

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM L. KOVACS
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ENVIRONMENT, TECHNOLOGY &
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VIA ELECTRONIC FILING

United States Fish & Wildlife Service
Public Comments Processing
Attn: FWS-HQ-ES-2015-0016
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

**Re: Comments on Proposed Rule for Revisions to the Regulations for Petitions for Endangered and Threatened Wildlife and Plants under Section 4(b)(3) of the Endangered Species Act (80 Fed. Reg. 29286) (May 21, 2015)
Docket No. FWS-HQ-ES-2015-0016; RIN 1018-BA53**

Dear Sir/Madam:

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system, offers these comments on the United States Fish & Wildlife Service’s and the National Marine Fisheries Service’s (“the Services”) Proposed Rule for Revisions to the Regulations for Petitions for Endangered and Threatened Wildlife and Plants under section 4(b)(3) of the Endangered Species Act (“the ESA”) (80 Fed. Reg. 29286) (May 21, 2015) (“the Proposed Rule”).

The Chamber membership includes companies, state and local chambers, and trade associations involved in industries and businesses that likely will be impacted by the Service’s proposal, including oil and gas, utilities, agriculture, construction, manufacturing, mining, renewables, and technology. The proposal to revise the regulations for listing petitions under the ESA for allegedly endangered and threatened wildlife and plants has the potential to impact some or all of these Chamber members. Therefore, the Chamber has a strong interest in the Services’ Proposed Rule.

Under longstanding policy, the Chamber recognizes the need to protect certain species threatened with extinction, provided that this protection is done in a reasonable manner and is not used to unnecessarily impede development of lands and natural resources. The Chamber’s main objective with the Endangered Species Act is to ensure that the listing of endangered species and

the designation of critical habitats are based upon sound science and balance the protection of endangered species with the costs of compliance and the rights of property owners.

The Chamber appreciates the Services' overall reasoning behind the Proposed Rule: "to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petitions process to support species conservation." 80 Fed. Reg. 29286. The petition and listing process under the ESA has been in need of improvement, in part, because of its susceptibility to manipulation by outside groups, such as the recent mega "sue and settle" agreements requiring the review of nearly 1,000 species under the ESA. Two of the key provisions of the Proposed Rule, in particular, should help bring more transparency, efficiency, sound science, quality data, and stakeholder input to the ESA listing process.

First, under the Proposed Rule, listing petitions under the ESA would be limited to single species, and multi-species petitions would not be allowed. The Services acknowledge that multi-species petitions have been problematic in the past because "it has often proven to be difficult to know which supporting materials apply to which species, and has sometimes made it difficult to follow the logic of the petition." *Id.* at 29287. Limiting petitions to a single species would mean that petitioners would have to provide specific data and support for why the species at issue is in need of protection under the ESA. This would not only save time and resources expended by the Services in reviewing the petition, it also hopefully would lead to more complete and well-founded petition and listing decisions.

Second, the Proposed Rule would require petitioners to consult with States prior to submitting listing petitions under the ESA to the United States Fish & Wildlife Service ("FWS"). Specifically, the Proposed Rule would "require that for any petition submitted to the [FWS] pertaining to species found within the United States, a petitioner must certify that a copy of the petition was provided to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species occurs at least 30 days prior to submission to the Service." *Id.* at 29288.

States have a significant interest in these ESA processes and decisions because the potentially threatened or endangered species are native to their borders, the use and development of their lands may be impacted, and any economic and employment impacts resulting from ESA decisions will be shouldered by them and their residents. The Proposed Rule, at a minimum, would give States thirty days' notice of ESA listing petitions to the FWS and an opportunity to weigh in on those petitions. These basic tenets of the rulemaking process – notice and comment – have not always been available to States for ESA processes, such as the aforementioned mega "sue and settle" agreements. Requiring petitioners to provide States with copies of any listing petitions prior to submitting them to the FWS likely would improve States' ability to offer meaningful input on the potential petitions. In addition, to the extent a State previously undertook a review of the need for protecting the species in question, the data, information and conclusions from that review may inform the FWS's review of the species and save the FWS valuable time and resources.

Additionally, the requirement that petitioners consult with States should put FWS in an improved position to evaluate listing petitions based upon enhanced and more comprehensive data. Those improved evaluation opportunities should help to conserve agency resources while potentially minimizing listings based upon incorrect or incomplete information.

In conclusion, it is imperative that, while there may be species that are threatened or endangered and needing protection under the ESA, the process for petitioning and listing such species and protecting them under the ESA must be done reasonably, fairly, openly, and in consideration of the impact on the development of lands and natural resources and the economic impacts on the affected communities, businesses and industries.

Thank you for the opportunity to participate in this proceeding. If you have any follow up questions, I may be reached at (202) 463-5457 or by e-mail: wkovacs@uschamber.com.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Kovacs". The signature is fluid and cursive, with the first name being the most prominent.

William L. Kovacs