the following exceptions:

1. Time Period for Consultation: The 60-day time limit will be adhered to whenever possible, especially for consultations which were interrupted on October 1st. Under the amendments, however, consultations must not exceed 90 days following receipt of a written request for initiation of consultation unless additional time is mutually agreeable between the agency and the Fish and Wildlife Service (FWS).
2. Biological Opinion Format: Opinions which reach a conclusion that an action is likely to jeopardize the continued existence of listed species or destroy or adversely modify Critical Habitat now must include a discussion of any "reasonable and prudent alternatives" which the FWS believes would avoid the jeopardy, destruction, or adverse modification, and which the consulting agency or permit or license applicant can take. Each opinion will detail how the agency action affects the listed species or its Critical Habitat and a summary of the information on which the opinion is based.



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OFFICE OF THE CHIEF

3. Biological Assessment: No consultation can be initiated on a construction project for which a contract has not been entered into and construction begun as of November 11, 1978, until the agency has prepared a biological assessment on listed and proposed species that may be in the area of the proposed action, as determined by the FWS. The biological assessment must be completed by the agency within 180 days after the date initiated, unless such other period is mutually agreed to by the agency and the FWS, and transmitted to the FWS.

For purposes of providing interim guidance, the FWS considers construction projects to be any action conducted or contracted by the Federal agency designed primarily to result in the building or erection of such man-made structures as dams, buildings, roads, pipelines, and the like.

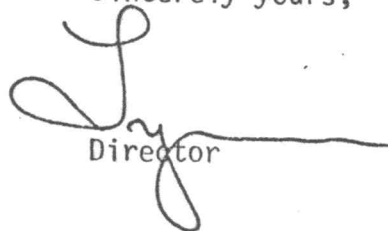
This includes consideration of major Federal actions such as permits, grants, licenses, or other forms of Federal authorization or approval which may result in construction and which significantly affect the quality of the human environment.

With these interim guidelines, the FWS anticipates orderly initiation and completion of Section 7 consultations until new regulations are developed to expand and formalize the new procedures.

When the changes to the Section 7 regulations implementing the amendments are proposed and published in the Federal Register, comments will be solicited from Federal agencies, institutions, organizations and individuals prior to any final rulemaking.

Questions regarding this subject should be directed to Mr. Robert Jacobsen, Chief, Branch of Management Operations (202/235-2760).

Sincerely yours,



Director

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

WO

FEB 16 1979

REPLY TO: 2630 Habitat

SUBJECT: New Endangered Species Regulations

TO: Regional Foresters, Station Directors, Area Directors,  
and WO Staff Directors



Enclosed is a letter from the Fish and Wildlife Service (FWS) which provides interim guidance for formal consultation under the new Endangered Species Act Amendments of 1978, pending publication of new regulations.

Most of our consultations will continue to be conducted under present regulations and directions; however, the Amendments set up a new procedure for construction projects. Construction projects are defined in the enclosed letter. Projects not meeting this definition are excluded from the new construction project consultation procedure.

As interim direction, you should consider all actions which will result in construction and which require an EIS as meeting the construction project definition. In addition, construction actions for which no EIS is required but which (a) are Regionally significant, (b) have a high potential for affecting a listed species, or (c) are highly controversial, may, at your discretion, be considered a construction project for these purposes.

The following procedure will be used for Endangered Species Act, Section 7 Consultation, until further notice:

1. Determine if the proposed action is a construction project.
2. If it is not, but still may affect a listed species, consult using the Interagency Cooperation Regulations issued in the FEDERAL REGISTER, January 4, 1978, and subsequent Forest Service directions.
3. If the proposed action is a construction project, as defined in this letter, use the following procedure:
  - a. Prior to implementing the proposed action, request in writing, from FWS regional office, a list of threatened, endangered and proposed species which occur in the project

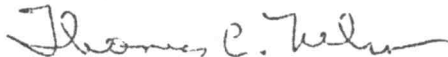
area. Include with the request an adequate map or description of the project location and a list of the classified and proposed species which you already know occur there. This step must be accomplished even if you know there are no species occurring in the project area.

b. If the FWS advice indicates that listed or proposed species may be present in the affected area, a biological assessment must be made. The exact nature of this assessment is not specified, but must include a comprehensive survey to identify any species which may be affected by the construction project and an evaluation of the nature and extent of impact that the proposed project may have on such species. Any necessary studies to determine the nature and extent of impacts must be borne by the Forest Service.

c. If the biological assessment indicates that there are no listed species present which may be affected, there is no need to consult further and the project may proceed.

d. If the biological assessment indicates that listed species are present which may be affected, consultation must be requested from the FWS. The biological assessment must be supplied to the FWS along with the request for consultation.

Please note that although biological assessments consider both listed and proposed species, the FWS can, legally, formally consult only on the listed species. Informal consultation can take place on proposed species. The purpose of considering proposed species in biological assessments is to identify and consider species which may be a problem or may be listed during the planning or construction of significant construction projects.



THOMAS C. NELSON  
DEPUTY CHIEF

Enclosure

Limited Distribution



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

IN REPLY REFER TO:  
FA/SE--Coop.--Federal

MAILING ADDRESS:  
Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80226

STREET LOCATION:  
134 Union Blvd.  
Lakewood, Colorado 80228

FEB 21 1979

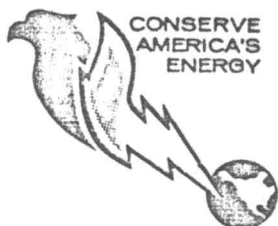
Steve Yurich, Regional Forester  
U.S. Forest Service  
Eastern Region  
633 West Wisconsin Avenue  
Milwaukee, Wisconsin 53203

Dear Mr. Yurich:

The recent amendments to the Endangered Species Act have changed the way the Act is administered, particularly with regard to the Section 7 consultation procedures. Since implementation of the amendments is already in effect and revised regulations have not been published, we have prepared a summary and flow charts which outline the new procedures. These are provided as interim guidance until the January 4, 1978, Interagency Cooperation Regulations are revised. The revised regulations will be proposed and published in the Federal Register and comments will be solicited prior to any final rulemaking.

The final regulations are expected to include a definition of "biological assessment." However, to provide sufficient information to develop a biological opinion, the assessment should include, but not be limited to: (1) name of the project and applicant; (2) location (including map); (3) description of the proposed project and its purpose; (4) biological data addressing possible impacts to proposed or listed species; (5) important dates, i.e., estimated beginning and completion of project; and (6) pertinent portions of environmental impact statements, professional publications and other relevant materials.

For construction projects, you should start consultation procedures early in project planning, as soon as you have identified proposed or alternative actions. For other types, initiate consultation procedures as soon as a "may affect" determination is made. This is desirable in order that decision makers can use biological opinions and thus avoid authorization of actions likely to jeopardize the continued existence of



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listed species or result in the destruction or adverse modification of their critical habitats.

Please let us know if we can provide further assistance.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Harvey Willoughby".

Regional Director

Attachments

DEPARTMENT OF AGRICULTURE  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20250

FEB 22 1979

SUBJECT: Acquisition Authority Endangered Species Act  
(92 Stat. 3751)

TO: John R. McGuire, Chief  
Forest Service

This responds to Mr. Van Gilst's memorandum of February 2, 1979, requesting our views with respect to acquiring lands in the National Forest System for endangered species and wildlife purposes under P.L. 95-632 (92 Stat. 3766), enacted November 10, 1978, which amended Section 5 of the Endangered Species Act of 1973, 16 U.S.C. 1534 (1976).

As amended, Section 5 now reads, in part, as follows:

"(a) The Secretary [of Interior], and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants . . . . To carry out such a program, the appropriate Secretary -

LANDS STAFF

(1) shall utilize the land acquisition and other authority under the [designated Fish and Wildlife and Migratory Bird Acts. 16 U.S.C. 742a, et seq. 16 U.S.C. 661 et seq., and 16 U.S.C. 715 et seq.]

FEB 22 1979

Director                     

Dep. Dir.                     

Access                     

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

A, & E                      

Valuation                     

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interest therein under subsection (a) of this section.


                    

Prior to the amendment, the acquisition authority of the Endangered Species Act was restricted to the Secretary of Interior. The amendment extended the acquisition authority to the Secretary of Agriculture

with respect to the National Forest System. It is particularly significant that the amendment used the words "the appropriate Secretary" because subparagraph (1) deals primarily with fish and wildlife as well as migratory birds. While it is arguable that parts of subparagraph (1) could apply to the Secretary of Agriculture, in our opinion, the better position would be to rely upon subparagraph (2), which confers a broader acquisition authority.

In summary, in addition to any other land acquisition authorities, the Secretary of Agriculture is authorized under subparagraph (a)(2) to acquire land, waters, or interests in lands by donation or otherwise to conserve fish, wildlife or plants pursuant to the Endangered Species Act.

  
CLARENCE W. BRIZEE  
Deputy Director, Forestry  
Natural Resources Division



SECTION 7 CONSULTATION PROCEDURES  
Prepared by U.S. Fish and Wildlife Service (FWS)  
Region 6 Endangered Species Office

The Endangered Species Act Amendments of 1978 (ESAA) have generated the need for two sets of procedures for consultation with the U.S. Fish and Wildlife Service (FWS) based on whether or not the project includes construction work. The first procedure will be used if a Federal action meets the criteria given in No. 1 below. This procedure requires the agency to conduct a biological assessment on listed or proposed threatened or endangered species within a project area. Other projects and actions defined under No. 2 do not require a biological assessment but do require consultation pursuant to Section 7(a) of the ESAA. The FWS will assist the agency, if requested, in determining which procedure to use. Flow charts outlining the procedures are attached.

1. Construction projects after ESAA enactment. The first consultation procedure (page 3) is required for construction projects for which no contract for physical construction had been entered into and for which no physical construction had begun by November 10, 1978. Such construction projects are those designed primarily to result in the building or erection of such man-made structures as dams, buildings, roads, pipelines and the like. These include:
  - a. projects constructed or contracted for by a Federal agency; such as Bureau of Reclamation or Corps of Engineers dams; and
  - b. non-Federal projects requiring Federal authorization or approvals such as permits, grants, licenses, technical assistance, loan guarantees or loans, which may result in construction and which may significantly affect the quality of the human environment. An endangered species potentially may be affected or an EIS is usually required.
  
2. Other projects and actions. The second consultation procedure (page 4) will be used for all other actions authorized, funded, or carried out by Federal agencies such as:
  - a. non-Federal projects requiring Federal authorization or approvals which may result in construction but which will not significantly affect the quality of the human environment (an endangered species will not be affected, nor is an EIS usually required);
  - b. Federal projects or non-Federal projects requiring Federal authorization, approvals or funding not designed primarily to result in construction;

- c. projects constructed or contracted for by a Federal agency where a contract for construction had been entered into before November 10, 1978.

The first procedure covers Section 7(a), (b), and (c) of the ESAA and the second covers Section 7(a), and (b). Note that Section 7(c) under the first procedure prohibits contracts for, and construction until the biological assessment is completed. Under both procedures, Section 7(d) prohibits any Federal agency and permit or license applicant from making irreversible or irretrievable resource commitments during the consultation period. Note also that only a Federal agency can request consultation and (except for most marine species) only the FWS has been designated by the Secretary of Interior to carry out consultation procedures.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

R-9

REPLY TO: 2630 Habitat

March 6, 1979

SUBJECT: New Endangered Species Regulations

TO: Forest Supervisors



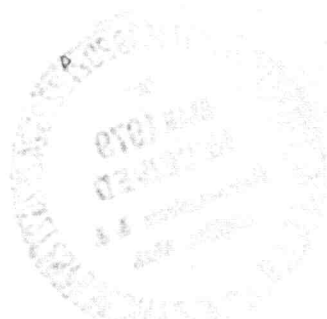
Enclosed is correspondence from the Chief and the Fish and Wildlife Service that provides interim guidance for formal consultation under the new Endangered Species Act Amendments of 1978. Procedure for construction projects is new. Direction is temporary pending publication of the new regulations that must cover changes in the Act.

In addition to formal consultation on already listed species, informal consultation may take place on proposed species too because some species could become a problem and be listed during the planning or construction phases of significant projects.

*Peter Wingle*  
H. PETER WINGLE, Director  
Recreation, Range, Wildlife  
and Landscape Management

Enclosures

NO. RECD \_\_\_\_\_  
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UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

P.O. Box 2417  
Washington, DC 20013

APR 4 1979

5400



Mr. Chris T. Delaporte  
Director, Heritage Conservation and  
Recreation Service  
U. S. Department of the Interior  
Washington, D. C. 20240

Dear Mr. Delaporte:

The Endangered Species Act of 1973, 16 U.S.C. 1534, as amended by P. L. 94-632 (92 Stat. 3766), authorizes the Secretary of Agriculture to acquire lands for threatened and endangered species and other wildlife and fish management purposes. The Act also provides for the use of L&WCF moneys to purchase lands for these purposes. A copy of our General Counsel February 22, 1979, opinion is enclosed.

In order to implement the authority granted in the amended Act, we feel it is appropriate to establish some criteria for measuring need and desirability for purchases. We suggest that lands proposed for purchase with L&WCF funds meet one or more of the following criteria to qualify:

1. Critical or essential habitats for federally listed, threatened or endangered species, for which Forest Service ownership and management would significantly contribute to the recovery of the species.
2. Essential habitats for sensitive species for which Forest Service ownership and management would play a major role in preventing the species from qualifying for Federal listing. Sensitive species are those which (a) have been officially proposed for listing by the Federal government, (b) are on an official State endangered species list, or (c) are recognized by the Regional Forester as needing special management in order to prevent their placement on Federal or State lists.
3. Nationally significant wildlife habitats which have fish and wildlife values, which go beyond local values in that they provide substantial benefits to many people over a wide geographical area.

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4. Unique wildlife habitats that are significantly different from other habitats in the geographical region and support natural fish and wildlife communities.

5. Access to National Forest System lands which contain wildlife or fish populations of outstanding value for recreational purposes where no other reasonable access is available.

6. All tracts are identified for purchase in plans prepared pursuant to the requirements of the National Forest Management Act, or prior to completion of such plans, in approved endangered species recovery plans, Sikes Act plans or biological unit plans.

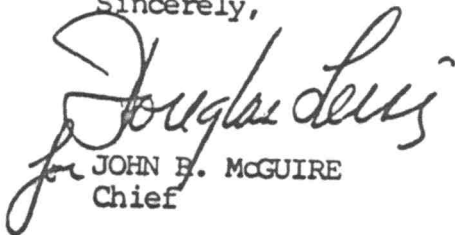
7. Tract is essential in protecting habitats for threatened, endangered, sensitive, and other important wildlife or fish species occurring on National Forest System lands.

8. The Forest Service will initiate formal consultation with the Fish and Wildlife Service, per requirements of Section 7 of the Endangered Species Act, as amended, for all proposed purchases of federally listed threatened or endangered species habitat. The Forest Service will not pursue acquisition of these lands unless a favorable biological opinion is received from the Fish and Wildlife Service.

We feel that the acquisition authority granted by P. L. 95-632 provides an opportunity to acquire some special wildlife habitats of outstanding value to the public. We also recognize that acquisitions under this authority must successfully compete with the valuable recreation lands that have traditionally been acquired with L&WCF moneys.

Your comments on this proposal will be greatly appreciated.

Sincerely,

  
JOHN B. MCGUIRE  
Chief

Enclosure



# United States Department of the Interior

HERITAGE CONSERVATION AND RECREATION SERVICE  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:  
2212

APR 9

## Memorandum

To: All Regional Directors  
Alaska Area Director

From: Director, Heritage Conservation and Recreation Service

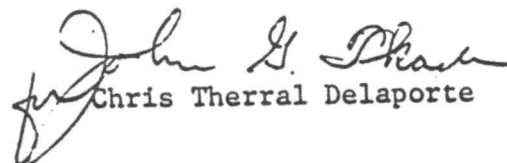
Subject: Forest Service Land Acquisition With LWCF to Conserve Fish,  
Wildlife, and Plants Including Rare or Endangered Species

Recent enacted legislation (P.L. 95-632 dated November 10, 1978), has extended to the Forest Service the ability to use LWCF monies to acquire lands for the conservation of fish, wildlife, and plants including those which are listed as endangered species or threatened species.

It is anticipated that the preparation of recovery plans and land acquisition for the protection of endangered or threatened species will be coordinated with the Department of Interior. Attached for your information is a letter from the Chief, Forest Service, addressing the need to establish a review system for this new land acquisition authority. An agreement concerning the coordinated protection of endangered or threatened species has not been formulated at this time between the Forest Service and Interior.

The Composite and Inholding programs as jointly agreed upon by FS and HCERS are for the acquisition of lands primarily of value for outdoor recreation. A separate process will have to be developed for the acquisition of lands for the conservation of fish, wildlife, and plants including those which are listed as endangered or threatened species.

Until an agreement between the Department of Agriculture and Interior is obtained and a procedure for funding desired FS land acquisition for the conservation of fish, wildlife, and plants is established, all potential FS land acquisition requests for the protection of fish, wildlife, and plants will not be accomplished by either the Composite or Inholding programs. Further information concerning land acquisition policy for wildlife and endangered or threatened species will be transmitted to the Regions as it is formulated.

  
Chris Therral Delaporte

Attachment

Land Acquisition Needs - Wildlife and Fish - National Forests in Minnesota and Wisconsin.

Acquisition of lands or interests for wildlife and fish management would be to accomplish objectives defined by comprehensive fish and wildlife plans developed under PL 93-452 (Sikes Act). These plans have been jointly prepared and approved by the States and Forest Service.

Lands proposed for purchase with L&WCF funds would be to achieve the following objectives (by priority):

1. Endangered/Threatened Species. These tracts are essential (or critical) habitat defined by approved Recovery Plans, or Forest Service management plans. The Forest Service is currently completing detailed plans on all Bald Eagle nest sites. These plans contain management direction for all Forest Service activities. They define key private tracts, essential to the management of the Bald Eagle. Acquisition of key tracts is needed to protect the Eastern Timber Wolf. Acquisition may also be needed to protect endangered plants.

2. Sensitive Species. (as defined by FSM 2600). Acquisition would play a major role in preventing species from qualifying for Federal listing. Sensitive species are those classed as State endangered or threatened, or established by the Regional Forester as needing special management. In Wisconsin and Minnesota, they include:

a. Osprey - Classed as endangered in Wisconsin. Management guides for Bald Eagle apply to Osprey. Detailed plans, including acquisition, have been, or are being prepared, for each nest site.

b. Sharp-tailed Grouse (Wisconsin)-- Two management areas exist on the Chequamegon National Forest. Management plans are being developed. Acquisition of interior lands would permit prescribed burning over the entire management area.

c. Loon - Lakeshore development has had a major impact on nesting loons. Some undeveloped lakes should remain where this species can survive.

d. Sandhill Crane - A few of these birds nest in bogs and wetlands on the Forests. Protection of bog environments and creation of small openings near bogs is needed. Acquisition on key bogs is needed.

e. Great Blue Heron - There are several nesting colonies on the National Forests. These should be protected including the acquisition of private lands in known heron rookeries.

f. Deer "yards" provide dense thermal cover for a variety of wildlife. These areas make up only a small percent of the total forest, but are critical to the survival of deer and other species during adverse winters. Acquisition of key tracts is needed to maintain the integrity of these yards and to limit development that would adversely effect the total yarding area.

g. Other - Key tracts as they may be needed to coordinate with State E/S programs.

3. Significant and Unique wildlife and habitats which have important regional and state values. These habitats include significantly different habitats and support unique wildlife communities.

a. Lakeshore/Streamshore ownership. Shoreline areas involving spawning habitat. Key spawning areas where shoreline development would adversely affect fish spawning habitat.

b. Wetlands habitat - Key marsh habitat as defined by the Sikes Act Plans (Type 2,3,4, and 6 wetlands). Acquisition of key wetlands which are part of a wildlife/fish development plan (wetlands flooding project, pike spawning marsh, etc.).

4. Critical Wildlife/Fish access needs. These lands provide essential access needed for management of wildlife habitat, or for recreation use associated with wildlife and fish (both consumptive and non-consumptive use). These lands may or may not have high values associated with recreation use.

5. Lake/Stream shoreline frontage.

a. Shoreline acquisition for protection of the lake ecosystem (and fish). Public acquisition is needed on some lakes to maintain an undeveloped lake, or lake with limited development. This is needed to protect the lake fishery and may not be related to recreation use.)

b. Access is needed to properly achieve fish harvest. This will vary from trail access on walk-in only lakes to developed fishing access points.

c. Acquisition of key lake/stream tracts requiring restoration to protect spawning habitat. Includes areas where bank erosion requires stabilization.



UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

R-9

*Copy to Dave*

REPLY TO: 5400 Landownership  
2630 Habitat

May 8, 1979

SUBJECT: Endangered Species and other Wildlife



TO: Forest Supervisors

The 1978 amendments to the 1973 Endangered Species Act, authorize and direct the Secretary of Agriculture to implement a program to conserve fish, wildlife, and plants, including those species listed as endangered or threatened. These Amendments (P.L. 95-632) authorize the Secretary of Agriculture to acquire by purchase, donation, or otherwise, lands, waters, or interest for threatened and endangered species and other wildlife and fish management purposes. The Act also provides that funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for this purpose.

Enclosed please find recent correspondence relating to the situation: 5400 April 4 letter to HCRS, April 9 letter to HCRS Regional Directors, February 22 letter from OGC, and our May 3 letter indicating the criteria that should be used as a guide in identifying your needs.

Our 1981 L&WCF program request included acquisition for which approved Recovery Plans exist, and for wildlife and fish habitat needs as identified in several National Forest wildlife plans (our 5400/1930 letter to you dated March 19).

As a result of this submission, a meeting was held between Forest Service and Heritage Conservation and Recreation Service officials in Washington, to discuss acquisition needs under the Act and reach agreement on the basis for which wildlife areas would be included in the 1981 L&WCF program budget.

We explained that the funds requested were not for wildlife planning purposes. The Forest Service presented the Wisconsin Wildlife Plan, developed in conjunction with the Wisconsin Wildlife Federation and the Wisconsin Department of Natural Resources, as an example of our Sikes Act plans. These plans discuss in general terms what is needed for land acquisition but are not specific. HCRS was told that wildlife needs are generally reflected in Forest Land Adjustment Plans rather than comprehensive State plans that eventually will be incorporated into the land management planning process.

In order that these wildlife plans remain in the 1981 L&WCF program, and receive consideration along with recreation composites, inholding, etc., it's important that the Forests identify wildlife and fish needs on a map. HCRS may wish to field-check all or a few of our plans.

This situation is especially important for Wisconsin National Forests since any Wisconsin State School Trust Fund lands that can be acquired for wildlife purposes will relieve the impact on limited Weeks Law funds.

The following Forests and/or States were included in the 1981 L&WCF program:

Current Level

Allegheny NF  
Wisconsin Forests  
Wayne NF  
Ottawa NF  
Chippewa NF  
Hiawatha NF  
Superior NF  
Hoosier NF

Unconstrained Level

Shawnee NF  
Green Mountain NF  
White Mountain NF

Each Forest should evaluate, and prepare a detailed map showing wildlife and fish acquisition needs, and incorporate this into their Land Adjustment Plan. Criteria for establishing priority for wildlife and fish acquisition are provided in the enclosed letter from the Chief to Mr. Delaporte, Director, HCRS. Special attention should be given to aquatic habitats important to endangered and threatened species, and species requiring these special or unique habitats.

for   
STEVE YURICH  
Regional Forester

Enclosure

cc: RRWL

cc: R-9

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
P.O. Box 2417  
Washington, D.C. 20013

2630

OCT 12 1979

U.S.F.S. R-9  
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OCT 17 1979  
RECREATION, RANGE  
WILDLIFE & LANDSCAPE



Mr. Lynn A. Greenwalt  
Director, Fish and Wildlife Service  
U.S. Department of the Interior  
Washington, D.C. 20240

Dear Mr. Greenwalt:

Here are our comments concerning the proposed rule for revising the lists of endangered and threatened wildlife and plants and designating species' critical habitat as published in the FEDERAL REGISTER, Vol. 44, No. 159, Wednesday, August 15, 1979.

Overall, these regulations look good and should strengthen cooperation between our two agencies as we mutually work toward fulfilling the intent of the Endangered Species Act.

The following specific comments are offered in a constructive manner:

405.02(a)(2) - It would be helpful to describe the criteria which the Secretary will use to determine if specific areas outside the geographical area occupied by a species at the time it is listed are essential for the conservation of the species. Without these criteria, field personnel have little basis for recommending such areas for delineation as critical habitat.

405.11(c) - We recommend that (c) be deleted. Although the wording in this paragraph does not say that species protected by the Convention on International Trade in Endangered Species or similar international agreements be automatically listed as threatened or endangered, the wording may encourage that type of thinking.

International trade is the only threat to many species listed on the CITES. To impose the prohibitions of the Endangered Species Act on these species is unnecessary. Species should be considered for listing based on the other provisions of this section. The reason for which a species is protected by the CITES or similar international agreement should be part of the evaluation process, but to highlight the CITES list in the rulemaking could lead to less than an objective evaluation.

- SUPV.....
- D. SUPV.....
- F. I&E.....
- Hydrigst.....
- Soils.....
- MnpwrA't....
- TM.....
- Compex.....
- Sales.....
- Silv.....
- Wildf.....
- ENG.....
- Cv'Eng#1....
- Cv'Eng#2....
- Fleet.....
- RECPTN.....
- Archlgst.....
- L.Arch.....
- PLN.....
- LUP.....
- RvrP'nr.....
- LANDS.....
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- Asst #3.....
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- Geolgst.....
- AO.....
- AdmSrv.....
- B&F.....
- Pers.....
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405.12(b) - In the discussion of biological or physical constituent elements of critical habitat, it is not clear whether only the constituent elements will constitute critical habitat or that critical habitat will encompass a larger area containing the constituent elements. This is an important concern that should be further clarified in the regulations.

405.15(c) - This section provides Governors 90 days to respond to the proposed regulations. Federal agencies are not specifically excepted from the 30-day public comment period. It seems appropriate that the Federal agencies be provided 90 days for response as are the State Governors.

405.15(c)(6)(iii)(A) - Section 4(b)(4) of the Endangered Species Act places the responsibility on the Secretary of the Interior or Commerce to consider economic and other relevant impacts of specifying critical habitat. This section of the proposed rules appears to transfer this responsibility to the affected Federal agencies.

We in the Forest Service recognize the advantage of our agency having economic and other impact information available and will certainly share this information with the Fish and Wildlife Service. Our intention is to collect this information as a matter of policy, however, not as a requirement through the regulations.

The apparent transfer of responsibility this section imposes should be corrected. Additionally, a description of the types of information needed, how the information will be obtained when not available from the affected Federal agencies, and criteria for use of the information in making a decision should be presented.

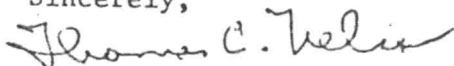
405.17 - On the eighth line, change "effecting" to "effective."

17.94(b) - Critical habitats should be clearly and precisely shown on maps.

17.94(c) - Substitute either the word "conservation" or "management" for the word "preservation." "Preservation" is a word which connotes a static condition when, in fact, various management practices may be necessary to maintain critical habitat in a condition suitable for the species. Conversely, the words "conservation" and "management" are more inclusive terms which provide for preservation.

Thank you for the opportunity to comment. If we can help in any way with the final regulations, please call upon us.

Sincerely,



THOMAS C. NELSON  
ACTING CHIEF