

Policy to Improve Endangered Species Act Implementation

Definition of “Significant portion of its Range”

Questions and Answers

Q. What action are the U.S. Fish and Wildlife Service and the National Marine Fisheries Service taking?

A. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NOAA-Fisheries) – together, the Services – are jointly finalizing a policy interpreting the phrase “significant portion of its range” (SPR) that appears in the Endangered Species Act’s (ESA’s) definitions of “endangered species” and “threatened species.”

Q. Why is this policy needed?

A. The policy provides a uniform standard for applying the SPR language in the ESA’s definitions of “endangered species” and “threatened species.”

The ESA provides that:

The term ‘endangered species’ means any species which is in danger of extinction throughout all or a significant portion of its range

“The term ‘threatened species’ means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The ESA itself does not, however, define the phrase “significant portion of its range.” Neither agency had a policy providing for the interpretation and application of the SPR phrase in its listing determinations. As a result, this important phrase has been applied case by case, and agency decisions based on varying interpretations of the phrase have been the subject of debate and litigation.

The policy provides a means to harmonize all relevant provisions of the ESA related to the definition of “threatened species” and “endangered species” and the phrase “significant portion of its range.”

Q. What does the policy say?

A. The policy clarifies the definition of two terms: “range” and “significant portion,” and describes how the definitions affect listing determinations.

Definitions

Range: the range of a species is defined as the general geographical area within which that species can be found at the time either FWS or NOAA-Fisheries makes a status determination. This range includes those areas used throughout all or part of the species’ life cycle. Lost historical range cannot constitute a significant portion of a species’ range (in other words, a species cannot be listed solely on the basis of loss of historical range), but the causes and consequences of loss of historical range on the current and future viability of the species must be considered and are an important component in determining whether a species is currently threatened or endangered. This does not alter how protections are applied to a species once listed, but is intended to focus status reviews on the current and projected future status of the species. Protections of the Act will continue to be applied to all individuals of the species wherever found. In other words, protections follow the species and are not limited to the range the species occupied at the time it was listed. (See section III.D. of the final policy – *Range and*

Historical Range – for further discussion of this topic.)

Significant: A portion of the range of a species is defined as “significant” if the species is not currently endangered or threatened throughout all of its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. (See section III. C. of the final policy – *Second Component: The Definition of “Significant” as it Relates to SPR* – for further explanation.)

Listing Circumstances

1. If a species is found to be endangered or threatened throughout its range, it would be listed as an endangered or threatened species accordingly, and no SPR analysis would be conducted.
2. If a species is neither endangered nor threatened throughout its range and an SPR analysis reveals it is either threatened or endangered throughout a significant portion of its range, then the entire species would be listed as an endangered or threatened species accordingly, and the ESA’s protections would apply to all individuals of the species, wherever found. (See section III.C.1.– *Circumstances under which a portion can be “significant”* – for further explanation.)

Q. How does the final policy differ from the published draft policy?

A. The final policy differs from the draft policy in one substantive respect and three non-substantive editorial respects. Most importantly, we modified the definition of “significant.” The revised definition removes problems associated with allowing a species to qualify as both threatened throughout its range and endangered throughout an SPR. **The change also lowers and simplifies the threshold for “significant.”** Many commenters requested this change. (See section II. – *Changes from the Draft Policy* – for a summary of the changes to the final policy.)

Q. How will this policy improve ESA implementation?

A. This policy will improve ESA implementation by providing a consistent and uniform standard for interpretation of the phrase “significant portion of its range” by both FWS and NOAA in making decisions to list species in need of federal protection and delist species no longer in need of federal protection (recovered species). It will inform other federal agencies and tribes and other public and private entities of the interpretation and provide more transparency regarding when a species may qualify for listing or delisting. In some cases, the policy will provide for increased and earlier opportunities for proactive conservation of species that are facing serious threats in portions of their ranges that are of substantial conservation importance.

Ultimately, FWS and NOAA-Fisheries agree that the benefits to be realized through the policy – consistency, clarity, transparency, opportunities for proactive conservation, and more effective use of time and resources – will improve the agencies’ ability to protect and recover the nation’s most vulnerable species, while improving implementation of the ESA.

Q. What are the implications of this policy for implementing the ESA?

A. Under most circumstances, the Services anticipate that application of the policy will result in the same status determinations as would have been made without the policy. However, in a few cases, application of the policy could result in FWS or NOAA-Fisheries listing and protecting throughout their ranges some species that previously the agencies may not have listed, or the Services would have listed in only portions of their ranges.

Q. Can a Distinct Population Segment be listed because it is endangered or threatened in an SPR?”

A. Yes. A Distinct Vertebrate Population Segment (DPS) is a listable entity under the ESA and treated like a species or subspecies. The SPR language is part of the definitions of “endangered species” and “threatened species” used to evaluate whether a species should be listed. The Services will conduct an SPR analysis for a DPS if they determine that the DPS is not endangered or threatened throughout its range. In that case, the Services will evaluate whether there is an SPR within the DPS and, if so, whether that SPR is endangered or threatened. If we find that there is an SPR that is endangered or threatened, we would list the DPS accordingly. (See sections *E. Relationship of SPR to the Act’s Distinct Population Segment (DPS) Authority* and *IV.H. Summary of Comments and Responses: Relationship with DS Authority* for further discussion.)

Q. What happens if an SPR of the entire species is also a DPS?

A. The policy defines SPR differently from DPS so that there is very little overlap. However, we acknowledge that there are some rare circumstances under which an SPR might also be a DPS. This final policy adopts the provision that in the rare circumstances where an SPR and DPS coincide, the Services will list the DPS rather than the entire species to which it belongs. We note that while this is a possibility under the SPR and DPS policies, it is extremely unlikely to occur. (See section *E. Relationship of SPR to the Act’s Distinct Population Segment (DPS) Authority* for further discussion.)

Q. When will this policy go into effect?

A. The policy will become effective 30 days following publication in the Federal Register.