



January 27, 2012

Division of Policy and Directive Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
MS 2042
Arlington, VA 22203

RE: FWS-R9-ES-2011-0031 Request for Comment Period Extension

Mr. Ashe:

On behalf of the more than 160,000 members of the National Association of Home Builders (NAHB), I respectfully request that the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) (collective referred to hereafter as the Service) extend the public comment period for the *Draft Policy on Interpretation of the Phrase "Significant Portion of Its Range,"* as published in the *Federal Register* on December 9, 2011 for an *additional sixty days (60)* beyond the currently scheduled public comment deadline of February 7, 2012.

The Service's draft policy interpreting the phrase "Significant Portion of Its Range," (SPR) represents a significant departure from the Service's long standing policy under the Endangered Species Act (ESA) of maintaining the distinction between species, subspecies, and distinct population segments (DPS). Under the draft SPR policy, the Service claims a SPR finding creates an independent basis for listing a species, subspecies or DPS under the Act, and thus, the Service can make a that a species, subspecies, or DPS warrants a finding of endangered or threatened throughout all of its range or only a "significant portion of its range."¹ Because the draft SPR policy represents a dramatic departure from the Service's prior species listing process outlined in its March 16, 2007 guidance memorandum,² NAHB submits additional time is needed to fully examine and understand both the proposed changes, as well as their impacts, and to formulate meaningful comments.

¹ 76 Fed. Reg. 76,987 (December 9, 2011).

² P. Ferraro, C. McIntosh, M. Ospina. The Meaning of "In Danger of Extinction throughout All of a Significant Portion of its Range." *Journal of Environmental Economics and Management* 54 (2007), 245-261.

Further, the draft SPR policy will have a substantial and direct impact on NAHB members who develop land and construct homes, apartments, and light commercial projects nationwide. Under the draft SPR policy, the Service could list endangered SPRs or threatened SPRs for any species, subspecies, or DPS, which would immediately trigger all of the ESA's regulatory and permitting requirements across the entire range of the species, subspecies, or DPS. While NAHB's members are committed to species conservation, oftentimes well-intentioned policies and regulatory actions by the Service such as the listing determinations that will be made under this draft SPR policy, have failed to strike a proper balance between species conservation and needed economic growth. In these instances, NAHB members are faced with increased costs attributed to project mitigation, modification, delay, or even termination of land development projects. Within the context of the ESA, all of these regulatory impacts are directly attributable to the Service's listing decisions. Thus draft SPR policy, if implemented as proposed, will impose substantial ESA permitting and regulatory burdens at a time when the U.S. homebuilding industry is experiencing the worst economic conditions on record.

For the reasons stated above, NAHB requests the Service extend the public comment period for *The Draft Policy on Interpretation Of The Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definition of "Endangered Species" and "Threatened Species,"* Service Docket Number, FWS-R9-ES-2011-0031, for an additional 60 days past the original announced due date of April 7, 2012. If you have any questions about this request please contact Larissa Mark (202) 266-8157 or lmark@nahb.org. Thank you in advance for your careful consideration of this request.

Sincerely,



Susan Asmus
Sr. Vice President, Regulatory Affairs
National Association of Home Builders