



November 17, 2015

Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>

Public Comments Processing  
Attn: FWS-R6-ES-2015-0078  
U.S. Fish and Wildlife Service  
MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**Re: 90-Day Finding on Petition to List Regal Fritillary Under the Endangered Species Act of 1973**

Dear Sir/Madam:

The U.S. Fish and Wildlife Service's (FWS) Evaluation of a Petition to List the Regal Fritillary under the Endangered Species Act of 1973 (ESA) demonstrates that listing is not warranted at this time. The petition lacks substantial scientific or commercial information on population, habitat trends or other factors necessary to warrant a listing. In addition, thirteen states have protections in place for the species, further obviating the need for a federal listing decision.

Western Energy Alliance represents over 450 members involved in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees. Although oil and natural gas development is not considered a threat to the viability of the regal fritillary, a listing decision could negatively impact our members' ability to operate in the range. Therefore, we appreciate the opportunity to comment and respectfully request you take these comments into full consideration when conducting the species review.

Western Energy Alliance is proud of the fact that industry has developed and implemented horizontal drilling and other best practices that have dramatically reduced the overall footprint of oil and natural gas development. Companies have achieved a 70% reduction in surface disturbance in recent years through increased drilling of horizontal wells, every one of which is akin to replacing between 8 and 16 vertical wells.<sup>1</sup> Clustering numerous

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<sup>1</sup> ["Oil and gas impacts on Wyoming's sage-grouse: summarizing the past and predicting the foreseeable future,"](#) *Human-Wildlife Interactions* 8(2), David Applegate and Nicholas Owens, Fall 2014, 284-290.

horizontal wells on one pad further reduces surface disturbance and habitat fragmentation. That record provides additional support for why oil and natural gas development should remain off the list of threats to the species.

### **Factors in a Listing Decision**

The listing petition identified fourteen possible factors that could potentially warrant an ESA listing, ranging from biocides and livestock grazing to climate change. Of these fourteen factors, FWS found a lack of substantial information supporting twelve factors, leaving just two supported: habitat fragmentation and synergistic effects. However, the petition does not establish that habitat fragmentation or synergistic effects are a threat to the species in and of themselves. Instead, habitat fragmentation merely “makes the butterfly more vulnerable to the other threats,” while “threats to the regal fritillary described in this petition could work synergistically to cause the extinction of the species.” Since FWS found that the “other threats” are not substantive enough to warrant a listing, logically the two factors that rely solely upon other threats are not in and of themselves a sufficient basis to warrant a listing decision.

Furthermore, establishing that habitat fragmentation is occurring at all is difficult given the paucity of data on historic habitat range. The claim of habitat fragmentation cannot be made without further scientific research. Even if habitat fragmentation is occurring, no scientific evidence is provided in the petition tying the fragmentation to the overall population of the species. In fact, population estimates for the species are so varied and lacking in scientific data that the petition estimates a range, anywhere between 2,500 and 1,000,000 individuals, that is too broad to be the basis for a listing decision.

Under a recently proposed FWS rule on the ESA petition process, the standard for credible scientific information in a listing petition is clarified and heightened. According to the rule, “a petition that states only that a species is rare and thus should be listed, without other credible information regarding its status, does not provide substantial information.” In the case of the regal fritillary, the petitioners are not even able to state that the species is rare, as the tremendous range in estimated populations demonstrates. Available data on the health of the species population is vastly insufficient at this time, and FWS should not make a listing decision until further population research is conducted.

### **State Conservation Programs**

Rather than relying upon federal regulations that could be overly broad and burdensome, FWS should instead continue to defer to state protections for the species. FWS’s findings on the listing petition provide strong support for this action, clearly stating:

“[T]he lack of protection at the federal level is not the same as inadequacy of existing regulatory mechanisms. Further, the petition

does not provide any substantial information indicating that existing state-level regulatory mechanisms meant to provide protections to the regal fritillary are inadequate and are negatively impacting the population.”

As part of the proposed changes to the petition process discussed above, FWS is also requiring increased consultation with state agencies on any petitioned species, acknowledging that these agencies have the best and most up-to-date data on the health and trends of potentially threatened species and their habitat. The regal fritillary petition makes no attempt to consult with state agencies, which contributes to the lack of scientific evidence in the petition.

The petition explicitly identifies Missouri and Oklahoma as states that have acted to protect the species, while arguing that other states have not provided sufficient support. Yet it contradicts itself by listing thirteen states in the species range that indeed have provided varying levels of protective status to the species. States are the appropriate managers of private lands within regal fritillary habitat, as local biologists know the local activity levels and habitat, and they have already taken the lead for this species.

Western Energy Alliance believes conservation or recovery plans for the species would be best carried out by individual states, as conservation, data collection, and management activities are already being capably managed by those states. FWS properly notes in the petition findings that there are adequate protection mechanisms in place at the state level, and should rely on these protections and the lack of scientific data in the petition to reach a not warranted decision.

#### **Other Federal Efforts**

Even in the absence of a listing decision for the regal fritillary, the health of the species is likely to be improved by ongoing federal efforts. For instance, grazing and farming practices may affect regal fritillary habitat, but federal programs such as the Prairie Pothole Wetland and Grassland Retention Project promote returning farmland in the regal fritillary’s range back to natural prairie grasslands. The federal government has also taken significant steps, through programs in the 2014 Farm Bill and via an Executive Order, to reduce pesticide use and protect pollinators. Any federal effort that will aid in the protection of similar species such as the monarch butterfly is likely to have ancillary, positive effects for the regal fritillary. Ongoing federal efforts will continue to protect the species and render a listing under the ESA unnecessary at this time.

In conclusion, substantive factors threatening the species are lacking and current estimates of population trends across the habitat range are fundamentally inadequate. The petition has failed to provide convincing scientific evidence that listing the regal

fritillary is warranted. Western Energy Alliance greatly appreciates the opportunity to provide these comments.

Sincerely,



Kathleen M. Sgamma  
Vice President of Government & Public Affairs