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**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

October 19, 2012

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U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dr. Jane Lubchenco, Administrator  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

**Request for Extension of Comment Period of USFWS and NOAA Fisheries Proposed Revisions to Critical Habitat Economic Impact Analyses**

Dear Director Ashe and Administrator Lubchenco:

I write regarding your agencies' recent proposed rule that would make sweeping changes to regulations for analyzing the economic impacts of critical habitat designations under the Endangered Species Act (ESA). I understand that the comment period for this proposed rule is scheduled to expire on October 23, 2012.

Considering the sweeping impact of this proposed rule, and the huge impacts that ESA-related decisions are already imposing on private property owners, economic activity and jobs, I am requesting that the comment period for this proposal be extended by 90 days. I am copying the Administrator of the White House Office of Information and Regulatory Affairs to ensure that he is also aware of my request.

As you know, when your agencies testified before the Committee on Natural Resources in March on behalf of the FY 2013 budgets for the U.S. Fish and Wildlife Service (FWS) and NOAA, I raised a number of ESA-related questions, several of which were specific to critical habitat designations and a few that are directly relevant to this proposed rule. It is unfortunate that it took the FWS more than five months—until August 23, 2012—to respond to my March questions, and they did not fully answer the questions.

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As I stated in March, for several years, the FWS has failed to do a cumulative and quantitative economic analyses for critical habitat designations, despite a decade-old 10<sup>th</sup> Circuit Court of Appeals ruling that it must do so. (See *New Mexico Cattle Growers New Mexico Cattle Growers Association v. U.S. Fish & Wildlife Service*, 248 F.3d 1277 (10<sup>th</sup> Cir. 2001)). Instead, FWS has considered only “baseline,” incremental economic impacts, a method of analyses that significantly undercounts the true impacts of critical habitat designations.

This flawed interpretation of critical habitat requirements has most recently played out this past summer for many of my constituents in the Northwest with the FWS’ release of an inadequate economic analysis for its proposed designation of nearly 14 million acres of critical habitat for the Northern Spotted Owl. One recent independent study of FWS’ use of incremental economic analysis stated the report “does not comport with sound socioeconomic assessment science and lacks a sufficiently comprehensive evaluation of potential impacts.”

Given the Committee’s concerns with FWS’ and NOAA’s current critical habit economic analyses methodology, I am frankly dismayed that the FWS and NOAA would seek to finalize within 60 days a proposed critical habitat rule change of this significance without more advance notification of Congress, and with insufficient time for affected stakeholders to provide meaningful input.

More time is needed to review and provide proper comments to this major policy change, which, with the stroke of a pen, could impact literally all areas of the country affected by the hundreds of species for which FWS has agreed via court settlement to make listing and critical habitat designations.

I respectfully request FWS and NOAA to provide a 90-day extension that interested parties have adequate time to respond with their written comments. I would appreciate a prompt response to this request. If there are any questions, please have your staff contact Todd Ungerecht of the Committee staff at (202) 225-2761.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", is written over a horizontal line.

Doc Hastings

Chairman

Committee on Natural Resources

cc: Boris Bershteyn, Acting Administrator, Office of Information and Regulatory Affairs, White House Office of Management and Budget