

November 23, 2021

Public Comments Processing
Attn: FWS-HQ-ES-2019-00115
U.S. Fish & Wildlife Service
MS:JAO (PRB/3W)
5275 Leesburg Pike
Falls Church, Virginia 2204-3803

To Whom It May Concern:

The Independent Petroleum Association of America (IPAA) appreciates the opportunity to comment on the U.S. Fish and Wildlife proposal to rescind the final rule titled “Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat” that published on December 18, 2020, and became effective January 19, 2021 (“the Final Rule”). IPAA does not support the rescission and is supportive of the Service’s previous efforts to clarify language and return the Endangered Species Act (ESA) back to the original intent of the law. Unfortunately, the ESA has been used all too frequently as a tool for litigation and a vehicle to stall important development projects for years and even decades. IPAA supported the Service’s previous rule as it led to safeguard species conservation while also clarifying criteria for consistent critical habitat designation.

IPAA is a national trade association representing the thousands of independent crude oil and natural gas explorers and producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies that provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

The purpose of critical habitat under the ESA is to identify the areas that are essential to the species’ conservation and recovery. Under the law, a critical habitat designation can be made only after a thorough review, taking into consideration the economic and national security impacts, and any other relevant impacts the action would set in motion, 16 U.S.C. 1533(b)(2). Congress defined critical habitat in section 3(5)(A), but also gave the Secretary of the Interior authority to exclude any particular area from critical habitat designation if the benefits for exclusion of a species outweigh the benefits for inclusion. This could be done so long as the exclusion effort will not result in extinction of a species. Unfortunately, Congress was not prescriptive regarding how the Secretary should arrive at a decision to narrowly designate critical habitat, thus exposing the Service to legal challenges.

IPAA agrees with the final rule to complete an economic analysis and identification of national security or other relevant impacts. The experience of IPAA member companies has been that the Service has considered activities under Section 7 consultations as the only economic impacts and dismissed those impacts with findings of no significant impact using an Environmental Analysis. IPAA appreciates the

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

1201 15TH STREET, NW ■ SUITE 300 ■ WASHINGTON, DC 20005 ■ 202-857-4722 ■ FAX 202-857-4799 ■ WWW.IPAA.ORG

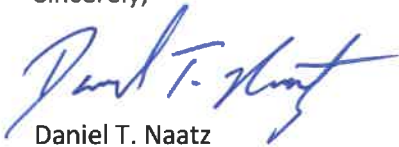
additional clarification and transparency brought by the final rule with respect to how the Secretary intends to exercise her discretion regarding exclusions under section 4(b)(2). Furthermore, IPAA believes language in this section was designed to identify areas where the Secretary has reason and justification to consider an exclusion, coupled with the proposal to include a non-exhaustive list of categories of potential impacts the Secretary will identify at the proposed rule stage, will ultimately provide more certainty for those leaseholders who operate on or near protected areas. To rescind this rule would be a step backwards in clarification and protection for species.

This clarification in the final rule, which allows the public to see the Secretary's reason to consider an exclusion, ultimately results in a more transparent process. The public will not only be able to submit comments on the benefits of exclusion and inclusion in general, but to focus their comments on those benefits as they relate to the specific areas most likely to be considered for exclusion. Additionally, the regulation makes clear that, at any time during the process of designating critical habitat, the Secretary may still consider additional exclusions, including areas that were not identified in the final rule. This codifies and makes transparent the Secretary's existing practice and is intended to allow commenters to provide information specific to those areas that the Secretary anticipates considering for exclusion.

In summation, IPAA disagrees with the Service's rationale for rescinding the January 19, 2021 final rule. We believe the final rule was a step in the right direction for clarity both to our members and the general public and an overall win for species conservation. IPAA does not believe that repealing defined steps for critical habitat designation is in the best interest of any party. IPAA and our member companies strive for excellence in stewardship of the land where they live and operate. However, having clearly-defined rules for development, including defining habitat, is key to responsible management and development.

IPAA appreciates the opportunity to comment on the proposed rule. We believe that the principles and considerations embodied in the final rule reflect a proper approach to implementing ESA requirements for the declaration of critical habitat.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel T. Naatz".

Daniel T. Naatz
Executive Vice President
Independent Petroleum Association of America