



February 5, 2021

Mr. Gary Frazer
Assistant Director for Endangered Species
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Endangered and Threatened Wildlife and Plants: Regulations for Interagency Cooperation
(Docket: FWS-HQ-ES-2020-0102)

Dear Director Frazer,

On behalf of the National Association of Counties (NACo) and the 3,069 counties, parishes and boroughs we represent, I write to comment on the U.S. Fish and Wildlife Service's (USFWS) final regulations on interagency cooperation under the Endangered Species Act (ESA). Counties appreciate the opportunity to offer input on these revisions that impact land management plans, project implementation and environmental stewardship.

As co-regulators and intergovernmental partners in wildlife and natural resource management, counties have a particular interest in implementation of environmental statutes. Federal agencies are required to coordinate resource or forest management plans with comparable county plans. State and local governments oftentimes provide scientific or economic information to federal land agencies for inclusion in environmental analyses developed for planning documents and specific project actions. Counties may also serve as partners in implementing final actions, such as infrastructure maintenance, wildfire fuels reduction, or watershed health projects on federal public lands. Therefore, counties strongly support the recently published regulations for interagency cooperation under the ESA.

Due to a ruling by the U.S. Court of Appeals for the Ninth Circuit in *U.S. Forest Service v. Cottonwood Environmental Law Center*, federal agencies have been required since 2016 to re-initiate ESA Section 7 consultations for forest or resource management plans when new information related to species listings or critical habitat designations becomes available. When appealing the ruling in 2016, the U.S. Department of Justice wrote that the ruling imposed on the U.S. Forest Service and USFWS "potentially cumbersome procedural measures that both agencies have determined to be unnecessary to achieve compliance with the ESA."¹ Counties agree that the courts have saddled federal agencies with a new, cumbersome process that needs to be addressed.

Forest and resource management plans drafted by federal agencies under the National Forest Management Act or the Federal Land and Policy Management Act are designed to serve as broad planning documents to guide lead agencies as they conduct environmental analyses for

¹ *U.S. Forest Serv. v. Cottonwood Env'tl. Law Ctr.*, No. 15-1387, U.S. Cert. Petition at 32 (May 13, 2016)

proposed actions on federal lands. It is atypical for these management plans to authorize specific actions, like resource extraction projects. Additionally, these management plans must undergo extensive analysis and legally mandated consultation with state and local governments and other federal agencies to ensure compliance with various environmental statutes, including the ESA, before they are finalized.

Furthermore, any proposed actions on federal lands must also be analyzed for potential impacts or conflicts with federal laws. Should an agency propose to construct a hiking trail, conduct a timber sale, or lease a parcel of land for oil drilling, that specific proposed action will be studied for effects on resource and environmental quality, including how any projects will affect endangered species or their habitat. The new final interagency cooperation regulations will ensure greater stability in partnerships with impacted local governments in environmental analyses and action implementation.

Once again, counties appreciate the opportunity to comment on this important matter. We strongly support the proposed final regulations for interagency cooperation under the ESA. Thank you for your attention to this crucial issue.

Sincerely,

A handwritten signature in black ink, reading "Matthew D. Chase". The signature is fluid and cursive, with the first name "Matthew" and last name "Chase" clearly legible.

Matthew D. Chase
Executive Director
National Association of Counties