

U.S. Fish and Wildlife Service  
Public Comments Processing  
Attn: FWS-R9-ES-2011-0031  
Division of Policy and Directives Management  
4401 North Fairfax Drive, MS 2042  
Arlington, VA 22203

**Re: Comments on the FWS/NMFS Draft Policy on Interpretation of “Significant Portion of Range”**

Dear Sir/Madam,

On Dec. 9, 2011, the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively, Services) issued a draft policy interpreting “significant portion of its range” (SPR) in the Endangered Species Act (ESA) definitions of “endangered” and “threatened.” Further, the Services identified a series of questions and issues for consideration and comment by the public.

**I. RESPONSE TO SERVICES’ QUESTIONS**

As part of its *Federal Register* notice, the Services requested comments and recommendations on a series of questions. In response, Farm Bureau provides the following comments:

***A. Services Question 1(a): Consequences of a species being endangered or threatened in a significant portion of its range:***

***(a) The draft policy interprets the SPR language to provide an independent basis for listing. Is this an appropriate interpretation? Are the other alternative interpretations we considered more appropriate, and why or why not? Are there other alternative interpretations that we should consider?***

The Services’ determination that the SPR language creates an independent basis for listing is a reasonable interpretation of the ESA. The definitions of both endangered and threatened species each contain the phrase “...throughout all or a significant portion of its range.” Here, the natural reading of this phrase is that the use of “or” distinguishes between two scenarios:

- First, where a species is found to be endangered or threatened throughout all of its range; and

- Second, where a species is found to be endangered or threatened throughout a SPR.

Importantly, however, the Services must apply the independent meaning/natural reading principle consistently in its administration of the SPR inquiry. In its present formulation, the Services appear to ignore the principle of independent meaning in several core respects:

- If independent meaning is to be given to the SPR inquiry, then the designation as threatened or endangered also is independently established. Specifically, the Services proposal to extend the determination of a threatened or endangered status within a SPR to a range-wide protection is inconsistent with the “independent meaning” principle that the Services rely upon in the first instance. Thus, in order to fully give independent meaning to the determination of threatened or endangered within a SPR, the actual designation must solely apply to that portion of the range, not range-wide as proposed by the Services.
- The Services’ determination of SPR must be a wholly separate inquiry from whether the species is in danger of extinction. In its present formulation, the Services insert the concept of the risk of “extinction” into the review of whether a portion of the species range is significant. It must be clearly understood that the test of “in danger of extinction” applies only to the relationship of that portion of a species’ range with the range of the species as a whole. It does not apply to the determination of species status for listing purposes. To be considered “significant” for purposes of this analysis, the portion of the range should be so important that, without it, the species would be in danger of extinction. Specifically, the Services propose that:

A portion of the range of a species is “significant” if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

***B. Services Question 1(b) and (6): Consequences of a species being endangered or threatened in a SPR: ...***

***[1(b)] When a species is listed due to being endangered or threatened throughout an SPR, should the protections of the Act apply throughout the range of the species? If so, how should we apply those protections?***

***(6) We recognize that under the draft policy, a species can be threatened throughout all of its range while also being endangered in an SPR. For the reasons discussed in this document, in such situations we would list the entire species as endangered throughout all of its range. However, we recognize that this approach may raise concerns that the Services would be applying a higher level of protection where a lesser level of protection may also be appropriate, with the consequences that the Services would have less flexibility to manage the species and that scarce conservation***

*resources would be diverted to species that might arguably better fit a lesser standard if viewed solely across its range. The Services are particularly interested in public comment on this issue.*

The Services propose a range-wide designation of a species where they determine that a species is threatened or endangered only throughout a SPR. Further, such range-wide designations will have the potential effect of “up-listing” a species from range-wide threatened to range-wide endangered if the SPR review determines that a species meets the threshold for an endangered designation. Both the application of a range-wide designation as well as this “up-listing” scenario are inconsistent with the independent meaning concept adopted by the Services and are contrary to the terms and intent of the ESA.

The draft policy proposes that when a species is found to be threatened or endangered only within a SPR, the entire species will be listed as threatened or endangered throughout its entire range. Farm Bureau does not agree with the draft policy’s interpretation in this regard. The Services’ interpretation of how to apply SPR must give full effect to the ESA, in this case, to Section 4(c)(1). This section provides that when listing species, the secretary will “specify with respect to each such species over what portion of its range it is endangered **or** threatened, and specify any critical habitat within such range.” The proper interpretation of Section 4(c)(1) and the SPR inquiry is that the listing determination based on a SPR determination is limited to that portion of the species’ range.

The Services’ proposal for range-wide protections for SPR findings also upsets the natural process of the listing inquiry. When determining whether a species is endangered or threatened, the Services should first assess whether the species is at risk range-wide. If the species is endangered or threatened throughout its range, then it should be listed as such and no further inquiry is necessary. If, however, the Services find that the species does not warrant listing range-wide, but does warrant listing in a SPR, it would be contradictory to then list the species as endangered or threatened range-wide based on the SPR finding. The preliminary finding that the species does not require range-wide protection should remain consistent upon a finding that the species warrants protection in any SPR.

To read the ESA as requiring range-wide listing on the basis of the SPR listing contradicts the Services’ own “independent meaning” principle as well as ESA, Section 4(c)(1). To give effect to the statute, a species could be considered “endangered or threatened” throughout all its range, or “endangered or threatened” throughout a SPR. In either case, the rangewide or significant portion of the range would provide the parameters for the listable entity. There is nothing in the statute or the regulations that would suggest a rangewide listing based on a finding of endangerment in a SPR, the language and construction of the statute suggests otherwise—that a species be listed in a SPR if it is found to be endangered or threatened there. Designating a species to be listed as endangered or threatened in the portion of its range where such protection is necessary will ensure that the Services’ application of this element is consistent with the statutory text.

***C. Services Question: (2) The definition of “significant”:***

***(a) The draft policy includes a definition based on biological/ conservation importance. Are alternative ways to define “significant” more appropriate, and why or why not? Would such approaches be workable in terms of transparency, harmony with all key portions of the Act, and ability to be implemented consistently?***

Farm Bureau agrees that the definition of “significant” should have a basis in biological conditions. It should also only apply to habitat that is absolutely necessary for the species, so as to protect only truly important habitat. The proposed definition of “significant” accomplishes both of those goals. With the explanation given in the guidance, scientists have sufficient guidance to determine when habitat might be “significant” enough that without it, a species might be in danger of extinction. Similarly, the “but-for” test—but for the habitat, the species is in danger of extinction—establishes that the habitat is truly “significant” to warrant an independent basis for listing.

***Services Question 2. (b) [Part I] We chose a relatively high threshold for “significant” which requires that loss of the portion would cause the overall species to become endangered (“in danger of extinction”). Is this threshold appropriate? Should it be higher or lower?***

Farm Bureau supports the Services’ intent to utilize a “threshold for ‘significant’ that is relatively high.” In explaining this approach, the Services have stated that it is seeking the balance needed to ensure that it is not imposing restrictions or expending conservation resources disproportionately to conservation benefits, while also ensuring that the SPR determination has independent meaning in implementation of the ESA. Farm Bureau would add that common-sense and consistent interpretation of the term “significant” requires a high threshold in order to effectuate its meaning.

As the Services have noted, applying the principle of giving force and independent meaning to the SPR inquiry means that there must be a clear distinction between review of the species on a range-wide basis and the narrower SPR inquiry. Under the independent meaning approach taken by the Services, the first element of the listing inquiry is whether, range-wide, the species is threatened or endangered. Thus, in order to give independent and separate purpose to the SPR inquiry, there must be a threshold that allows for an appropriate distinction between the inquiries. Specifically, there must be a meaningful inquiry as to the biological importance of a specifically identified portion of the species range.

Use of a lower threshold for significance would ultimately dilute the SPR inquiry. It is not merely any threats to a species within any part of its range that merits protection under the SPR inquiry. Further, it is not a measure that is defined by mere percentages, acreages or other measures of “size” (although such factors may be relevant to determining whether a portion of a species range is significant). Rather, the determination of what constitutes a SPR must draw upon myriad factors (size, species health, characteristics of the range being reviewed, life cycle needs, utilization and other biological characteristics critical to the species well-being) to determine whether there is a SPR that bears a separate review and, if so, a determination of whether a species is threatened or endangered within that SPR.

Establishing a high threshold/independent meaning approach to the SPR inquiry also wards against attempts to cherry-pick or gerrymander the identification of an area for the purpose of obtaining a listing determination. Thus, it is imperative that the Services establish a clearly defined, high threshold for review of a SPR as an independent basis for listing a species.

***D. Services Question 2(b) [Part 2]: Should the definition reference both “in danger of extinction” and “likely to become endangered,” thus reflecting both the definitions of “endangered species” and “threatened species” as the benchmark for biological significance? Or should it refer only to whether loss of the portion would render the whole “in danger of extinction,” as is currently included in the draft policy?***

The current definition is adequate and appropriate for the determination of SPR. The standard of “in danger of extinction” applies only to the determination of the SPR. The guidance also discusses the scientific principles that address how “in danger of extinction” should be determined. These principles are adequate.

The determination of what constitutes SPR is wholly separate and distinct from the determination of whether a species should be listed as endangered or threatened. To have meaning, the SPR must be so important to the species that “but-for” that habitat, the species would be in danger of extinction. That determination involves the relationship of the SPR to the entire current range of the species. Adding the additional language will confuse the SPR determination with the listing determination, to the detriment of both.

To put this discussion in perspective, Farm Bureau proposes the following:

The Services should first determine whether a species might be endangered or threatened on a rangewide basis. An affirmative answer would preclude consideration of whether the species might be listable in a SPR. A negative answer would lead to an inquiry whether the species is endangered or threatened throughout a SPR. If a proposal to list in the SPR is made, the public should also be given an opportunity to comment on the determination of SPR made by the Service.

***E. Services Question (3): We recognize that our definition of “significant” in the draft policy has a difficult conceptual underpinning both to analyze and to convey. Would it be appropriate to use another measure, such as percentage of range or population, as a rebuttable presumption as to whether a portion meets the definition of “significant,” or whether a portion does not meet the definition of “significant”? Doing so could potentially streamline analyses and allow us to use our resources more effectively, as well as provide some general guidance to the public on how the standard for***

***“significant” would be applied. Would development of such a measure provide a useful tool? What measure would be appropriate for a rebuttable presumption, and how would it be rebutted?***

Farm Bureau opposes the use of “percentage of range” or other quantification metrics to establish a rebuttable presumption. The determination of what constitutes a SPR is a biological inquiry that will have to take into account factors relevant to the subject species. Further, acreage of habitat (or other similar metrics) or any use of a rebuttable presumption run counter to the holistic analysis of factors (i.e. representation, redundancy or resiliency/NMFS’ four viability characteristics) that has been proposed by the Services. The review of a species’ status, including identification of any SPR, should be done on an individual basis and addressed through examination of the specific factors and characteristics particular to that species.

Farm Bureau agree that a determination of significance of a portion of a range should be based on biological principles. Determinations based on area percentages, population percentages or other statistical metrics do not measure significance for purposes of conservation. Basing significance on arbitrary metrics, such as area, misses the whole point of the ESA with its emphasis on conserving *species*.

***F. Services Question (4) Range and historical range: What role should lost historical range play in determining whether a species is endangered or threatened?***

The draft policy currently considers range of a species as “the general geographical area within which that species can be found at the time FWS or NMFS makes a particular status determination”. Farm Bureau supports the Services’ conclusion that SPR review should be limited to presently occupied habitat, excluding historical range.

The statutory text supports the conclusion that historical range should not be included in identifying what constitutes a SPR.

The focus on a species’ current, occupied range is supported by the fact that, where Congress intended to look at unoccupied areas, it specifically addressed that element. In particular, ESA Section 2(5)(A) explicitly addresses the treatment of occupied and unoccupied areas in the designation of critical habitat. Principles of statutory construction require that the Services take note of Congress’ purposeful choice of language in defining the scope and applicability of particular provisions. As evidenced by its treatment of the definition of “critical habitat,” Congress addressed those instances where both occupied and unoccupied areas are to be examined. The fact that Congress did not explicitly include historical range, but rather used what is clearly a present tense, possessive phrase of “its range” is a meaningful legislative choice that defines the scope of the SPR inquiry.

We must remember that “significance,” for purposes of this definition, measures the relative importance of a portion of a species’ range with its present range. Historical range has no relevance for determining what portion of a species’ range is “significant.” It is the present situation that is important for this analysis, not historical considerations. In any event, the

analysis would be the same—what portion of a species’ range is so “significant” that without it a species is in danger of extinction?

In comments supporting the proposed exclusion of historical range from the identification of what constitutes a SPR, the Services note that the loss of habitat or narrowing of a species’ range is an appropriate factor in reviewing whether a species is endangered or threatened. Specifically, Section 4(a)(1) includes a consideration of the “curtailment” of a species habitat or range. This element properly captures when and how the consideration of historical range is to occur in the listing inquiry. Specifically, as part of the listing review that will look at a species’ status within a SPR, the Services are directed to look at whether a species’ range has been curtailed, modified or otherwise adversely affected in a way that the species is in danger of extinction or is likely to become endangered in the foreseeable future. Accordingly, integration of historical range into the identification of what constitutes a SPR is inappropriate.

Once again, the Services must strive to ensure consistency with the principle of independent meaning and a natural reading of the ESA. As enacted by Congress, the statutory inquiry in determining a SPR is a precursor inquiry to the listing determination review. Thus, while treatment of historical range occurs in the actual listing determination, the first-level identification of what constitutes a SPR is a narrower inquiry that only looks to those areas which are presently occupied by the species.

***G. Services Question (5): Reconciling SPR with DPS authority: What is the proper relationship between SPR and DPS?***

The draft policy attempts to harmonize the current practice of designating distinct population segments (DPS) as threatened or endangered with the SPR inquiry. The Services propose to retain the DPS inquiry as a separate review, and where it could make a determination that a species is endangered or threatened within a SPR, and the population in that significant portion also is a valid DPS, the Services will default to listing and protecting only the DPS, rather than the entire species. Farm Bureau supports the Services’ proposal.

The Services have a long-standing set of policies, listing determinations and ESA implementation actions involving distinct population segments. Further, the adequacy and scope of the DPS policy has been the subject of numerous court decisions. Overall, implementation of DPS policies has now developed a level of certainty in application that warrants its continued utilization. Moreover, application of the DPS policy, in a manner that is independent of the SPR inquiry, provides a level of flexibility and continuity that is encouraged in the administration of the ESA.

Farm Bureau supports the Services’ proposed harmonization of the DPS policy with its treatment of the SPR policy. Particularly, Farm Bureau supports the Services’ proposal to defer to a listing of a distinct population segment instead of a SPR listing, when there is a valid distinct population segment. This approach provides for appropriate harmonization of the DPS and SPR elements. The Services’ approach ensures that species will be protected where necessary, and that land would not be designated when it would not add to the protection of the species.

Both the statute and case law are clear that a “species” is not listable below the DPS level. Thus, there can be no SPR listing for a DPS.

## **II. CLARIFICATIONS AND IMPROVEMENTS TO THE SERVICES POLICY**

In addition to responding to the specific questions posed by the Services, a number of other elements to the draft policy warrant comments.

### ***A. Designation of a Species as Endangered or Threatened in a SPR Should be Specific to that Portion of its Range.***

The Services’ proposal to extend designation of a species as threatened or endangered, range-wide, should be reversed. As noted in Section I.A., this proposal fails to give independent meaning to the listing review and determination of range-wide threats versus the narrower SPR inquiry. If, as the Services now pronounce, it recognizes the SPR inquiry as a separate and independent basis for designating a species as threatened or endangered, then the Services must apply such determination consistent with the structure of the ESA. In this regard, Section 4(c)(1) definitively addresses this matter, providing that:

... “[e]ach list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range.

This formulation clearly requires and accommodates designation of a species as threatened or endangered to a “portion of its range.” Accordingly, the Services must remove from its policy its present statement that a finding of threatened or endangered status within a SPR requires listing of the entire species on a range-wide basis.

### ***B. A High Threshold Should Apply to Designation of Critical Habitat for a SPR Listing that Covers Unoccupied Areas or Areas Outside the Identified Portion of the Range for which the Listing is Made.***

The Services propose to use “the same process” for designation of critical habitat for a species that is listed based on a SPR finding. In particular, the Services assert that:

“critical habitat designations may include areas within the SPR, areas outside the SPR occupied by the species, and areas that are both outside the SPR and outside the area occupied by the species at the time of listing, as appropriate.”

Further, the Services also state that:

“...as a result of threats in a significant portion of its range, the designation of critical habitat may tend to focus on that portion of its range.”



This tendency to focus on the portion of a species' range for identification of critical habitat should be further clarified to establish a high threshold to any designation of unoccupied areas or areas outside the identified portion of the species' range.

By definition, the concept of "critical habitat" may cover both occupied and unoccupied habitat. However, this is not the only relevant consideration in the context of a designation of critical habitat associated with a SPR listing. In particular, Section 4(c)(1) explains that:

Each list [designating a species as threatened or endangered] shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range.

This language is not superfluous. To the contrary, the reference to specification of critical habitat "within such range" was added at the same time as the concept of SPR. As such, the statutory provisions under Section 4(c)(1) evinces an intent to focus designation of critical habitat within the species' range. Accordingly, the presumption should be that, where a species is designated as endangered or threatened on the basis that it is endangered or threatened through a SPR, the consequent determination of any critical habitat is similarly limited to that area which has been determined to be a SPR.

This presumption can be accomplished by ensuring that, when critical habitat needs to be designated for a species that has been listed because it is at risk in a SPR, the appropriate focus for the critical habitat designation should first examine the primary constituent elements (PCEs) within such range—i.e., the areas which have been identified to represent a SPR. Further, review and designation of any unoccupied habitat or areas outside the identified range should only be undertaken in the event that the Services first determines that habitat within the identified range, if designated as critical habitat, will not fully satisfy the purpose of designation of critical habitat under the ESA.

***C. The Services Must Adopt Transparency Measures and Revisions to Its Petition Process to Ensure that Adequate Information is made Available to the Public***

A fundamental premise of the Services' policy is that the Services intend to undertake, as an independent analysis, the potential listing of a species as threatened or endangered based on threats to such species within a SPR. A prerequisite to any such determination, however, is the need to inform the public fully regarding the identification and analysis of any portion of a species' range under this SPR inquiry. Failure to provide specific information of the particular range being identified and the factors necessitating its independent review plans would fundamentally undermine the openness and sufficiency of the public notice and comment period. To facilitate this level of transparency, the Services must take several steps:

- First, the Services must include in its policy and procedures a specific requirement that any initiation of a status review for a species (including a 12-month review under Section

4(b)(3)(B); the annual candidate notice of review; and any proposed listing of a species as threatened or endangered within a SPR) shall be preceded by a publication of a notice in the *Federal Register* that includes notification of any proposal or consideration of an area for separate assessment of a species listing under the SPR inquiry. Such information must, at a minimum, include mapping, identification of factors considered, identification of all studies and information to be considered in relation to this inquiry, and an explanation as to any proposed basis for the identification of an area as a SPR for purpose of an independent listing inquiry.

- Second, the Services must contemporaneously propose revisions to its regulations governing the submission and review of listing petitions to require specification and documentation of any proposal to consider a portion of a species' range as a SPR for the purpose of a separate listing review. Further, the Services should explicitly note that any petition failing to provide such information shall only be considered to be requesting consideration of a species' listing on a range-wide basis. Moreover, review and action on the listing petition must be limited to the specific question and issues posed within the listing petition.

The ESA and the Services' own scientific integrity policies dictate the need for the identification of the best scientific and commercial data available for consideration in a listing process. Further, the Services have long stated its intention to ensure a fully transparent listing review process. That must be carried forward in the implementation of the SPR policy.

*D. Core Elements of the Treatment of the SPR Inquiry and its Legal Implications  
Must be Incorporated into the Services' ESA Regulations*

As the Services recognize, the phrase SPR has been the subject of a number of different interpretations emanating from both the Services and the courts. Continuation of such a piecemeal and haphazard treatment of the SPR inquiry is unproductive and must be ended to ensure a more consistent approach to implementation of the ESA. However, it is equally important that the Services adopt the appropriate approach to implementation of the SPR inquiry. Specifically, the Services should not be adopting a "policy" for interpreting this phrase, but rather engaging in a full rulemaking under the Administrative Procedure Act (APA).

Federal courts have long recognized that an agency's attempt to "define" or "interpret" a statutory phrase does not, by that act, qualify it as an interpretive rule.

In general terms, interpretive rules merely explain, but do not add to, the substantive law that already exists in the form of a statute or legislative rule. Legislative rules, on the other hand, create rights, impose obligations, or effect a change in existing law pursuant to authority delegated by Congress.

For example, an interpretation of a statutory term that creates a new or independent basis for enforcement action also is creating new rights and imposing

new obligations, thereby making such action a legislative rule under the APA. Similarly, where a rule adds to, amends, or otherwise changes an existing legislative rule, the modifying action by the agency also must be treated as a legislative rule pursuant to the APA.

Here, the Services are not merely formalizing “interpretation” of the phrase “significant portion of its range.” Rather, it is setting forth a definitive rule that states, in part, that:

The phrase “significant portion of its range” ... provides *an independent basis for listing*; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a SPR. *If a species is found to be endangered or threatened in only a SPR, the entire species is listed as endangered or threatened, respectively, and the Act’s protections apply across the species’ entire range.*

These statements carry with them new legal implications, including:

- The listing and delisting process will now, separately, consider the status of each species under the SPR inquiry;
- If a designation of threatened or endangered species is required under the SPR analysis, then “take” prohibitions and Section 7 consultation requirements will be imposed; and
- As proposed, the Services would change the designation of a species from a range-wide designation of “threatened” to an “endangered” status if the species is deemed endangered within a SPR.

While the Services have, undoubtedly, struggled with and attempted to interpret the SPR inquiry on a case-by-case basis, this proposal steps beyond that approach. Specifically, there are clearly new rights and legal obligations arising from the prospective application of the proposed interpretation of the SPR inquiry.

As an additional matter, the proposed policy will have the effect of modifying and adding to the Services’ existing ESA regulations covering the process for designation of endangered and threatened species. Notably, 50 C.F.R. § 424.10 provides that:

“[t]he Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species . . . *only in accordance with the procedures of this part.*” (Emphasis added).

The Services’ proposal, however, departs from these regulations—and certainly contemplates listing determinations which are not in accordance with the present listing regulations.

The existing ESA listing regulations detail factors for consideration in making listings and designating critical habitat, basic information requirements for petitions and notices of review, and timelines for actions. The Services now propose to adopt an “independent basis” for listing determinations and articulate specific criteria for reviewing what constitutes a SPR. Logically, and consistent with governing precedent, such measures should be included in the ESA listing regulations.

Several elements warrant application of full notice and comment rulemaking proceedings under the APA, including:

- The definition of “significant portion of the range”;
- Identification of factors to be used in identifying a SPR;
- The scope of the listing protection (i.e., whether limited to the identified SPR element or applied range-wide) resulting from a finding that a species is threatened or endangered within a SPR; and
- Modification of the listing petition review process (as detailed in Section II.C.)

***E. It Must be Clearly Understood that these Principles Apply Equally to De-Listing as to Listing.***

If a species can be listed based on a SPR it should be equally understood that a species can be de-listed based on the same principle. Thus, a species listed because it is endangered or threatened in a SPR should also be de-listed if it has recovered in a SPR. This common-sense application is not always clearly stated or understood, and Farm Bureau requests that it be clearly stated in the final rule.

If the Services decide to list range-wide based on a determination that a species is endangered or threatened in a SPR as currently proposed, the final rule should also clearly state that if a species so listed has recovered in the SPR it should also be de-listed range-wide as well.

***F. Application of Policy to Pending Candidate Review***

Farm Bureau requests that FWS clarify and explain the intended role of the SPR policy in ongoing implementation of the candidate species review settlements with WildEarth Guardians and the Center for Biological Diversity. Under these settlements, FWS is required to review 251 candidate species over the course of approximately five years, and either propose the species for listing or find that a listing of such candidate species is not warranted and, thus, remove the “candidate” designation for such species. FWS’s initial determination that the species should be classified as “candidate species” clearly occurred prior to establishment of any independent policy regarding FWS’ interpretation of the SPR inquiry. Farm Bureau presume that FWS will be updating its administrative record for each species as it is reviewed, and will be independently assessing whether listing of the species is now required. Accordingly, it would make sense that

FWS apply all of same procedures, assumptions, thresholds and definitions that the Services are now announcing under this present policy.

The ability and nature of any FWS application of the SPR definition and procedures to its candidate review process should not be left unstated. Accordingly, prior to any implementation, FWS should publicly, and with full transparency, explain how it intends to address the SPR inquiry in the candidate review process.

Farm Bureau appreciates the opportunity to offer our comments.