Normativity Redux

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Nelson et al. (2007) make three major arguments in their comment on our proposed biological framework (Waples et al. 2007) for considering the significant portion of its range (SPOIR) language in the U.S. Endangered Species Act. First, they find our proposed SPOIR definition "awkward and obfuscating." This might be at least in part due to the necessity of relating the definition to existing language in the ESA, which has not won awards for syntax or clarity. In any case our proposed SPOIR framework is conceptually straightforward and can be implemented by evaluating three simple questions: (1) Is the species at risk of extinction (or likely to become so in the foreseeable future) throughout *all* of its range? If so, the species can be listed and SPOIR considerations are not necessary. If not, go to question 2. (2) Is the species at risk of extinction (or likely to become so in the foreseeable future) throughout a *part* of its range? If so, go to question 3. If not, the species cannot be listed at present. (3) If the species were to be extirpated from the areas where it is currently at risk, would the entire species at that point be at risk of extinction or likely to become so in the foreseeable future? If so, these areas amount to a significant portion of the species' range.

Second, Nelson et al. argue that our proposed SPOIR framework "obliterates" important distinctions regarding endangered species, and they have gone to some pains to create scenarios that would result in reduced levels of protection under the ESA. Specifically, they claim our framework could allow redefining an endangered species to include one that is "likely to become in danger of extinction in the foreseeable future." This is not true; this quote is essentially the ESA definition of a *threatened* species, in which case consideration of the SPOIR language is not necessary. Under our framework, although threats to the areas currently at risk occur under the time horizons formally considered by the ESA, the threats that loss of these areas would pose to the species as a whole occur on a longer time frame than "the foreseeable future." It is thus clear that our framework would provide additional protections beyond those that apply when the entire species is threatened or endangered. This point is evident from consideration of the three questions above. If the SPOIR provision were eliminated from the ESA and the answer to question 1 were no, then no listing would occur. Under our proposed framework, a negative answer to question 1 can still lead to a listing of the species if there are current risks in a SPOIR.

Finally, in the last half of their essay, Nelson et al. seem to be taking us to task for the real and imagined transgressions of legions of other scientists. We do not attempt to address here all the issues they raise, which Nelson et al. admit extend well beyond the scope of our original paper, but we would like to respond to their claims that our paper was impelled by "the biased presumption that scientific treatments are somehow inherently superior to normative treatments" and was "prompted by the belief that Vucetich et al. (2006) unnecessarily and inappropriately treated SPOIR as a normative issue."

In fact, we developed our SPOIR framework independently in response to a request within our agency for a biological option to consider in interpreting the SPOIR language. By chance, we finalized our report at the same time the paper by Vucetich et al. (2006) was published. At that point we decided to reformat it as a journal article to provide an alternative framework for consideration. It seems we all agree that implementing the ESA requires consideration of normative issues, especially those embedded in the definitions of threatened and endangered species. The primary advantage of our biological framework is that it avoids additional normative considerations associated with the SPOIR language, and in this respect seems to us to be consistent with the stipulation in the ESA that listing decisions be based "solely on the basis of the best scientific and commercial data available." Contrary to the implication by Nelson et al., we have not said that our framework is what managers ought to use in

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implementing the ESA, but we do believe it provides an alternative that merits serious consideration.

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