

Freshwater Mollusk Conservation Society



September 12, 2008

Lyle Laverty
Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior

c/o Public Comment Processing
Attention: 1018-AT50
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Suite 222
Arlington, VA 22203

Dear Mr. Laverty,

On behalf of the membership of the Freshwater Mollusk Conservation Society (FMCS), I would like to provide comments on the proposal to amend regulations governing interagency cooperation under the Endangered Species Act of 1973, as amended (the Act) (docket FWS-R9-ES-2008-0093).

Founded in 1998, FMCS is dedicated to the conservation of and advocacy for freshwater mollusks, North America's most imperiled animals. The membership of FMCS consists of state, federal, academic, and private biologists, many of whom work directly with the nearly 150 endangered and threatened mollusks, and are considered experts in their conservation and recovery.

After review, our concern is that the proposed regulations will weaken the Act by preventing numerous federal activities from receiving an impartial, scientific review using the best available science, and staff working for action agencies may be put in the unenviable position of a conflict of interest between the requirements of the Act and the mission of their agency. We are also concerned with the limited amount of time that was allowed for public comment on these proposed amendments.

The proposed regulations modify what we believe to be the underlying intent of the consultation process, and that is to provide a fair, balanced, and impartial review of activities proposed by action agencies to ensure compliance with the Act. Section 7(a)(2) of the Act requires the use of

best-available science; it is our concern that the proposed regulations violate this principle by removing the checks and balances afforded by requiring informal consultation.


We concur with the position that action agencies now have more endangered species expertise than in 1986, and are much more aware of the consequences of violating provisions of the Act. Indeed, many FMCS members are employed by and provide that expertise to action agencies. The missions of action agencies are often in direct conflict with the needs of imperiled species. This clear conflict of interest will result in the impossible position of employees of action agencies being unable to comply with the Act and follow the mission of their agency. Retaining an external, peer-review via the informal consultation process will continue to allow for a scientific, fair, unbiased review.

Finally, we are concerned with the inadequate 30-day comment period for these regulations. By the Service's own acknowledgment, the proposed regulations may "raise novel legal or policy issues." Such a short comment period does not allow the American public sufficient time to study the ramifications of the proposed regulations. In addition, the lack of public hearings on the proposed regulations, and the limited methods of receiving written comments, work only to minimize public involvement in the regulations development process.

After careful review, it is our conclusion that the proposed regulations should not be enacted, and that the Service and federal action agencies and their designees should continue to implement interagency cooperation under the Act in the current fashion.

Thank you for your considerations in this matter.

Sincerely,



Steve Ahlstedt, President
Freshwater Mollusk Conservation Society

Cc: American Fisheries Society
North American Benthological Society
American Malacological Society