



TEXAS GENERAL LAND OFFICE
COMMISSIONER DAWN BUCKINGHAM, M.D.

August 17, 2023

Via Electronically and U.S. Mail, CMRRR

U.S. Fish and Wildlife Service
Public Comments Processing
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803
Attn: FWS-HQ-ES-2021-0107

Dear U.S. Fish and Wildlife Service:

As Commissioner of the Texas General Land Office, I appreciate the opportunity to comment on the June 22, 2023, proposal by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (collectively the "Services"), to revise three final rules (collectively the "Rule") implementing the Endangered Species Act of 1973, as amended ("ESA").

By way of background, the General Land Office ("GLO") is the oldest state agency in Texas, established by the Republic of Texas in 1836. The agency serves the schoolchildren, veterans, and environment of Texas by maximizing State revenue through innovative administration, and exercising prudent stewardship of State lands, minerals, and natural resources. The GLO is responsible for managing over 13 million acres of State lands and mineral interests dedicated to the Permanent School Fund ("School Fund"). The School Fund is a perpetual endowment created by the Texas Legislature in 1854 to support public schools. See TEX. CONST., art. VII, § 2. The GLO has a fiduciary duty to maximize revenues from State lands and minerals for the benefit of the School Fund. The agency generates revenue for the School Fund through oil and natural gas production, sales, leases, and other transactions involving the assets under management. The GLO has deposited over \$30 billion into the School Fund since inception, including over \$2.1 billion in oil and natural gas revenues last fiscal year.

As Land Commissioner, I also serve as the Chairwoman of the Board for Lease of University Lands, which oversees lands owned by the Permanent University Fund ("PUF"). The PUF owns approximately 2.1 million acres in West Texas. Similar to the School Fund, the PUF is a constitutionally-created fund that generates substantial revenue for the University of Texas and Texas A&M University Systems.

As you know, the Rule impacts several aspects of the ESA. One facet of the Rule eliminates the reasonable consideration of economic impacts – like lost revenue for oil and gas production – when deciding whether a new species warrants ESA protections. Neither ESA protections nor the Rule exist in a vacuum. ESA listing determinations can impact thousands of acres of land, water, and energy resources, and significantly affect the lives of landowners, ranchers, and farmers. In the real world, disclosing the economic implications of a certain course of action is not only common sense but best practice. To illustrate the point, in 2021 the Services proposed listing the Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and the false spike as endangered species under the ESA. In total, approximately 1,944 miles of Texas rivers – under the beds of which the School Fund owns the minerals – was to be designated critical habitat. To blindly subject what could be huge swaths of the country to federal regulation (and limited development prospects) without any thought to the economic ramifications is irresponsible and unjustifiable.

While some might argue that economics aren't an aspect of the natural sciences that directly pertain to endangered species considerations, I would say just the opposite. People have to live, and societies have to function. In the real world, people can't put food on their tables and roofs over their children's heads without engaging in every day, practical economics. If there is a choice to be made between real economic need and an abstract aspiration under the ESA to cater to every imaginable species (see, e.g., the above-referenced fatmuckets, pimplebacks, and false spikes), people are always and understandably going to look after their own families first. The Services can make listing decisions, but they have to rely on the population at large to abide by them. The Services can't reasonably expect to get the societal buy-in that the ESA needs if the Services make listing decisions without any regard to the real-world economic impacts of those decisions.

Another aspect of the Rule expands protections for threatened – but not endangered – species. Essentially subsuming a lesser classification with the same protections, one wonders why we have a hierarchical system at all. Treating threatened species in the same manner as endangered species is further regulatory overreach that will compound the negative impacts of the Rule. If, for example, a threatened, but not endangered, species is determined by the Services to exist on surface acreage under which the School Fund owns the minerals, the protections provided by the Rule mean that ordinary use of that surface acreage for mineral exploration and development (pursuant to well-established Texas common law regarding the right of the dominant mineral estate to make reasonable use of the servient surface estate) will be prohibited or severely curtailed because of the presumed impact on such alleged habitat, then School Fund minerals could effectively be “condemned in place” – i.e., left in the ground with no commercially reasonable option or opportunity for the minerals' production. Such a condemnation in place would constitute a regulatory taking of the School Fund's mineral estate without compensation, in violation of the U.S. and Texas Constitutions. At minimum, studies and permitting will significantly interfere with and delay the productive use and development of School Fund lands and mineral interests, resulting in a direct decrease in oil and gas royalty and bonus revenues generated for the beneficiaries of the School Fund, the K-12 schoolchildren of Texas, who are among my most vital constituents.

Lastly, as you may be aware, during the 88th Regular Session of the Texas Legislature, House Bill 33 was passed into law which prohibits the GLO from providing assistance in any manner to a federal agency purporting to regulate oil and gas operations in Texas beyond what is required by

Texas law. Accordingly, the GLO will in no way assist the Services in their efforts to implement the proposed Rule at the expense of vital Texas oil and gas resources. By substantially diminishing School Fund mineral interest and surface values, inhibiting School Fund mineral exploration and development, and reducing School Fund revenues that support public schools, the Rule will cause irreparable harm to the GLO, the State and the many schoolchildren of Texas who benefit from the School Fund. Please be advised that the GLO may seek relief in the appropriate court to stop the Services from proceeding with implementation of the Rule. The GLO respectfully requests that the Services respond to these comments in writing. Thank you for your careful consideration of these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "D. Buckingham". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAWN BUCKINGHAM, M.D.
Commissioner, Texas General Land Office

c: Governor Greg Abbott
Members of the Texas Senate
Members of the Texas House of Representatives
Commissioners of the Texas Railroad Commission