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U.S. FISH AND WILDLIFE SERVICE  
PROPOSED LISTING OF BIG CREEK CRAYFISH  
AND ST. FRANCIS RIVER CRAYFISH  
VIRTUAL PUBLIC MEETING PUBLIC COMMENTS PORTION

Date: May 13, 2021  
Time: 7:30 - 9:00 p.m. CT

Transcriber:  
Marci Lynch  
Marci Lynch & Associates  
330 Wendell Street, Suite C  
Fairbanks, Alaska 99701

1 P R O C E E D I N G S

2 (On record)

3 7:30 p.m. CT

4 AMANDA BIEDERMANN, EMPSi, Facilitator: Hello,  
5 everyone. It is 7:30 p.m. Central Time. So we're now going  
6 to officially start the verbal public hearing portion of  
7 today's meeting to receive comments related to the proposed  
8 listing for the critical habitat rules for the Big Creek  
9 Crayfish and St. Francis River Crayfish.

10 I'm now going to turn on Lori Nordstrom and Karen  
11 Herrington's videos, so that you can see these two U.S. Fish  
12 and Wildlife Service staffers are present and are actively  
13 listening to your comments today. They are there, so both  
14 their videos are now on.

15 Again, this verbal public hearing portion of the  
16 meeting, along with your comments, is being recorded as part  
17 of the official record, and we do have an official court  
18 reporter with us on the meeting today who, is receiving your  
19 comments.

20 As a reminder, your camera and microphone control  
21 settings are restricted during this time. So you will only be  
22 able to talk if and when you are unmuted, so please remember  
23 to speak when prompted.

24 The Fish and Wildlife Service wants to hear from all  
25 members of the public, so we'll be using the following

1 guidelines today. First, please be mindful of the length of  
2 your comment so that everyone who wants to speak has an  
3 opportunity to do so today. Second, please be respectful of  
4 others and their viewpoint. Third, please refrain from using  
5 profanity. While passion is welcome in your comment, policy  
6 requires that we mute anyone who uses foul language, because  
7 we are recording this meeting, and others may be  
8 livestreaming. So please avoid inappropriate language. If  
9 that does happen, we'll provide a reminder before unmuting the  
10 person to try again using words acceptable to ears of all  
11 ages.

12           I'm now going to read through the instructions for  
13 those participants who indicated they wanted to offer a verbal  
14 public comment when they preregistered for today's meeting.  
15 We have a list of these participants, and comments will be  
16 accepted in the order that people registered today. Again, if  
17 you are on our commenter list today, you received a separate  
18 e-mail informing you that you would be called upon to offer  
19 your comment.

20           This e-mail also included your place in the  
21 commenter list. So if you are on the commenter list, when it  
22 is your turn to provide your comment, we will read your name  
23 aloud from the list and display your name on the screen. We  
24 will also display the name of the commenter who is next in  
25 line.

1           When you hear your name called out, please use the  
2 raise-hand feature so that we know you are available and ready  
3 to offer your comment. You can access the raise-hand feature  
4 by clicking on the participants' list icon, which is located  
5 at the bottom of your Zoom screen. Again, if you wave your  
6 mouse back and forth across the bottom of your screen, the  
7 participants' icon should appear. You can then select the  
8 raise-hand feature located at the bottom of your participants'  
9 list. Again, you may need to exit out of your full screen  
10 Zoom view to see this icon.

11           Or, if you are calling in through the phone today,  
12 please press star 9 to access the raise-hand feature. Once  
13 you have raised your hand, you will then be unmuted so that  
14 you can provide your verbal public comment. You may be double  
15 muted, so, if that is the case, we will prompt you to unmute  
16 yourself on your end so that we can hear you.

17           Please spell your first and last name for the record  
18 before providing your comment. And if you are officially  
19 representing an organization or group, please say so. Again,  
20 we ask that you be mindful and respectful of the length of  
21 your verbal public comment in order to allow others the  
22 opportunity to offer their comment, as well.

23           After you have provided your comment, we will mute  
24 you and move on to our next commenter. If you do not feel  
25 that you were able to complete your verbal public comment

1 today, the U.S. Fish and Wildlife Service strongly encourages  
2 you to submit the remainder of your comment in writing.

3           On the screen, I have included some graphics showing  
4 participants where they can access the raise-hand feature on  
5 Zoom. Again -- no, I did it backwards this time. Let's see.  
6 It will be in that participants' list icon at the bottom of  
7 your Zoom screen, if you are using the Zoom web portal or Zoom  
8 app. I do know that some participants may have different  
9 versions of Zoom, so it might also be in this reactions' icon  
10 located at the bottom of your Zoom screen; you can see the  
11 raise-hand feature there, or you can press star 9 on your  
12 phone keypad if you're calling over the phone today.

13           If you still can't find the raise-hand feature and  
14 it is your turn to comment, please go ahead and just chat  
15 directly to Amy Lewis using the Zoom chat feature to let her  
16 know that you are on the meeting and available to offer your  
17 comment today.

18           So, at this time, I am now going to turn it over to  
19 Amy Lewis, who is going to be our primary moderator for the  
20 verbal public comment portion of today's hearing.

21           AMY LEWIS, EMPSi, Moderator: Okay, good evening,  
22 everyone. As Amanda said, my name is Amy Lewis, and I am  
23 going to be the moderator for this portion of tonight's  
24 meeting. So when I call your name, and you are unmuted, I  
25 will first ask you to spell out your first and last name for

1 the record and whether you are representing an agency or a  
2 group tonight, in your comments. After that, I will go ahead  
3 and give you notice that you can officially start your  
4 comment.

5 We ask that you all try to limit your public  
6 comments to around five minutes to be respectful of others on  
7 the meeting tonight. And if you go too far beyond, I may have  
8 to come on and provide a prompt for you to wrap up your  
9 comments, so just please be respectful of others on the  
10 meeting, too, that would like to comment.

11 So, as you can see on the screen, our first  
12 commenter tonight is Garrett Hawkins. Garrett, I know you are  
13 there. All right, you've got your hand raised. I'm going to  
14 go ahead and ask you to unmute. Hi, Garrett.

15 GARRETT HAWKINS, Commenter: Well, hello. Can you  
16 hear me?

17 AMY LEWIS, EMPSi, Moderator: Hi. Can you spell  
18 your first and last name for the record?

19 GARRETT HAWKINS, Commenter: Yes, Garrett,  
20 G-a-r-r-e-t-t, Hawkins, H-a-w-k-i-n-s. And I am commenting on  
21 behalf of Missouri Farm Bureau.

22 AMY LEWIS, EMPSi, Moderator: Excellent. All right,  
23 you can go ahead and start your comments.

24 GARRETT HAWKINS, Commenter: Now, a novice  
25 question, am I allowed to turn on my video or --

1           AMY LEWIS, EMPSi, Moderator: We have everyone's  
2 videos turned off for public comment.

3           GARRETT HAWKINS, Commenter: All right. Well, thank  
4 you to team at U.S. Fish and Wildlife Service for holding this  
5 virtual open house and comment session. As I said before, my  
6 name is Garrett Hawkins, and I serve as president of Missouri  
7 Farm Bureau, and we certainly appreciate the chance to  
8 participate and comment tonight.

9           In comments submitted last year, we raised concerns  
10 about the proposed designation of these species as threatened,  
11 combined with the proposed designation of critical habitat  
12 could impact agricultural activities, as well as other  
13 land-use activities along what would become the longest  
14 stretch of comparable designated habitat in Missouri at more  
15 than 1,500 stream miles.

16           According to analysis conducted by the Service, most  
17 of this stream mileage abuts private property. Yet, no  
18 regulatory flexibility analysis to determine potential costs  
19 to private land owners has been conducted. Furthermore, an  
20 analysis conducted for the Service by Industrial Economics  
21 found, quote, the designation is unlikely to measurably  
22 increase the probability that the species will be conserved,  
23 unquote.

24           As stated by the Pacific Legal Foundation, and I  
25 quote, although the Service anticipates that the designation

1 will have a minimally beneficial impact on species  
2 conservation, it, nevertheless, proposes to designate over  
3 1,000 stream miles of critical habitat for each species, well  
4 over 60 percent of which directly abuts privately owned  
5 property.

6           It would be bad enough if landowners were saddled  
7 with more government restrictions on the use of their land,  
8 but it would be absolutely outrageous if land-use restrictions  
9 were imposed with little or no prospect of conserving the  
10 species. Consequently, we oppose the designation as proposed  
11 and urge the Service to, instead, direct resources toward a  
12 voluntary incentive-based approach to restoring habitat and  
13 improving water quality.

14           Again, thank you for the opportunity to participate  
15 and provide comment on behalf of the farmer, rancher, and  
16 landowner members of Missouri Farm Bureau.

17           AMY LEWIS, EMPSi, Moderator: Great. Thank you,  
18 Garrett, for your comment tonight. I'm going to put you back  
19 on mute and lower your hand. And we'll move on to our next  
20 commenter, who is Charles T. Yates. Charles, I see you have  
21 your hand raised. I'm going to go ahead and ask you to  
22 unmute. Hi, Charles.

23           CHARLES T. YATES, Commenter: Hello. This is  
24 Charles Yates. I'm speaking on behalf of Pacific Legal  
25 Foundation.



1           AMY LEWIS, EMPSi, Moderator: Okay. Could you just  
2 go ahead and spell your name for the record?

3           CHARLES T. YATES, Commenter: Yes. That is  
4 C-h-a-r-l-e-s, Charles, Y-a-t-e-s.

5           AMY LEWIS, EMPSi, Moderator: Great. You can go  
6 ahead and get started with your comment.

7           CHARLES T. YATES, Commenter: So, as I stated, I'm  
8 Charles Yates, an attorney at Pacific Legal Foundation, the  
9 nation's leading public interest law firm dedicated to  
10 defending private property rights and limited government.

11           The proposed 4(d) rule and critical habitat  
12 designation for the Big Creek and the St. Francis River  
13 crayfish are poorly tailored to addressing the threats to the  
14 species. And by failing to adequately consider effects on  
15 private landowners, the proposed rule violates the Endangered  
16 Species Act, the Regulatory Flexibility Act, the National  
17 Environmental Policy Act. And, indeed, as I will discuss,  
18 poorly tailored regulations which fail to properly assess  
19 effects on private landowners, in fact, have the perverse of  
20 effect of hindering species recovery and habitat conservation.

21           So I'll begin by discussing the proposed 4(d) rule.  
22 Under the ESA 4(d) -- under the ESA, 4(d) rules can be issued  
23 only if necessary and advisable to the conservation of a  
24 threatened species. In Michigan v. EPA, the United States  
25 Supreme Court held that statutory standards, like necessary

1 and advisable, although offering a reasonable amount of  
2 discretion to federal agencies, nevertheless, must involve  
3 consideration of all relevance factors, especially costs  
4 imposed on private parties.

5           As such, the U.S. Fish and Wildlife Service can only  
6 determine whether a 4(d) rule is necessary and advisable to  
7 the conservation of a species, if it first thoroughly analyzes  
8 the cost and benefits of the rule. Now, in the notice  
9 announcing the proposed 4(d) rule for the crayfish, the  
10 Service disclaimed any obligation to make a necessary and  
11 advisable determination to support the proposal, and it did  
12 not assess the proposed rules cost and benefits.

13           It serves as justification that the proposed 4(d)  
14 rule is, therefore, insufficient, and, therefore, the Service  
15 should not finalize a proposed 4(d) rule without first  
16 analyzing its cost and benefits. And in performing that  
17 analysis, the Service should bear in mind that ESA regulations  
18 could have conservation costs, as well as economic costs.  
19 Overly broad and punitive ESA regulations can create perverse  
20 incentives, making rare species a liability rather than an  
21 asset.

22           So it's not simply a question of balancing economic  
23 costs against conservation benefits to the species, because  
24 landowners are more likely to proactively recover species and  
25 restore habitats if they are rewarded for doing so, rather

1 than punish with additional regulation.

2 I'll now turn to the proposed critical habitat  
3 designation. Aware of the harmful effects of critical habitat  
4 on the property of private landowners, congress mandated that,  
5 before designating critical habitat, the Service must consider  
6 the economic impact of a designation.

7 But the approach adopted in the proposed rule  
8 radically underestimates the total cost of the designation.  
9 Instead of following the ESA's requirement to analyze every  
10 cost associated with designating critical habitat, the  
11 analysis only considers economic costs solely attributed for  
12 the critical habitat designation; so would baseline approach,  
13 which goes against the actual requirement to consider all  
14 costs, including costs associated with multiple contributing  
15 causes.

16 Now, this so-called baseline approach often fails to  
17 give the service a full picture of the impacts of a  
18 designation, and it warps the analysis in favor of allotted  
19 designation. This is well demonstrated by the proposed rule.  
20 Although the Service anticipates the designation will have  
21 only a minimally beneficially impact on the species  
22 conservation, it, nevertheless, proposes to designate over  
23 1,000 stream miles of critical habitat for each species. And  
24 as we know, over 60 percent of that -- of those streams  
25 reaches, directly abut privately owned property.

1           And even if the baseline approach were proper, the  
2 Service failed to adequately measure significant incremental  
3 costs of the designation. A growing body of literature  
4 recognizes that critical habitat designations reduce the value  
5 of impacted private property due to perceptions about the  
6 additional regulation that designation will bring. And, here,  
7 the Service did not attempt to measure reduction to the  
8 private property values of adjacent riparian lands.

9           Finally, before I wrap up, just quickly, the ESA is  
10 not the only statute that governs issuance of ESA regulations.  
11 The Regulatory Flexibility Act requires an analysis of how new  
12 rules would affect small businesses. And the National  
13 Environmental Policy Act requires an analysis of how any major  
14 federal action would affect the human environment by, for  
15 instance, hindering resource management projects through  
16 additional consultations or permitting restrictions.

17           Despite the rule-making record itself reflecting  
18 numerous impacts on small entities and on the human  
19 environment, neither the 4(d) rule nor the proposed critical  
20 habitat designation include the analysis required by the RFA  
21 and NEPA. As such, PLF urges the Service to correct these  
22 errors, more fully laid out in our November 16, 2020 public  
23 comments, before finalizing the rule.

24           Thank you. I appreciate your time and for having me  
25 on here. Thank you.

1           AMY LEWIS, EMPSi, Moderator: Thanks, Charles, for  
2 your comment. I'm going to put you back on mute and lower  
3 your hand. And it appears that we have come to the end of our  
4 preregistered list of commenters for tonight, so I'm going to  
5 pass it back over to Amanda, for the moment.

6           AMANDA BIEDERMANN, EMPSi, Facilitator: Great.  
7 Thank you, Amy. So, yes, as Amy said, we have reached the end  
8 of our preregistered list of commenters. So we still do have  
9 plenty of time left on our verbal public comment portion. So  
10 what we're going to do, at this point, is that we're going to  
11 open up the meeting to anyone who would like to offer a  
12 comment who has not done so already. Even if you registered  
13 and said you didn't want to provide a comment, now is your  
14 opportunity to do so.

15           If you would like to offer a comment, please go  
16 ahead and access the raise-hand feature, again, located either  
17 at the bottom of your participants' list, in the reactions'  
18 icon at the bottom of your Zoom screen, or by pressing star 9  
19 on your phone keypad.

20           We will then just go in the order that we see hands  
21 raised. We will put your Zoom name up on the screen, but  
22 then, again, also ask you to spell your first and last name,  
23 aloud, for the record. So we'll give everyone here a few  
24 minutes to decide if they would like to offer a public comment  
25 today.

1 (Pause)

2 AMANDA BIEDERMANN, EMPSi, Facilitator: And I'll  
3 just flip back to this slide, briefly. You can locate the  
4 raise-hand feature either in this participants' icon at the  
5 bottom of your Zoom screen. If you wave your mouse back and  
6 forth across the bottom of your Zoom screen, that icon should  
7 appear for you. You can then select the blue raise-hand  
8 feature. It might also be located in this reaction icon, also  
9 at the bottom of your Zoom screen.

10 If you're calling in through the phone today, please  
11 press star 9 on your phone keypad to access that raise-hand  
12 feature. If you still can't locate it, please feel free to  
13 just chat directly to Amy Lewis using the Zoom chat feature.

14 (Pause)

15 AMANDA BIEDERMANN, EMPSi, Facilitator: Again, I'll  
16 read through those instructions again. So if you would like  
17 to offer a verbal public comment today, and have not done so  
18 already, you can go ahead and click on the raise-hand feature  
19 either at the bottom of your participants' list, in the  
20 reactions icon, by pressing star 9 on your phone keypad, or by  
21 chatting directly to Amy Lewis. And we'll give everyone just  
22 a minute or two here more to decide if they would like to  
23 offer a comment today.

24 (Pause)

25 AMANDA BIEDERMANN, EMPSi, Facilitator: All right, I

1 don't see any raised hands from participants. So since we do  
2 have a little over an hour left on our verbal public hearing  
3 portion of today's meeting, what we're going to do, at this  
4 time, is that I'm going to lead us into this last slide.

5 I'll turn it over to Karen to provide us with some  
6 closing remarks. However, I do want to clarify that the Fish  
7 and Wildlife Service will remain on the meeting until 9:00  
8 p.m. o'clock Central Time to accept verbal public comments  
9 from participants today. This is just your opportunity. If  
10 you would like to leave early, you are welcome to do so, or  
11 you are welcome to stay with us until 9:00 o'clock p.m.  
12 Central Time to see if any additional participants join who  
13 would like to offer a comment today, or if any of our current  
14 participants decide that they would to offer a comment.

15 So I just want to let everyone know that, even  
16 though we're going to provide some last information on  
17 commenting, that we are going to remain here until 9:00  
18 o'clock p.m. Central Time.

19 So, at this time, I will go ahead and unmute Karen  
20 Herrington so that she can provide those closing remarks.

21 KAREN HERRINGTON, USFWS: Thanks, Amanda. We wanted  
22 to close out by saying that we really appreciate everyone's  
23 participation and your input this evening. When we finalize  
24 our decision on the crayfishes, we'll take into consideration  
25 all of your comments from this evening, as well as those that

1 we received during the public comment period. So thank you,  
2 again, and we hope you have a good evening.

3 AMANDA BIEDERMANN, EMPSi, Facilitator: Great.  
4 Thank you, Karen. And, now, I will just remain on this slide.  
5 Again, if you want to offer a verbal public comment, please  
6 let us know by accessing that raise-hand feature. I will come  
7 on about every 15 minutes or so and let participants know that  
8 we do remain on the meeting to accept your comments today.  
9 Thanks, all.

10 (Pause)

11 AMANDA BIEDERMANN, EMPSi, Facilitator: Hello,  
12 everyone. It is 8:00 o'clock p.m. Central Time. Again, the  
13 Fish and Wildlife Service will remain on the meeting until  
14 9:00 o'clock p.m. Central Time to accept verbal public  
15 comments from participants. If you would like to make a  
16 comment today, please let us know by accessing the raise-hand  
17 feature. Thank you.

18 (Pause)

19 AMANDA BIEDERMANN, EMPSi, Facilitator: Hi,  
20 everyone. It is 8:18 p.m. Central Time. The Fish and  
21 Wildlife Service remains on the meeting until 9:00 o'clock  
22 p.m. Central Time to accept verbal public comments from  
23 participants today. If you would like to make a verbal public  
24 comment, please let us know by accessing the raise-hand  
25 feature. Thank you.



1 (Pause)

2 AMANDA BIEDERMANN, EMPSi, Facilitator: Hello,  
3 everyone. It is 8:30 p.m. Central Time. The Fish and  
4 Wildlife Service will remain on the meeting until 9:00 o'clock  
5 p.m. Central Time to accept verbal public comments from  
6 participants. If you would like to offer a verbal public  
7 comment, please let us know by accessing the raise-hand  
8 feature. Thank you.

9 (Pause)

10 AMANDA BIEDERMANN, EMPSi, Facilitator: Hello,  
11 everyone. It is 8:45 p.m. Central Time. The Fish and  
12 Wildlife Service will remain on the meeting until 9:00 o'clock  
13 p.m. Central Time to accept verbal public comments from  
14 participants. If you would like to make a comment today,  
15 please let us know by accessing the raise-hand feature. Thank  
16 you.

17 (Pause)

18 AMANDA BIEDERMANN, EMPSi, Facilitator: Hello,  
19 everyone. It is 9:00 o'clock p.m. Central Time, so I'm going  
20 to officially close the verbal public hearing portion of  
21 today's meeting and also close out of today's meeting. Again,  
22 we appreciate everyone's time and participation, and I hope  
23 you have a great evening.

24 (Off record)

(End of Proceedings)

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CERTIFICATE

UNITED STATES OF AMERICA       )  
  ) ss.  
STATE OF ALASKA                    )

I, Marci Lynch, Notary Public in and for the State of Alaska, residing at Fairbanks, Alaska, and Court Reporter for Marci Lynch & Associates, Inc., do hereby certify:

That the annexed and foregoing U.S. Fish and Wildlife Service Proposed Listing of Big Creek and St. Francis River Crayfish virtual public comment portion of the meeting was taken before me on the 13th day of November 2021, beginning at the hour of 7:30 p.m. Central Time;

That this meeting, as heretofore annexed, is a true and correct transcription of the proceedings taken by me electronically and thereafter transcribed by me;

That I am not a relative or employee or attorney or counsel of any of the parties, nor am I financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 16th day of May 2021.

