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HOUSE APPROPRIATIONS COMMITTEE
SUBCOMMITTEE ON DEFENSE
SUBCOMMITTEE ON FINANCIAL SERVICES AND
GENERAL GOVERNMENT
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN
SERVICES, EDUCATION, AND RELATED AGENCIES

Congress of the United States
House of Representatives
Washington, DC 20515-0403

June 27, 2014

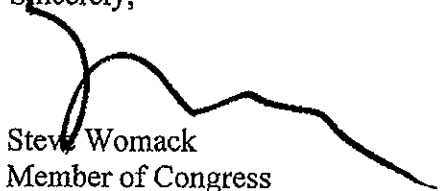
Ms. Eden Howard
Legislative Analyst
Bureau of Legislative Research
1 Capitol Mall, Floor 5
Little Rock, AR 72201-1151

Dear Ms. Howard,

It is my pleasure to provide the following statement to the Arkansas Senate and House Committees on Agriculture, Forestry, and Economic Development and City, Country, and Local Affairs for the meeting on June 30, 2014, regarding the federal proposal by the U.S. Fish and Wildlife Service to designate areas of Arkansas as critical habitat for the Neosho Mucket and Rabbitsfoot Mussels:

While I understand the need to protect endangered species, any federal designation that does not take into account economic impacts is questionable. The Neosho Mucket and Rabbitsfoot Mussels critical habitat proposal is especially concerning because it not only lacks this consideration, but it also is so broad in scope and range that the property rights of Arkansas's farmers and landowners far beyond the Illinois River and Buffalo River watersheds will undoubtedly be affected. From the moment the administration issued the critical habitat proposal, I have worked with the Arkansas delegation to ensure that the administration is not able to impose its illogical environmentalism on us without a fight. I will continue to work with Senators Pryor and Boozman and Representatives Crawford, Griffin, and Cotton on this matter and thank them for their hard work. I would also like to thank the Arkansas Senate and the Arkansas House of Representatives for turning a critical eye to this designation and for the opportunity to have my comments read here today. I am certain that these committees will develop thoughtful proposals that will help us be responsible stewards of our land without allowing the federal government to intervene in damaging ways.

Sincerely,


Steve Womack
Member of Congress

SW/kw

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Comments Regarding Current Endangered Species Act Legislation

Office of Congressman Rick Crawford

Congressman Crawford along with Congressmen Cotton, Griffin and Womack, introduced HR 4319, the Common Sense in Species Protection Act, which will bring greater transparency and a true picture of the economic cost of critical habitat designations. The legislation has two significant components.

First, HR 4319 requires the Secretary of the Interior to consider economic impact when designating areas within a proposed critical habitat designation. The Endangered Species Act (“ESA”) gives the Secretary the option of considering the economic impact when designating, and when considering whether to include or exclude areas from a critical habitat designation. HR 4319 simply changes “may” to “shall”, in effect *requiring* the Secretary to consider economic impact. The language in HR 4319 however does not change the provided exclusion from considering economic impact should the Secretary determine that the extinction of the species is at risk.

Second, the bill requires the administering agencies to use the Cumulative rather than the Incremental method to calculate the economic impact of proposed critical habitat designations. The cumulative method embodied in HR 4319 considers the true costs to the lives and livelihoods of those who live and work within a proposed designation, and presents a much more transparent picture of the true cost of species protection. Certainly more so than the administering agencies’ current method, the so-called incremental method, which basically counts the cost of one government agency conferring with another. This requirement is not a radical departure; the administering agencies have used both methods, and variations of both, over the past 40 years.

In addition to HR 4319, there are currently four additional pieces of legislation before the U.S. House of Representatives specifically promoting increased transparency and fairness and discouraging litigation in the current process for listing a species and recovery of species.

H.R. 4315, the 21st Century Endangered Species Transparency Act, introduced by Representative Doc Hastings of Washington, current Chairman of the House Committee on Natural Resources. HR 4315 amends the Endangered Species Act to require the Interior Secretary to publish the data used in listing and delisting federally endangered and threatened species on the Internet.

H.R. 4316, the Endangered Species Recovery Transparency Act, introduced by Representative Cynthia Lummis of Wyoming. HR 4316 requires the Secretary of the Interior to track, report to Congress, and make available online: (1) total funds expended to respond to Endangered Species Act lawsuits; (2) the number of federal employees dedicated to ESA lawsuits; and (3) attorneys’ fees awarded in the course of ESA lawsuits and settlement agreements.

H.R. 4317, the State, Tribal, and Local Species Transparency and Recovery Act, introduced by Representative Randy Neugebauer of Texas. HR 4317 amends the Endangered Species Act to: (1) ensure the federal government lives up to its statutory responsibilities to cooperate and consult with states under Section 6 of the ESA, specifically with the data used in proposals and listing regulations; and (2) ensure the best available scientific and commercial data used in ESA listing decisions includes data made available to the federal government from affected states, local counties and tribal governments.

H.R. 4318, the Endangered Species Litigation Reasonableness Act, introduced by Representative Bill Huizenga of Michigan. HR 4318 amends the citizen suit provision of the Endangered Species Act to conform to section 2412 of Title 28 of the U.S. Code, the Equal Access to Justice Act. This is intended to standardize and cap the hourly rate for the awarding of attorneys’ fees to prevailing parties against the federal government.

United States Senate

WASHINGTON, DC 20510

June 19, 2014

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

Dr. Kathryn 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 serve as the Ranking Members of the appropriate Senate Committees and Subcommittees with jurisdiction over the Endangered Species Act (ESA). We write today to request that you extend the comment period for three proposed rules and policies issued by the Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) on May 12, 2014. In those proposals, the FWS and NOAA propose to make changes to the process for designating critical habitat, to the definition of destruction or adverse modification, and to the ESA's process for excluding critical habitat. We request that you extend the comment period on these proposals for a minimum of six months.

The three proposals issued in May are extremely complex. This complexity is evidenced by the fact that the Office of Management and Budget (OMB) spent more than one year reviewing and discussing their content with both Services before their release. Despite the complex nature of the proposals, the Services allotted only 60 days for public comment. While we support appropriately limited public comment periods on routine matters, these three proposals will have far-reaching consequences that will affect a variety of land users because they have the potential to fundamentally shift the requirements for designating critical habitat.

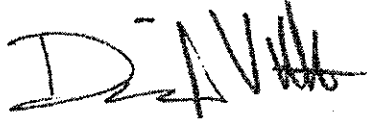
The substantial impact is particularly assured given the decision by the FWS to enter into settlement agreements that require listing determinations on more than 250 species nationwide. Since the settlement agreements in 2011, we have seen species listings and critical habitat designations occur with increasing frequency. Additionally, the Services decision to use an extremely limited form of economic impact analyses for future listings unnecessarily limits discretion of whether or not to designate areas as critical habitat. Private property owners and public land users need a reasonable amount of time to digest the proposals and to share the impacts they see as likely with the Services.

We believe that the current 60-day comment period is an inadequate amount of time for impacted parties to provide thorough written comments on these complex policy changes. As such, we request that you extend the comment period by at least six additional months. We note

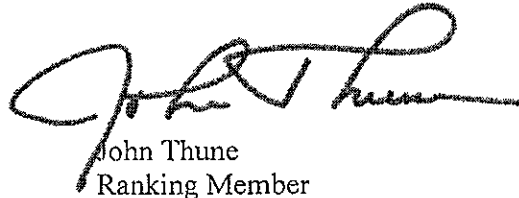
that this is approximately half of the time that was given to OMB to review the proposals and suggest that the impacted stakeholders deserve at least six additional months.

We thank you for your prompt attention to our request and look forward to your reply.

Sincerely,



David Vitter
Ranking Member
Senate EPW Committee



John Thune
Ranking Member
Senate Commerce Committee



John Boozman
Ranking Member
Subcommittee on Water and Wildlife



Marco Rubio
Ranking Member
Subcommittee on Oceans, Atmosphere
Fisheries and Coast Guard

Pryor, Brownback Offer Remedy to Ailing Rural Hospitals *Pocahontas, Murfreesboro Centers Seeking Special Designation*

WASHINGTON D.C. – Senators Mark Pryor (D-AR) and Sam Brownback (R-KS) today said millions of families in small, rural communities have access to quality medical care because the hospital in their area is designated as a “critical access hospital,” allowing the facility to receive a higher Medicare reimbursement for services provided. They are seeking to expand this opportunity for communities and prevent struggling hospitals from closing or reducing staff positions and patient services.

Pryor and Brownback said the bipartisan *Critical Access Flexibility Act of 2009* will enable community hospitals to receive a cost-based Medicare reimbursement by waiving a provision in the Medicare law that requires a critical access hospital to be 35 miles away from another health care facility. Specifically, the legislation restores a state’s authority to waive the mileage requirements if all other requirements are met and the state designates the facility as a necessary provider.

“Retaining medical care in rural communities is an ongoing challenge that must be met,” Pryor said. “My legislation seeks to keep ailing, rural hospitals afloat by simply expanding the circle of providers who can receive an equitable Medicare reimbursement.”

“Rural hospitals are the cornerstone businesses of many small towns in my state of Kansas. Maintaining access to these facilities and their health care providers benefits the surrounding community twofold: it ensures access to vital health care services, as well as offers employment, to the local residents. This legislation will allow small, rural hospitals in my state to have a reimbursement option that helps to keep their doors open during these uncertain economic times.”

Pryor said the Five Rivers Medical Center in Pocahontas, AR and the Pike County Memorial Hospital in Murfreesboro, AR have expressed interest in the critical access hospital designation, but do not qualify because of their proximity to another health care facility. Residents living in the following 29 cities enjoy access to better health care services as a result of their medical center’s critical access hospital designation: Arkadelphia, Ashdown, Berryville, Booneville, Calico Rock, Clinton, Crossett, Dardanelle, DeQueen, Dewitt, Dumas, Eureka Springs, Fordyce, Gravette, Heber Springs, Lake Village, McGehee, Morrilton, Mt. View, Nashville, Osceola, Ozark, Paris, Piggott, Salem, Waldron, Walnut Ridge, Warren and Wynne, AR.

Statement by Senator Mark Pryor
On U.S. Fish and Wildlife Proposed Critical Habitat Rule
October 29, 2013

After hearing from Arkansans, I pressed the Fish and Wildlife Service for answers about their proposed critical habitat rule for two mussels. I wanted to ensure that Arkansans were able to weigh in on the negative economic impact this rule will have on our state's landowners, counties, and agriculture. The Fish and Wildlife Service needs to gather all the facts in order to fully understand the adverse economic impact, including the devastating effect it will have on landowners' ability to use their land. While I'm pleased Fish and Wildlife granted my request for an extension, the fight's not over yet. I'll continue to push to ensure Arkansas landowners have the freedom they deserve.

FOR IMMEDIATE RELEASE
January 10, 2014

Contact: Michael Teague, 501-324-6336
Sara Lasure, Boozman, 202-224-4843
Jonah Shumate, Crawford, 202-225-4076
Matt Wolking, Griffin, 202-225-2506
Claire Burghoff, Womack, 202-225-4301
Caroline Rabbitt, Cotton, 202-225-3772

Arkansas Delegation Challenges Critical Habitat Designation in Arkansas

WASHINGTON D.C. - U.S. Senators Mark Pryor and John Boozman, along with Congressman Rick Crawford (AR-1), Tim Griffin (AR-2), Steve Womack (AR-3), and Tom Cotton (AR-4) today sent a letter to the U.S. Fish and Wildlife Service (FWS) Director Daniel M. Ashe challenging the critical habitat designation for the Neosho Mucket and Rabbitsfoot Mussell in Arkansas -- a decision the delegation says could negatively impact Arkansas's families, farmers, businesses, and local communities. The delegation letter calls for information on the process that led to the agency's proposal and asks the FWS to reevaluate the scope of the critical habitat designation.

The delegations letter can be found [here](#).

FOR IMMEDIATE RELEASE
March 7, 2014

Contact: Michael Teague, 501-324-6336

Pryor Pushes Back on Critical Habitat Designation to Protect Arkansas's Economy

WASHINGTON D.C. - U.S. Senator Mark Pryor and a large coalition of Arkansas stakeholders have teamed up on the *Community Protection Act*, common-sense legislation to ensure the U.S. Fish and Wildlife Service (FWS) takes into account the full economic impact of proposed critical habitat designations. Over the past few months, Pryor has expressed serious concerns about the impact that a critical habitat designation for two mussels could have on Arkansas landowners, businesses, and local communities.

Audio of Pryor discussing his bill can be found below:

https://s3.amazonaws.com/sdmc-media.senate.gov/Pryor/030714_PRYOR_1_RADIO.mp3

FOR IMMEDIATE RELEASE
April 17, 2014

Contact: Michael Teague, 501-324-6336

Pryor Announces Reopening of Public Comment Period for Proposed Critical Habitat Designation

LITTLE ROCK, AR- U.S. Senator Mark Pryor today announced that the U.S. Fish and Wildlife Service (FWS) will reopen its public comment period for the proposed critical habitat designation for the Neosho Mucket and Rabbitsfoot Mussel. In February, Pryor invited FWS Director Dan Ashe to visit the state to see the economic impact of this designation. Today, Ashe met with Pryor's office and Arkansas stakeholders in Little Rock.

"This designation could threaten the economic viability of Arkansans' private land—from lowering property values to hampering Arkansans' ability to obtain loans," Pryor said. "I appreciate Director Ashe accepting my invitation to visit our state so he could hear directly from the Arkansans who would be impacted. After multiple letters and conversations, I'm also pleased to hear that Fish and Wildlife will reopen the public comment period. I hope folks from all across the state will join me in sharing their thoughts and concerns."

Background:

Under current protocol, the FWS is only considering the cost of consulting on critical habitat designations to the government, instead of considering costs to all stakeholders. Pryor's bill, *The Community Protection Act*, would require FWS to take into account the economic impact critical habitat designations have on all those involved.

Senator Pryor Actions on Critical Habitat of Endangered Species in Arkansas since 2011

2011

- 8/9/2011- The U.S. Fish and Wildlife Service (USFWS) released final rule for listing the yellowcheek darter as federally endangered will publish in the Federal Register on August 9, 2011 as part of a five fishes rule.
- 12/8/2011- Sent letter with requesting that the Department of the Interior and USFWS asking them to clarify and extend the comment deadline for the proposed critical habitat rule for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace.
- 12/12/2011- Staff call on the Yellowcheek Darter. The participants from the Service were:
Janet Mizzi, Chief, Division of Endangered Species
Jim Boggs, Supervisor, Arkansas Field Office
Chris Davidson, Fish and Wildlife Biologist, Arkansas Field Office
Kristi Watkins, Congressional Affairs, Southeast Regional Office
Roya Mogadam, Congressional Affairs, Washington Office

2012

- 2/10/2012- As a result of previous calls and letters, the U.S. Fish and Wildlife Service announced a public information meeting to share information and answer questions about a proposal to designate critical habitat for the endangered yellowcheek darter.
- 04/19/2012- Contacted FWS to confirm that they will keep interested stakeholders notified of any future Endangered Species issues in Arkansas.
- 04/24/14- USFWS reopened comment period for the rush and yellowcheek darter. The Service re-opened the comment period for 30 days through June 25, 2012, in order to allow comments on the proposed designation and the draft economic analysis.
- 06/12/2012- At Senator Pryor's request, the USFWS held a public hearing about the yellowcheek and was held at the Clinton High School Auditorium from 7:00 p.m.
- 08/30/2012- Staff held a call on Endangered Species Act Conservation Agreements.
- 9/6/2012- Requested a meeting with the Arkansas Cattlemen, Arkansas Association of Counties and other interested stakeholders on the two listed mussels.
- 10/9/2012- The Service held a meeting based on "Conversation about Solution-Oriented Conservation, What the Endangered Species Act Means to You" in Hot Springs in response to the 9/6/2012 request.

2013

- Jan 2013 – Sent a letter to Dir. Ashe concerning public comments on the impact of critical habitats.
- 5/23/2013- The U.S. Fish and Wildlife Service re-opened the public comment period for 30 days for the Neosho Mucket and Rabbitsfoot.
- 06/7/2013- Sent letter to Interior Secretary Jewell and Director Ashe of the USFWS asking for an additional 30 day extension on the critical habitat for the Neosho mucket and rabbits foot mussels.
- 6/27/2103- The FWS responded to the 6/7/13 letter by reopening the comment period.
- 7/23/2013- At Senator Pryor's request, the Fish and Wildlife spoke to the Arkansas Farm Bureau to brief concerned farmers and ranchers at the Hot Springs Convention center.

2014

- 01/10/2014- Sent a letter to the U.S. Fish and Wildlife Service Director Ashe challenging the critical habitat designation for the Neosho Mucket and Rabbitsfoot Mussel in Arkansas.
- 2/12/2014- Call to Director Ashe about the critical habitat designation and to discuss Community Protection Act.
- 02/25/2014 – Met with USFWS Director Ashe to talk about the pending critical habitat designation and the Community Protection Act that would require the FWS to complete quantitative economic analysis when determining critical habitat. Invited him to speak directly with Arkansans in the state on the issue.
- 03/06/2014- Introduced S. 2084, the Community Protection Act of 2014 to amend the ESA to make the Secretary of the Interior authorize a draft economic analysis and make it available for public comment at the time a proposed rule to designate critical habitat is published. S. 2084 is currently in the Senate Environment and Public Works Committee, with Senator Landrieu as a cosponsor.
- 04/17/2014- At the request of Senator Pryor, the U.S. Fish and Wildlife Service reopened its public comment period for the proposed critical habitat designation for the Neosho Mucket and Rabbitsfoot Mussel. Director Ashe visited with concerned stakeholders in Little Rock on the issue and visited a local farm to see the impacts.

June 30, 2014

The *Endangered Species Act* was enacted into law in 1973 in an effort to protect various species in the United States from extinction. While I believe this law was crafted with good intentions, the current enforcement practices of the U.S. Fish and Wildlife Service, combined with the secretive listing process of species, have distorted the Act in such a way that threatens the property of many Arkansas landowners.

There are few better examples of unintended consequences of the Endangered Species Act than the topic at hand today: the listing of the Neosho mucket and Rabbitsfoot mussel. Many Arkansans may not know that the designations for the mucket and mussel were the result of closed-door negotiations between environmental groups and the U.S. Fish and Wildlife Service, without input from stakeholders—including the members of this committee, state authorities such as the Arkansas State Forester, and county judges. The lack of transparency in these negotiations is unsettling for those Arkansans affected by such decisions, as well as for advocates of good government.

Unfortunately, this is yet another example of the Obama administration's overreach. It seems President Obama's bureaucrats consider themselves better equipped to make decisions regarding responsible land use and protection of the natural environment than the people who have lived and worked on this land for generations. I urge the U.S. Fish and Wildlife service to immediately cease the listings and implement new protocols that will bring transparency and fairness to the endangered species listing process.

The Neosho mucket and Rabbitsfoot mussel listing would impact approximately 1,684 miles of riverfront, the majority of which is productive, private land and would restrict activity on 42 percent of Arkansas's surface area. We cannot and should not take this designation lightly.

I have similar concerns with the U.S. Fish and Wildlife Service's recently proposed endangered species classification of the Northern Long-Eared Bat. This listing would eliminate forest harvesting in Arkansas during the critical spring and summer months, severely damaging this vital industry, not to mention the effects it would have on farming, energy development, and manufacturing industries.

Forests cover more than half of Arkansas and our timber industry is still struggling to recover from the housing crash and economic downturn; it simply cannot afford any more unnecessary government regulations.

As a sixth-generation Arkansan, I know our state has a unique appreciation for the outdoors. Protecting the environment—including critical habitats for threatened and endangered species—is of the utmost importance. But we must do so sensibly, in a way that protects Arkansans from onerous regulations that negatively impact our agriculture, wildlife, and sporting industries.

I will continue to work with the FWS to help develop responsible conservation policy for our state. I look forward to working with Arkansans and affected stakeholders to develop narrow regulations that will protect our animal habitats while minimally impacting the lives of Arkansans.

Sincerely,

Tom Cotton
Member of Congress