



October 28, 2013

U.S. Fish and Wildlife Service
Division of Policy and Directives Management
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

Re: USFWS Proposed Designation of Critical Habitat
for the Neosho Mucket and Rabbitsfoot Mussels
Docket ID: FWS-R4-ES-2013-0007

To Whom It May Concern:

The Arkansas Farm Bureau Federation welcomes the opportunity to submit comments on behalf Arkansas' agriculture community and our more than 200,000 member families, especially those residing in the 31 affected counties where Critical Habit is being proposed for the Neosho Mucket and Rabbitsfoot Mussels.

The Arkansas Farm Bureau supports the comments submitted by the Association of Arkansas Counties. IF the comments herein are in conflict, those comments shall take precedence.

While not specifically relevant to the designation of Critical Habitat the following paragraph is relevant to the process used to list the Neosho Mucket and Rabbitsfoot Mussels along with 372 additional species in the South and Southeast including 42 species in Arkansas alone. The Endangered Species Act (ESA) is inherently flawed. It allows non-governmental organizations (NGOs) to file third party lawsuits and then requires federal agencies to compensate these NGOs whether they prove their case or not. It allows secret negotiations, behind closed doors, that result in binding out-of-court settlements that do not allow the participation of the affected community. It is interesting to note that, depending on the issues at hand and the entities involved, our federal agencies claim that they do not have the budgets to defend lawsuits filed by environmental groups and use this as justification for these out-of-court settlements; however, no expense is too great when these same agencies want to make an example of private individuals, organizations, and companies. An assortment of environmental NGOs and the U.S. Fish & Wildlife Service (USFWS) have collaborated and conspired on a number of these secret behind closed doors stipulated settlement agreements. Similar tactics have been used by environmental NGOs and the Environmental Protection Agency. It has become quite obvious that the Endangered Species Act and the Clean Water Act are in need of substantive reform.

Small Businesses Were Not Consulted

The Regulatory Flexibility Act requires federal agencies to solicit information related to the financial impact on small businesses/entities. The proposed CHUs include entire watersheds. The economies in these watersheds are agriculture based. Almost all of the farms and ranches in these Critical Habitat Units (CHUs) would fall under the small business/entity description. To our knowledge, not a single member of the agriculture community was contacted in accordance with the provisions of the Regulatory Flexibility Act. If you believe otherwise please provide a list of who in the agriculture community was contacted.

Listing Should Not Encompass an Entire Geographic Area

The ESA expressly states that "Critical Habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." In many cases the USFWS violates this express statutory limitation by including large geographical areas that have not been shown to be occupied by the species. Almost half (48%) of the proposed CHUs in all 12 states are in Arkansas, encompassing 31 counties and 42% of Arkansas' geographical area. The vast majority of these proposed CHUs appear to be arbitrary and are clearly an overreach of the USFWS authority under the ESA.

Local USFWS officials have stated that Arkansas has numerous listed threatened and endangered species and that these listings have had minimal or no impact on private landowners. However, one important aspect of these listings that have not been clearly explained is that they have not been accompanied by critical habit designations. The listing in unto itself does provide protection; however, the designation of critical habitat is crucial to implementation and enforcement. By the USFWS's own admission in a 2009 FWS revised fact sheet you state, "In areas where the species is not currently present there may be some project modification that would not have occurred without the Critical Habitat designation."

There are numerous examples of private landowners, businesses and companies in western states that have been bankrupted as a result of endangered and threatened species litigation, e.g. residential housing developments, agriculture in the San Joaquin Valley, silviculture in Oregon, etc. To imply these listings and their accompanying Critical Habitat designations will have minimal impact on private property owners is disingenuous. Litigation may not come directly from the USFWS itself, but the designation of Critical Habitat provides the mechanism for third party lawsuits. Ensuring that the Critical Habitat designation is limited to those areas which are essential for the protection of these species (occupied habitat) is crucial to also protecting private landowners, farmers and ranchers from unnecessary and extremely expensive third party litigation.

Flawed Economic Analysis

The USFWS estimates the total cost of Critical Habitat designation to be \$4.4 million dollars (\$220,000 per year) over a 20 year period for all 12 affected states. This estimate was performed using an incremental approach that only accounted for the cost of interagency consultations.

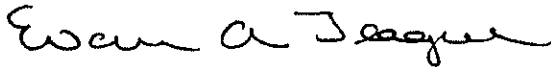
Based on the economic analysis performed by the Association of Arkansas Counties the absolute minimum cost of the proposed Critical Habitat in Arkansas alone will be over \$20 million. This is approximately five times the cost of \$4.4 million that was contained in the USFWS report for all 12 states and all rivers involved, yet the \$20 million figure only represents a small fraction of the total value of economic activity of the counties containing these CHUs. As mentioned above, the proposed CHUs include all or part of 31 counties. The value of agriculture production in these counties alone is nearly \$3 billion and represents more than 500,000 jobs.

The USFWS economic analysis fails to recognize any cost to private property and the impact Critical Habitat will have on their cost to operate their business or their property values. The USFWS estimate does not take into account the additional requirements imposed on farmers and ranchers seeking coverage under federal and state permits (EPA NPDES CAFO, COE Section 404, APCEC Regulation 5, etc.) or non-permitted activities (EPA Section 319, NRCS and FSA cost share programs, etc.)

Designation of Critical Habitat will significantly increase the numbers of consultations required for permitted activities as well as non-permitted activities. In the past consultations have not occurred and therefore insufficient data existed related to the cost of project delays; however, consultations are expected to significantly increase with the designation of Critical Habitat. These consultations are time consuming and will delay permit approvals, conservation practice implementation and have their own inherent costs. These costs have not been included in the economic analysis.

Again, thank you for the opportunity to provide input. Please feel free to contact us with any questions or comments. You can reach me at 501-228-1335 or at evan.teague@arfb.com.

Respectfully submitted,



Evan A. Teague, P.E.
Environmental Specialist

Cc: ARFB Staff and Board of Directors