



**SOUTHERN GROUP OF STATE FORESTERS**

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**Public Comments Processing**

Attn: FWS–R4–ES–2019–0018  
U.S. Fish and Wildlife Service, MS: JAO/1N,  
5275 Leesburg Pike, Falls Church, VA 22041–3803

RE: Reclassification of the Red-Cockaded Woodpecker from Endangered to Threatened with a Section 4(d) Rule

To Whom it May Concern,

The Southern Group of State Foresters (SGSF) appreciates the opportunity to provide comment on the proposed downlisting of the Red-Cockaded Woodpecker (RCW) with an associated Endangered Species Act (ESA) Section 4(d) rule, which was posted in the Federal Register on October 8, 2020 (Docket No. FWS–R4–ES–2019–0018).

The SGSF is a non-profit organization that represents the State Foresters from 13 southern states, Puerto Rico and the US Virgin Islands. Its mission is to provide leadership in sustaining the economic, environmental, and social benefits of the south's forests. To achieve this mission, the SGSF works with many partners across the south and nation to identify and address existing and emerging issues and challenges that are important to southern forests and citizens. This includes the conservation and restoration of endangered, threatened and candidate species and their forested habitats. The entire current 11-state range of the RCW falls within our region, and our organization as well as our member agencies have been actively involved in RCW conservation for decades.

**Support for Downlisting**

The recovery of the RCW to-date is a success story worthy of being told, and it speaks to the power of collaborative conservation across ownership boundaries. The majority of the forested lands (86%) in the south are privately-owned, and thus any wildlife conservation efforts need to use tools that engender positive outcomes on both public and private land. Since the 1960's, the work of the United States Fish and Wildlife Service (USFWS), State Foresters, and hundreds of partners across our region have emphasized forest management practices that have resulted in both the growth of RCW populations and restoration of open-forest landscapes that the species depends on, most notably longleaf and shortleaf pine. This management has yielded exceptional results, including on the private forestlands that are covered under Safe Harbor Agreements for RCW in 8 southern states (Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Texas and Virginia), where forest landowners have voluntarily stepped up to manage for the species. State forestry agencies help landowners assess habitat suitability, establish population baselines, and get enrolled in these cooperative agreements.

We will not look to document the significant growth of RCW populations in these comments, as the proposed rule addresses this aspect of the conversation in detail. RCW population numbers are increasing across the region, and the species distribution is expanding. Per USFWS data, 87% of RCW populations are stable or increasing. It is worth noting that the largest RCW recovery success stories have often been associated with forestlands managed by state and federal agencies. It is clear the strides made by stakeholders are creating the enabling conditions for the species to trend in the right direction. As such, the SGSF supports the downlisting of the RCW from endangered to threatened status. We believe this conclusion is supported by the best available data and evidence, which is what the USFWS is obligated to make any listing decisions based upon.

A number of our member states manage RCW populations on state forestlands through USFWS-approved management plans. RCW populations on those forests have been increasing over the past several decades due to state agency management efforts which will continue regardless of a species status change. Our member state agencies are fully-vested in the conservation of this species, and a downlisting is not anticipated to result in any “letting up on the gas pedal” of RCW conservation on these lands.

### **Concerns with the Draft Section 4(d) Rule**

One of the primary missions of state forestry agencies is to serve the private forest landowners in each of their states through both technical and financial forestry assistance. The proposed downlisting would serve to validate the voluntary conservation work of thousands of landowners, and should ideally provide them more flexibility to manage their lands in ways that both benefit the RCW and allow them to achieve their other management objectives. Unfortunately, we have concerns that the 4(d) rule as-written in the USFWS proposal will do just the opposite, and dampen the positive effects of the downlisting. For the most part, the 4(d) rule appears to offer protections that differ little from the current status quo under an endangered status, and even in some cases appears to impose additional restrictions on forest management activities.

Our first major concern is with the proposal that only landowners with USFWS or state-approved management plans would be exempted from incidental take under the 4(d) rule. This seems to be installing a redundant process alongside the existing pathway for landowners to enroll in a Safe Harbor Agreement for the species through their state. Since these Safe Harbor Agreements will be unchanged by this downlisting and associated 4(d) rule, it is unclear what significant added value this requirement would bring. What would be more beneficial is for the 4(d) rule to explicitly recognize clearly-defined management activities that *all* forest landowners would be able to conduct and in doing so be exempted from incidental take. A good model for the USFWS to follow in this regard is the 4(d) rule developed for the Northern Long-Eared Bat (NLEB). This rule was developed in partnership with forestry professionals, states, and other stakeholders across the range of the species and installs exceptions for incidental take for certain activities carried out by any individual.

We believe implementing a similar approach for the RCW could be achievable given the decades of experience the USFWS and partners have in establishing allowable silvicultural practices in RCW habitat. The practices exempted from incidental take in a 4(d) rule could be the same activities with the same precautions that are allowed under USFWS and state-approved plans. We recommend such silvicultural exemptions for prescribed burning and timber harvesting that creates or maintains RCW habitat while simultaneously protecting RCWs and cavity trees. Utilizing this approach, the

process could be significantly streamlined to avoid every private landowner that wishes to conduct forest management within RCW habitat having to obtain an individually-approved management plan. Smaller acreage private forest landowners are unlikely to manage in a way that benefits RCW if management tools are taken away and onerous plans are required.

Additionally, the proposed listing is unclear about what would constitute a “state-approved management plan”. State forestry agencies issue many different types of approved management plans to forest landowners, which may or may not contain wildlife objectives. Would a landowner be able to refer to their forest management plan as a “state-approved management plan”? If so, state forestry agencies have significant concerns about both potential liability and/or additional information requirements placed on their plan-writing workloads by such a potential scenario. Relating the 4(d) rule exceptions to clearly-defined silvicultural practices on the ground as opposed to an unclear set of allowable plans would help solve this problem.

Our second major concern is with the blanket prohibition on the use of insecticides and herbicides within a ½ mile of an active RCW cavity tree. Considering that hand-spraying of these chemicals within range of a cavity tree is currently allowable, the proposed threatened listing actually appears to be more restrictive than the current endangered listing. More importantly, insisting on this ½ mile buffer would be significantly detrimental to forest health in RCW cavity tree areas by allowing invasive species to take hold. Active RCW clusters, due to their open canopy, often face intense competition from undesirable vegetation, including invasive species. Herbicide applications have always been very effective at controlling the mid-story layer of these clusters, while still enabling native herbaceous species to become established. Additionally, many regional invasive species are very flammable, and as such their increased prevalence from restricted herbicide use would make the application of beneficial prescribed fire even more challenging due to ladder fuel risk to cavity trees. RCWs thrive in healthy forests, so this prohibition could actually harm RCWs more than it would help them.

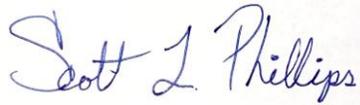
As best as we can discern from the proposed listing, this insecticide and herbicide prohibition is not grounded in the best available science. In listening to the Public Hearing on this proposal hosted by the USFWS on 12/1/2020, it seemed the agency was advocating for its use of the precautionary principle by making it incumbent upon land managers and landowners to get herbicide use approved on a chemical-by-chemical (or possibly case-by case) basis going forward. Herbicide use has been ongoing in RCW habitat for decades and is allowed in the current RCW recovery plan. The USFWS knows the risk profiles of most common forestry herbicides and should explicitly allow for their use in the 4(d) rule.

## **Conclusion**

It is vitally important to recognize that the recovery of the RCW over the past several decades has been due, in large part, to the ability to conduct active forest management. Tree thinning and prescribed burning within longleaf, shortleaf, and other pine stands are critical to maintaining quality RCW habitat, and it has been widely demonstrated that such activities can not only co-exist with the RCW but benefit the species. The downlisting of the species from endangered to threatened should validate this beneficial role of active forest management and the hard work of forest landowners to date, and make it easier for them to manage their forests, not harder. The 4(d) rule needs to be revised to this effect.

We would like to thank the USFWS for their ongoing partnership in the conservation of RCW and other wildlife species that call our region home. It is only through strong partnerships on public lands and innovative programs that encourage landowners to prioritize conservation on private lands that our southern wildlife will thrive.

Sincerely,

A handwritten signature in blue ink that reads "Scott L. Phillips". The signature is written in a cursive style with a blue ink color.

Scott Phillips  
State Forester, South Carolina Forestry Commission  
Chair, Southern Group of State Foresters

