Congress of the United States
House of Representatives
Washington, DC 20515

June 11, 2014

Mr. Dan Ashe, Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

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

Dear Director Ashe and Administrator Sullivan:

We write regarding the three May 12, 2014 proposed rules and policies issued by your agencies that would make sweeping changes to regulations for how critical habitat is designated or excluded. Specifically, how the federal government will evaluate whether proposed actions "destroy or adversely modify" critical habitat under the Endangered Species Act (ESA); redefining "adverse modification" as used in consultation under Section 7 of the ESA, and creating new policy on when to exclude lands or waters from critical habitat designations under Section 4(b)(2).

As written, these rules could dramatically increase the amount of private and public lands designated for habitat, which in turn could result in blocking or slowing down an array of agricultural, grazing, energy transmission and production, transportation, and other activities on the more than 680 current habitat designations and hundreds more slated to be finalized in the next few years.

The comment period for these proposed rules and policy changes is scheduled to expire on July 11, 2014. Considering these rules reportedly were issued and sent to the Office and Management and Budget over a year ago, yet were only recently released for public comment for 60 days, we request that the comment period be extended by at least six (6) months. We have copied the Administrator of the White House Office of Information and Regulatory Affairs to ensure that he is also aware of this request.

Last year, the Obama Administration ignored widespread opposing comments and a federal court ruling (New Mexico Cattle Growers New Mexico Cattle Growers Association v. U.S. Fish & Wildlife Service, 248 F.3d 1277 (10th Cir. 2001)) to finalize a rule that vastly undervalues the economic impacts of critical habitat designations, requiring that only "incremental" costs be analyzed versus the true cumulative and co-extensive costs of ESA listings and critical habitat designations.

Now, adding to the nearly 1,000 ESA-related regulations nationwide that your agencies have already issued over just the past three years, these three new proposed actions, which appear to respond directly to litigation and selective court rulings, would further expand executive branch authority and interpretation of ESA with the stroke of a pen.

Recent comments from Mr. Ashe express support for the agencies to find opportunities to work with Congress to improve ESA "on an incremental basis." However, we are concerned that these rules appear to run counter to the current bipartisan desire to improve transparency, flexibility, and species recovery, and to make improvements in a manner that also respects impacted states, local economies, and landowners.

A first short review of these rules makes clear that they would significantly alter federal interpretation of two major sections of the ESA—Section 4 (relating to critical habitat designations and interpretation of whether actions "adversely modify" or "destroy" critical habitat) and Section 7 (relating to formal consultations on thousands of permits, proposed actions, etc.). These rules could increase the regulatory impact of activities on millions of acres of public and privately-owned lands included in areas designated as critical habitat nationwide, regardless of whether species occupy those areas or not. In addition, the proposed policy change would significantly alter how agencies implementing ESA view actions involving conservation plans, Department of Defense lands, tribal lands, and other federal and non-federal lands.

There is a history of concerns that we and others have had with the U.S. Fish and Wildlife Service's (FWS) and National Oceanic and Atmospheric Administration's (NOAA) interpretations of critical habit designations, economic analyses methodology, and regulations stemming from hundreds of listings from closed-door settlements with litigious groups. In light of these concerns, we are surprised and disappointed that the FWS and NOAA would seek to finalize, within just 60 days, multiple rule changes of this significance without more advance notification of Congress, and with insufficient time for affected stakeholders to provide meaningful input.

We respectfully request FWS and NOAA to extend the public comment period by at least six months for interested parties to have adequate time to respond with their written comments. We would appreciate a prompt response to this request.

Sincerely,

Doc Hastings
Member of Congress

Stevan Pearce
Member of Congress

Tim Huelskamp
Member of Congress

Tom McClintock
Member of Congress

Bill Huizenga
Member of Congress

Doug Collins
Member of Congress

Greg Walden
Member of Congress

Glenn "GT" Thompson
Member of Congress

John Fleming, M.D.
Member of Congress

Steve Daines
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