



December 22, 2008

Public Comments Processing
Attn: FWS-R1-ES-2008-0046
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Re: **Comments on Proposed Rule Listing 48 Species on the Island of
Kauai as Endangered and Designating Critical Habitat for 47 of those
Species**

Dear Sir or Madam:

Safari Club International (SCI) appreciates the opportunity to comment on the Proposed Rule Listing 48 species on Kauai as Endangered and designating critical habitat for 47 of those species. 73 Fed. Reg. 62592-62742 (October 21, 2008) ("Kauai 48 Species Proposed Rule"). SCI will not take a position on the proposed listing of the 48 species or the specifics of the proposed designation of critical habitat. But SCI urges caution in both (assuming there is a listing) the designation of critical habitat and the post-listing management of wild ungulates that are described as one of the primary threats to the species at issue. SCI also urges that the FWS, State of Hawaii, and local hunters and sporting groups work together to ensure that hunters are part of the solution and that endangered species management does not infringe on traditional hunting opportunities on the Island of Kauai. The Palila experience on the Big Island shows that litigation and conflict can sap resources and lead to undue judicial involvement in wildlife management.

Safari Club International

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 55,000 members worldwide, including many who live in and hunt throughout the United States, in Hawaii, and in many countries around the world. SCI's missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool.

SCI has previously submitted comments on numerous ESA matters, including involving gray wolves, grizzly bears, bald eagles, Canada lynx, and polar bears. SCI also has participated in numerous lawsuits involving ESA matters, including listing and delisting.

Discussion

As mentioned above, SCI will not take a position on the listing of the 48 species or the specifics of the designation of critical habitat for the 47 species, but will make a number of observations, mostly relevant to the impact of any listing or designation on hunting opportunities.

Impacts on Hunters: According to the Economic Impact Analysis for the “Proposed Listing and Critical Habitat Designation for 48 Species on the Island of Kauai, Hawaii” (2008) (“48 Species EIA”), “27,355 acres of proposed critical habitat for the 48 Kauai species is within areas managed for public hunting.” *Id.* at 7. As the Proposed Rule proposes to designate only 27,674 acres 73 Fed. Reg. at 62592, nearly 100% of the proposed habitat will be within hunting units managed by the State. Thus, the impact of listing any species and designating critical habitat will fall heavily on the hunters who use those units.

Ungulate Management: As non-native ungulates appear to be one of the threats to the species at issue, hunters can be a part of the solution. While fencing can minimize the number of ungulates within the critical areas, well-regulated hunting can help manage the ungulates to minimize damage to any listed species or critical habitat. SCI does not advocate the eradication of these species as such eradication efforts in this terrain are usually impossible and costly, diverting resources from other conservation measures. In addition, the FWS has acknowledged that ungulate help control the risk of wildfires: “The Service also recognizes that under certain circumstances, removal of ungulates can result in an increase in weedy growth and associated fire risk, and we recommend that ungulate management programs assess and address this issue.” Final Designation of Critical Habitat for 95 Plant Species on Kauai, 68 Fed. Reg. 9116, 9174 (Feb. 27, 2003). Such wildfires could have a devastating effect on any species listed under the proposal. Kauai 48 Species Proposed Rule at 62312. Instead, fencing and ungulate management at sustainable but not overly harmful levels appears to be the best approach.

The Impacts of Critical Habitat Designation: The designation of the proposed critical habitat would appear to add little protection to the habitat not already provided by the designation of critical habitat for the 95 already listed Kauai plant species. 68 Fed. Reg. 9116 (Feb. 27, 2003). According to the FWS, 94% of the land proposed for critical habitat designation for the 47 species is already designated as critical habitat under the 2003 designation of critical habitat for the 95 species. 48 Species EIA at 3. Nevertheless, SCI approves of the identification of the habitat most critical, which will help guide the wildlife managers in where to focus management activities, such as fencing and ungulate control through State-authorized hunting. Without the identification of this habitat, these management activities might have to be employed in a much greater area.

The proposed rule's discussion of the impacts on landowners and others of the designation of critical habitat misses an important point. In discussing the impact of critical habitat designation on the public, the proposed rule focuses exclusively on Section 7 consultation when there is a federal nexus to a private or state activity. *Kauai 48 Species Proposed Rule*, 73 Fed. Reg. at 62617. But such a designation also brings with it prohibitions against the adverse modification of the critical habitat under Section 9. In most situations, this prohibition will overlap with the prohibition on the "take" of the species itself and not provide additional protection (thus, the FWS longstanding position that the designation of critical habitat often offers little to protect the species). But here, the proposed critical habitat designation "is a combination of areas currently occupied by the species in that ecosystem, as well as areas that may be currently unoccupied." *Id.* at 62623. The FWS should acknowledge that, at least in those unoccupied areas, critical habitat designation creates an otherwise non-existent prohibition on adversely modifying the habitat.

Climate Change: The FWS should make clear that any listing or designation of critical habitat is not due to predictions about climate change. The FWS has only identified possible climate change as a concern regarding these species. As the proposed rule acknowledges, "because the specific effects of probable climate change on these species are unknown at this time, we are not able to determine the magnitude of this threat with confidence." *Kauai 48 Species Proposed Rule*, 73 Fed. Reg. at 62612. In addition, the uncertainties surrounding global climate change predictions are exacerbated when applied to local regions, such as the Hawaiian Islands.¹ In other words, the confidence level is even further reduced when climate models attempt to predict local climate trends. Thus, any predictions about climate change and its impact on these species, if any, does not meet the listing standard under Section 4 and the definition of an "endangered species" under Section 3 of the ESA. 16 U.S.C. § 1533(a) & (b); *id.* § 1532(6). The FWS recently made a similar finding regarding climate change and emperor penguins,

¹ Reports relied on by the FWS in listing the polar bear explain the even greater uncertainty regarding the potential impacts of global climate change at the "sub-region" or smaller level:

In a region as large and diverse as the Arctic, there are significant sub-regional variations in climate. ... In assessing future impacts in the sub-regions, projected changes in climate were primarily derived from global scale climate models. As regional scale climate models improve and become more widely available, future assessments may be capable of more precisely detailing the local and regional patterns of change. For this assessment, the patterns of climate change and their impacts should be viewed at a fairly broad regional scale, as they become less certain and less specific at smaller scales.

The Impacts of a Warming Arctic, Arctic Climate Impact Assessment, "Synthesis Report," Cambridge University Press (2004), Page 18, <http://amap.no/acia>.

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concluding that the climate change and sea ice science in that case was too “uncertain.”
Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List
Penguin Species as Threatened or Endangered Under the Endangered Species Act;
Proposed Rules, 73 Fed. Reg. 77264, 77296-97 (Dec. 18, 2008).

Conclusion

In general, SCI supports innovative approaches to implementing the ESA listing and critical habitat processes, especially if they minimize the impacts on activities by members of the public. Such approaches highlight the need to consider ESA reform, as SCI has generally supported over the years. The FWS has made a concerted effort to address a challenging listing scenario as efficiently as possible. SCI recommends that the FWS consider the above factors and the interests of hunters in general as it moves toward a final decision.

Please contact Doug Burdin (dburdin@safariclub.org), or Anna Seidman (aseidman@safariclub.org), or 202-543-8733, if you have any questions or we can provide any further assistance.

Sincerely,



Merle Shepard
President,
Safari Club International
Safari Club International Foundation