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September 3, 2020

Public Comments Processing  
Attn: FWS-HQ-ES-2020-0047  
U.S. Fish and Wildlife Service  
MS: PRB(3W)  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

Dear Sir or Madam:

The Western Governors' Association (WGA) submits the following comments to the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) on the proposed rule, Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat (85 FR 47333). WGA represents the Governors of the 22 westernmost states and territories and is an instrument of the Governors for bipartisan policy development, information-sharing and collective action on issues of critical importance to the western United States.

The proposed rule would establish a regulatory definition of "habitat," as that term is used in the context of critical habitat designations under the Endangered Species Act (ESA, 16 USC 1531 *et seq.*). In WGA Policy Resolution 2020-01, *Strengthening the State-Federal Relationship*, Western Governors observe that states are co-sovereigns with the federal government pursuant to the Tenth Amendment of the U.S. Constitution and other federal law. This is certainly true of fish and wildlife management, as states have primary management responsibility for the majority of fish and wildlife species within their borders. The federal government maintains certain management responsibility for species listed under the ESA; the Act itself, however, is premised on a strong federal-state partnership in managing and recovering listed species.

Establishing a definition for habitat could have implications for state management of fish and wildlife. It is important for federal agencies and state wildlife managers to maintain a close working relationship to ensure that any new interpretation or application of the term does not result in unintended consequences for state management of species. Accordingly, the Governors appeal for ongoing consultation between states and the federal government in the development of this proposed rule and all federal policies affecting state authority.

It is also critical that state wildlife data inform federal decision making on critical habitat designations. Western Governors, in WGA Policy Resolution 2017-08, *State Wildlife Science, Data and Analysis*, urge FWS and NOAA to utilize state wildlife data, analysis and expertise as principal sources in development and analysis of science serving as the legal basis for federal regulatory action, including the determination of what constitutes "habitat" under any new regulatory definition of the term. State wildlife science, data and analyses are invaluable tools for informing federal project planning and research efforts related to wildlife management.

Western Governors submit these remarks through the public notice and comment process for administrative recordkeeping purposes. The Governors, however, maintain that this process is an

insufficient channel for state-federal communication on federal actions that may affect state authority or administrative activity. Western Governors strongly urge you to engage in early, meaningful, substantive and ongoing consultation with states in advance of any such decisions or related public processes. Such consultation will result in more effective, efficient, and resilient federal policy, benefiting our shared constituents.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Brown", with a long horizontal flourish extending to the right.

Kate Brown  
Governor of Oregon  
Chair, WGA

A handwritten signature in blue ink, appearing to read "Brad Little", with a long horizontal flourish extending to the right.

Brad Little  
Governor of Idaho  
Vice Chair, WGA