

Comments on the Proposed Rule on Habitat:
*Endangered and Threatened Wildlife and
Plants; Regulations for Listing Endangered
and Threatened Species and Designating
Critical Habitat*

**Idaho Wool Growers Association
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The Idaho Wool Growers Association (IWGA) is grateful for the opportunity to comment on the proposed rule change to define the more broad term of habitat. The IWGA represents sheep producers in the State of Idaho involved in the production of sheep, lamb, and wool and has been doing so since the 1870's. The organization is committed to defending public lands grazing while ensuring it is done in a sustainable manner with the best available science.

We believe the concept of a definition of habitat is essential to provide common sense limitations on the broad and ambiguous term of habitat. Without a definition of habitat, there is no guarantee that an allotment or geographical area that has none of the qualifying features to be considered habitat scientifically, could not be classified as habitat generally leading to improper classifications and dangerous limitations on management. Therefore, we are grateful for the Secretaries' effort to bring further clarification to this process to ensure proper management of these areas.

The definition and the alternate definition both have strengths and weaknesses which our comments will address in the order the comments were solicited.

The primary proposed definition presents a broad definition of habitat generally, as the Services need to effectively implement the statute. However, as is important with broad definitions which have a substantial impact, there are limitations upon it that are essential to keep it from being misconstrued from its original intent due to vagueness in the language. Comments were specifically solicited regarding the usage of the phrase "depends upon" versus "use" in the definition. We would strongly encourage the use of the phrase "depend upon" for multiple reasons.

The phrase "depends upon" more accurately defines habitat as an environment that the species could potentially need upon expansion to more desirable levels rather than simply one it could adapt to in the future. The difference here is that a species can use areas to which it is not ideally suited, but its conservation requires areas upon which it actually depends. This small variance has a substantial impact for our members in that any geographical area that could be potentially used by a species could be listed as habitat and regulated accordingly, even if the species did not rely upon it. Because the goal of the proposed definition is to also encompass areas that the species may need for further conservation, the language "depends upon" is important.

Additionally, utilizing the term "depends upon" is consistent with the statute and provides uniformity and clarity in the application of the statute. The purpose of the Endangered Species Act as laid out in 16 U.S.C. § 1531 is to, among other goals, "*provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved*". Since the goal of the Act is to preserve the ecosystems upon which endangered species depend, the most well reasoned approach to this issue is to regulate areas upon which the species *actually*

depends for their life functions, rather than one that simply *could* have some of the qualifications that allow it to be used. A deer could use a highway median for raising its fawn, for instance, but it certainly should not depend upon it, nor would considering that median as habitat be a wise policy. However, if a highway median presented the only forage in the area due to a multi-year drought of substantial levels, and a species of forage consuming mammal was endangered in the area, perhaps that forage would be required for the survival of said species and would thus need to be depended upon.

The distinction we are pointing out is that superfluous geographical areas could be designated as habitat if the overly broad “use” term is utilized, even if a species does not depend upon such areas. In fact, as has been scientifically observed, that is how speciation has occurred in nature as some creatures migrated into new areas and were required to adapt to the environment over time to survive. While some creatures can adapt, the purpose of the ESA is to protect those species that rely upon specific ecosystems to survive, rather than providing areas not necessary for their survival for them to expand to and adapt within. The ability to use does not delineate a bright line substantive enough to adequately define areas needed for the restoration and preservation of a species. Utilizing the term “depends upon” in the definition adequately addresses this issue and limits habitat to a common sense set of locations while also incorporating the necessary unoccupied areas.

An additional segment of the proposed definition that the Services have requested comment regarding is the inclusion of the phrase “where such attributes presently exist”. It is our position that such language should be included. Since the determination of habitat is a determination designed to guide management decisions, it is important that such determinations be made in the most accurate scientific method possible. When a wildland fire goes through a section of potential habitat, that area very likely will no longer meet the “existing attributes” necessary to provide habitat for the species until it is restored. Restoration may take activities which perhaps would typically infringe on habitat and thus be restricted under normal circumstances, but without cause then after the habitat is removed. Another harm to not delineating the current state of the habitat is caused by judging geographical areas based on past, or even future projected species utilization. To do so is not only unwise, but also dangerous to the Services’ proper management of the lands under its care.

We would highly encourage the incorporation of this phraseology into the final draft version of the habitat definition. This would provide much needed clarification that such actions should not be taken to designate “habitat” in areas that currently would not provide any value as habitat for the species. This prevents historical usage from being a factor if certain environmental and ecological factors have changed the acceptability of the geographical location as habitat. Additionally, it would also remove speculative assessment of a particular area for future development into habitat if it is not currently suitable for habitat. Thus this definition provides

common sense guidance for areas that do not have the suitable requirements as habitat should not be treated as such simply based upon wishful thinking.

The notice in the Federal Register also invited comment on the question of how to adequately define the characteristics that make “habitat” actually be habitat without producing confusing statutory language. While using a different set of terms from critical habitat may certainly provide greater distinction, utilizing the same terms would provide consistency without undermining the purpose of the additional definition. The primary need for a definition of habitat is to include the unoccupied areas that are not incorporated into the definition of critical habitat. This goal is not undermined by utilizing the “physical and biological features” as a reference point for determining habitat more broadly. If anything, it is helpful in removing duplicative standards. However, we would provide some comments generally on the difference of the definitions.

Any foreseeable “existing attributes” that would prohibit the dependence of a species upon an area that are not “physical or biological features” should not be ignored when classifying areas as habitat. While such attributes are certainly difficult to conjure up in the imagination as the “physical or biological features” is a pretty broad term to apply, we would not want geographical areas unusable to a species that met the “physical or biological features” to be classified as habitat incorrectly. We see some limited strength in “existing attributes” solely in its inclusive nature. However, there are weaknesses which we find concerning.

1. The vagueness of “existing attributes” might present undue hardship to those implementing the policy of the Services due to a lack of clear definition.
2. The term “existing attributes” must have a time component to it to address at what point in time “existing” is referring to.
3. If “existing attributes” is not taken collectively, there is a foreseeable instance where a sole existing attribute that is neither a “physical” nor “biological feature” may be utilized as the sole justification for determining an area to be habitat. Such a determination would be unscientific and misguided at best, dangerous to management and proper utilization at its worst.

Thus, we would encourage the Services to either make “physical or biological features” the terminology to utilize for consistency and clarity, or to require that “physical or biological features” be included in the sum of the total parts of “existing attributes” to be all taken exhaustively as criteria for habitat.

Additionally, we are grateful for the Services’ statement in the proposed rule that this is not designed to produce another procedural step and to cause more regulations on the process of defining areas as habitat. We hope that this commitment remains for decades in its

implementation as we frequently see lapses in management potential of federal lands due to procedural issues that threaten the health of our public lands. We would highly encourage the Services' to make every effort to ensure that this does not become another obstacle in the way of properly managed land.

Again, the Idaho Wool Growers Association is thankful for the opportunity to comment on these proposed changes. Our members have been ranching on this land for decades, some even centuries. We understand the importance, and are dedicated to the protection of the ecosystems in which we operate. Utilizing definitions that are clear, concise, and scientifically sound is essential to the proper management of these ecosystems. In an ideal world, the definition would combine aspects of both the proposed and the alternate definitions with consideration as to the specific wording as mentioned above.

For questions regarding this document, please contact

A. Caleb Pirc
Government Affairs Manager
Idaho Wool Growers Association
caleb@idahowoolgrowers.org
(208) 996-9987