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Endangered Species Act: U.S. Fish and Wildlife Service/National Marine Fishery Service Notice of Policy Revision Regarding Role of State Agencies

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The United States Fish and Wildlife Service and National Marine Fisheries Service (collectively, “Services”) issued a Notice of Policy revision in the February 22nd Federal Register clarifying the role of state agencies in their activities undertaken under the authority of the Endangered Species Act and associated regulations. See 81 Fed. Reg. 8663.

The Services state that the policy revision reflects a “renewed commitment by the Services and State fish and wildlife agencies to work together in conserving America’s imperiled wildlife.”

In describing the policy revision, the Services initially state that:

... in the exercise of their general governmental powers, States possess broad trustee and police powers over fish, wildlife, and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats.

The Services also note that state agencies often possess scientific data and valuable expertise on resident species and can assist the Services in implementing various aspects of the Endangered Species Act (“ESA”). Further, they state that Section 6 of the ESA provides that the Services shall cooperate to the maximum extent practicable with the states in carrying out the relevant programs.

The revisions revise the policy issued by the Services in 1994 regarding the role of state fish and wildlife agencies in implementing the ESA.

The Services describe the changes to the policy in regards to the States role as:

- Inclusion of more proactive conservation of imperiled species before they require protections of the ESA
- Expanded opportunities for engagement on listing and recovery activities
- Improved planning with the state agencies across a species’ range

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