



August 8, 2022

Submitted via Federal eRulemaking Portal  
<https://www.regulations.gov/>

Lisa Ellis  
Acting Chief  
Division of Restoration and Recovery  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
Falls Church, VA 22041– 3803

**RE: California Farm Bureau Comments on Docket ID No. FWS–HQ–ES–2021–0033 -  
Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations**

Dear Ms. Ellis:

The California Farm Bureau appreciates the opportunity to provide comments on the U.S. Fish Wildlife Service (Service) Proposed Rule *Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations*. If finalized, the proposal to revise the regulations concerning experimental populations of endangered species and threatened species under the Endangered Species Act (ESA).

I. About California Farm Bureau

California Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 32,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers, ranchers and foresters engaged in production agriculture to provide a reliable, safe, and affordable supply of food and fiber through responsible stewardship of our natural resources.

II. Background

Amendments made to the ESA in 1982 included the addition of section 10(j) which provides for reintroductions of listed species by allowing the Service to designate “experimental populations.” To carry out section 10(j), the regulations provide that the Service may designate as an experimental population a population of an endangered or threatened species that will be released into suitable natural habitat outside the species’ current natural range but within its probable historical range, absent a finding by the Service Director in the



extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed.

It is our understanding that the Proposed Rule is proposing to remove language generally restricting the introduction of experimental populations to only the species' "historical range" therefore allowing for the introduction of populations into habitat outside of their historical range for conservation purposes. Citing unanticipated impacts of climate change and other threats such as invasive species, the Service states that it may be increasingly necessary and appropriate to establish experimental populations outside of a species' historical range if the ability of the habitat to support one or more life history stages has been reduced.

### III. General Comments

California farmers and ranchers acknowledge the important role working agricultural lands play in sustaining wildlife. Across the nation, farmers and ranchers have placed 140 million acres of land in conservation programs, helping to provide for wildlife habitat, illustrating that farmers and ranchers view themselves as partners in conserving our natural resources and the wildlife that we share those resources with. For these reasons, we are disappointed with the Service's Proposed Rule which seeks to greatly expand the Service's authority and change the current process for establishing experimental populations of threatened and endangered species. Due to the sweeping nature of the proposal and its potential impacts on California farmers and ranchers, we offer the specific comments below for your consideration.

### IV. Specific Comments

#### *Scrutiny on Introductions Outside Historic Range is Appropriate*

Current Service regulations allow for the introduction of experimental populations within its probable historic range, absent a finding by the Director in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed. Yet, the Proposed Rule would allow for increased occurrences of species introductions into habitat outside of their historical range for conservation purposes. This would both remove regulatory restrictions on when these introductions could occur, and revise descriptions of what habitat areas may be appropriate for such introductions. California Farm Bureau believes the current level of scrutiny on introduction of experimental populations outside the probable historic range is appropriate, given the significant impacts new species can have on both ecosystems and economic activity in a new region. Additionally, we urge the Service to consider unintended, harmful consequences of the Proposed Rule in its current form.



### *Experimental Populations and Critical Habitat*

The Proposed Rule seeks to establish experimental populations as well as designate critical habitat for essential experimental populations anywhere in the United States due to threats, specifically citing climate change and invasive species as two potential threats. This proposal, when combined with the recent rescission of regulations providing a definition of “habitat” for the purpose of designating critical habitat, would allow the Service to designate critical habitat on both public and private lands that it believes has a necessary “resource or condition” for an essential experimental population’s “life history stages” anytime in the future. This results in an almost no-limit dynamic as to what could be claimed to be an impact to a species during its non-defined “life history stages” and therefore no limit to how expansive the Service could be in designating populations resulting in vast restrictions to land and water use across the country. We urge the Service to reconsider this proposal and, at minimum, urge the Service to define “life history stages” in the context of this regulation.

### *Invasive Species*

As previously mentioned, the Proposed Rule cites the threat of “invasive species” in its proposal. The Service’s website defines invasive species as *“non-native plants, animal and other living organisms that thrive in areas where they don’t naturally live and cause (or are likely to cause) economic or environmental harm, or harm to human, animal or plant health. Invasive species degrade, change or displace native habitats, compete with native wildlife, and are major threats to biodiversity”*.

California Farm Bureau is deeply concerned that the Service is contemplating the introduction of invasive species, including predators, on a regular basis. Despite the negative impacts of invasive species included in the definition above, the Proposed Rule would grant the Service sweeping authority to introduce non-native species across the United States. We urge the Service to consider the contradiction of this proposal.

Additionally, we also urge the Service to provide further restraints on this proposal and retain Director review of introductions of species outside historic range. The Proposed Rule also discusses “appropriate circumstances” for introduction of a species outside historic range but fails to provide a definition or constraints on what constitutes those circumstances.

### *Expansion of Service’s Authority*

The Proposed Rule does not provide regulatory certainty or transparency of agency action for the regulated community. Additionally, California Farm Bureau disagrees with the Regulatory Flexibility Act analysis included in the Proposed Rule as published in the June 7, 2022 Federal Register. The Proposed Rule would greatly expand the authority of the Service.



Additionally, given the vast nature of the Proposed Rule, California Farm Bureau believes that the proposal would have significant impacts on external entities, including small businesses. Specific to farming and ranching, we disagree with the analysis that the Proposed Rule would not have significant taking implications. Many farmers and ranchers are already having to conduct more limited agricultural activities due to critical habitat designations. Additionally, because land is often the principal business asset for farmers and ranchers, critical habitat designations and other ESA restrictions can be especially impactful to agricultural small businesses. For this reason, we strongly disagree with the analysis that the Proposed Rule “would not present a barrier to all reasonable and expected beneficial use of private property.” We also urge the Service to consider the impacts of the Proposed Rule on federally managed lands.

#### I. Conclusion

California Farm Bureau appreciates the opportunity to provide comments in response to the Service’s Proposed Rule. We respectfully request that the Service take these comments into full consideration when determining whether to proceed with promulgating a final rule to revise ESA experimental population regulations. Please contact Erin Huston at [ehuston@cfbf.com](mailto:ehuston@cfbf.com) (916-849-3746) with additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jamie Johansson'.

JAMIE JOHANSSON  
President