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U.S. Fish and Wildlife Service Proposal to Downlist Red-Cockaded Woodpecker: Southern Environmental Law Center Comments

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The Southern Environmental Law Center ("SELC") submitted December 7th comments in response to a proposal by the United States Fish and Wildlife Service ("Service") addressing the red-cockaded woodpecker ("Woodpecker").

The Service has proposed downlisting the Woodpecker. See [Proposed] Reclassification of the Red-Cockaded Woodpecker From Endangered to Threatened With a Section 4(d) Rule, 85 Fed. Reg. 63,474 (Oct. 8, 2020).

Section 4 of the Endangered Species Act ("ESA") and the implementing regulations at Part 424 of Title V of the Code of Federal Regulations set forth procedures for adding species to, receiving species from, or reclassifying species as threatened or endangered.

"Endangered species" is defined as any species that is in danger of extinction throughout all or a significant portion of its range.

"Threatened species" is defined as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

For the Service to downlist the species it is required to determine that threats have been eliminated or controlled. In making this assessment, the Service reviews five factors:

1. Is there a present or threatened destruction, modification, or curtailment of the species' habitat or range?
2. Is the species subject to over-utilization for commercial, recreational, scientific, or educational purposes?
3. Is disease or predation a factor?
4. Are there adequate existing regulatory mechanisms in place, taking into account the initiatives by states and other organizations, to protect the species or habitat?
5. Are other natural or manmade factors affecting its continued existence?

This Woodpecker was federally listed as endangered in 1970.

SELC argues that such ESA protection has been key to preventing the species' extinction and helping protect the pine ecosystems. The Woodpecker is stated to have been previously widespread across the Southeast, but by the time of listing in 1970, fewer than 10,000 individuals remained.

SELC further argues that the species now "persists in mostly small, heavily fragmented populations." Habitat loss is stated to be the primary driver of the decline.

The SELC argues that the proposed downlisting would violate the ESA because:

- The Service has not followed the best available science to reach its conclusion, and failed to prepare a prerequisite status review to justify its decision as required by the ESA;
- The red-cockaded woodpecker remains at risk of extinction due to habitat loss, climate change, southern pine beetle infestations, inbreeding and genetic drift, among other threats;
- The Service violated the ESA in failing to consider the combined effect of the many threats facing the red-cockaded woodpecker for the foreseeable future, as required by its own regulations;
- The Service failed to adequately analyze whether the red-cockaded woodpecker is at risk of extinction throughout significant portions of its range in violation of the ESA's listing requirements and governing case law;
- The proposed rule lacks needed specificity and adequate protections to ensure conservation and recovery, in violation of the ESA's requirements for 4(d) rules;
- The proposed 4(d) rule would further fail to provide for recovery and conservation by allowing red-cockaded woodpeckers to be harmed and killed on military bases, which are home to some of the most important red-cockaded woodpecker populations.

A copy of the SELC comments can be downloaded [here](#).