

**Summary Points Related to
Significant Portion of Range Policy**

BACKGROUND

- As enacted by Congress, the Endangered Species Act (ESA) defines "endangered species" as any species in danger of extinction throughout all or a *significant portion of its range*. The term "threatened species" means any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
- Historically, it has been up to the Fish and Wildlife Service (and the National Oceanic and Atmospheric Administration in the case of marine species) to interpret the phrase, "significant portion of its range," which is not defined in the Act.
- Until 2007, neither of the two agencies had defined the phrase or explicitly addressed it in their listing determinations. Both agencies believed a species must be listed throughout its entire range if it were determined to be threatened or endangered.
- A 2007 legal opinion issued by the Department of Interior solicitor allowed the Fish and Wildlife Service to list a species in only the part of its range where it was determined to be threatened or endangered, leaving the species unlisted in other parts of its range where it was not determined to be threatened or endangered. The opinion did not affect NOAA, which is part of the Department of Commerce.
- Two courts ruled against aspects of the opinion, again leaving the issue of how that phrase would be implemented up in the air.
- Some environmental groups were also upset because the 2007 opinion dealt with only the current range of the species and not the historic range, which they want to see considered as part of the listing process. Other plaintiffs, including the National Home Builders Association sued over other aspects of the opinion.

NEW POLICY

- The policy we have announced comes in an effort to clarify and provide consistency in our administration of the ESA, while lessening the need for emergency actions and increasing the likelihood of recovery and delisting by allowing the agencies to focus their staff and resources on species of greatest conservation concern.
- The policy says that a species may be listed if it is:
 - 1) threatened or endangered in *all* of its range; or
 - 2) threatened or endangered in a significant portion of its range *AND* that portion's contribution to the viability of the species is so important that, without it, the species would be in danger of extinction.
- The policy states that lost historical range will not be considered as a significant portion of a species' range but the causes and consequences of loss of historical range must be considered when determining whether a species is currently threatened or endangered.