

**Q's and A's**  
**Review of Endangered Species Decisions**  
**July 20, 2007**

**Q: What action is the Service taking?**

A: The U.S. Fish and Wildlife Service (Service) will review and take further actions as appropriate for eight decisions previously influenced by Julie MacDonald in her role with the office of the Assistant Secretary for Fish and Wildlife and Parks.

**Q: Why is the Service taking this action?**

A: On May 9, 2007, during questions in the House Natural Resources Committee's hearing on *Implementation of the Endangered Species Act of 1973*, Deputy Secretary of the Interior Lynn Scarlett committed to review endangered species actions in which MacDonald may have inappropriately influenced the scientific outcome of the Service's final decisions. Deputy Interior Secretary Lynn Scarlett then asked Service Director Dale Hall to conduct a review of decisions that may have been inappropriately influenced.

In late May 2007, Fish and Wildlife Service Director Dale Hall asked Regional Directors and key field office project leaders to re-evaluate any Endangered Species Act decisions that may have been inappropriately modified or changed by MacDonald. This nationwide review identified 11 decision actions that, in the opinion of the Regions, might need to be re-examined to ensure that the decision comports with the best available science and other appropriate legal standards.

After further discussion, the Regional Directors and Director Hall collectively decided that review was not needed for three of those decisions after it was determined that MacDonald's impact on the decisions was minimal.

Director Hall ultimately recommended that eight decisions be reviewed to determine if they should be redone. Those decisions were selected because the final decision may have been changed in a manner that does not comport with the best available science or the appropriate legal standard.

**Q: What decisions are going to be reviewed? Why were these species chosen?**

A: There are eight decisions that will be reviewed for scientific and legal accuracy. For three of these decisions, we will be taking appropriate action as funding is available

- **Hawaiian picture-wing flies** proposed critical habitat: MacDonald directed in the proposed rule that the critical habitat for each of the 12 federally listed Hawaiian picture-wing flies consist of no more than 1 acre per species. The Service published the proposed rule based on that direction. The Service received numerous comments from peer reviewers questioning the methodology and lack of scientific basis for the approach. The Service has recently decided to re-propose the designation rule using scientifically based criteria prior to finalizing the rule.

- **Preble's meadow jumping mouse** 12-month finding and proposed delisting: MacDonald was involved in a decision to move forward with a proposal to delist the mouse based on a preliminary genetics report which had not been accepted for publication at the time of the proposal. Peer reviews had identified major issues with the report. The Service has not finalized the delisting and recently settled a lawsuit regarding this issue. We have initiated a status review of the species pursuant to the settlement agreement.
- **White-tailed prairie dog** 90-day petition finding: The field office drafted a positive 90-day finding on a petition to list the white-tailed prairie dog. The finding concluded the information in the petition was substantial and warranted further review of the species' status. MacDonald revised the document to be a "not-substantial" finding and the Service published the document with her edits. The Service plans to withdraw the "not substantial" 90-day finding and complete the 12-month finding when funds are available.

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- **California red-legged frog**, final critical habitat: MacDonald 's involvement may have affected the extent of the critical habitat designation.
- **Canada Lynx**, final critical habitat: MacDonald 's involvement may have affected the extent of the critical habitat designation.
- **Preble's meadow jumping mouse**, final critical habitat: MacDonald 's involvement may have affected the extent of the critical habitat designation.
- **Southwestern willow flycatcher**, final critical habitat: MacDonald 's involvement may have affected the extent of the critical habitat designation.
- **Arroyo toad** final critical habitat: Ms. MacDonald 's involvement may have affected the extent of the critical habitat designation.

**Q: Wasn't MacDonald involved in all endangered species decisions? Why did you only select 8 species?**

A: More than 200 listing, delisting and critical habitat rules came across MacDonald's desk between 2002 and her departure in 2007. For the majority of these rules, MacDonald's input did not lead to inappropriate changes to the Service's scientific conclusions and recommendations. These 8 actions were specifically selected because the internal Service review determined they should be reexamined to ensure the decisions comport with the best available science and other appropriate legal standards.

**Q: Was this review prompted by the Inspector General's 2007 report on MacDonald's role in endangered species decisions?**

A. No. This review resulted from the Deputy Secretary's request to Service Director Hall, and from the Director's desire to see that all Service decisions reflect the best available science and comport with legal requirements.

**Q: What is the appropriate role of the Assistant Secretary's Office in Endangered Species Act decisions?**

A: It is within the purview of the Assistant Secretary's Office to make changes in critical habitat rules due to the application of Department policies and discretion, especially section 4(b)(2) exclusions and interpretations of statute language in the Endangered Species Act, and to review all materials for clarity and accuracy.

Section 4 (b)(2) reads:

*The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.*

**Q: Did any employees of the Fish and Wildlife Service and the Department of the Interior raise concerns regarding these decisions? If not, why weren't these concerns raised before now?**

A. Yes, employees raised these concerns. However, MacDonald's approval was required to complete Endangered Species Act actions, many of which were under court-ordered deadlines.

**Q: What is the role of policy in listing species or designating critical habitat?**

A: There are significant policy decisions that come into play in promulgating listing and critical habitat rules. For example, the Service often does not have full information about a species such that it can know with the utmost reliability that species' risk of extinction, population levels, rate of decline or recovery needs. The Service must use the best available science, be explicit about the level of uncertainty in that science, and leave it to decision makers as to whether there are reliable data upon which to base a decision. In addition, policy decisions in critical habitat designations are appropriate in the 4(b)(2) exclusion process, where the Secretary must weigh the benefits of exclusion against the benefits of inclusion.

**Q: Why did the Director decide not to revisit all of the Endangered Species Actions the Regions identified?**

A. The Regional Directors evaluated decisions for which they ultimately concluded, after analysis, that the involvement of the Assistant Secretary's office either did not affect the outcome of the rule or the status of the species. In addition, further discussion within the Service identified some rules where the regional recommendation was not supported in the Washington headquarters by Fish and Wildlife Service career employees, not because

of MacDonald's input. The Director's final list reflects the consensus view of Regional Directors and Service headquarters officials.

**Q: Who is ultimately responsible for authorizing endangered species decisions? Who signed off on these rulemakings?**

**A:** The Departmental manual delegates listing decisions to the Service Director while other regulatory decisions, such as critical habitat designations, are not delegated below the level of the Assistant Secretary for Fish and Wildlife and Parks.