

Congress of the United States
House of Representatives
Washington, DC 20515-3702

April 8, 2021

The Honorable Debra Haaland
The Secretary of the Interior
1849 C St, NW
Washington, DC 20240

Dear Secretary Haaland,

Congratulations on your confirmation on March 15. We appreciate your stated commitment to listening to all stakeholders. We are writing to raise an issue that deserves immediate consideration to correct agency overreach and a failure to follow the law.

The Department of the Interior (DOI) announced it was delaying the Revised Designation of Critical Habitat for the Northern Spotted Owl, 86 Fed. Reg. 4820 (January 15, 2021); Delay Notice, 86 Fed. Reg. 11,892 (Mar. 1, 2021). To comply with governing law, provide greater certainty to land managers, rural communities, and to those that depend on sustainable forest management for their livelihoods, and to improve focus on the primary threats to the existence of the Northern Spotted Owl (NSO), we urge you to immediately implement the rule as published on January 15, which was scheduled to go into effect on March 16.

The 2021 designation aligns critical habitat for the NSO with a unanimous U.S. Supreme Court decision and with federal environmental law. It represents an opportunity to move past antiquated, ineffective habitat policies that have stymied critical federal forest restoration activities by focusing on the real threats to this species and its habitat, while supporting American jobs and rural communities across three Western states. Science and the law have changed since the NSO was listed 30 years ago, and DOI needs to adapt to this as well.

The previous 2012 NSO critical habitat designation was subject to litigation from a coalition of business, labor, and county governments. The coalition's litigation specifically took issue with the inclusion in the designation of at least 1.1 million acres of federal lands that are not NSO habitat but are expressly designated for active forest management activities under the Northwest Forest Plan. These are areas where a critical habitat designation does nothing for conservation but inflicts direct harm on rural communities.

The U.S. Fish & Wildlife Service (FWS) agreed to initiate a public regulatory rulemaking process for reevaluating NSO critical habitat following the U.S. Supreme Court's 2018 decision in *Weyerhaeuser Co. v. U.S. Fish and Wildlife Service et al. (Weyerhaeuser)*. The unanimous *Weyerhaeuser* decision clarified that to qualify as critical habitat it must first actually be *habitat* of the species.

After completing the rulemaking process and incorporating public input, FWS adopted the 2021 NSO designation, which better follows the Supreme Court's ruling in *Weyerhaeuser*, and the Endangered Species Act (ESA), by significantly reducing the amount of non-habitat that is incorrectly and now illegally designated as "critical habitat." In addition, this revised rule is consistent with the O&C Act of 1937 and recent court decisions requiring the Bureau of Land Management to manage Western Oregon O&C Lands for timber production under the principles of sustained yield. Further, it is consistent with the Northwest Forest Plan that promised a stable supply of timber from those federal lands identified as suitable for timber harvest. The 2012 critical habitat rule dismantled the Northwest Forest Plan, setting aside 75 percent of the suitable lands, which only make up about one-sixth of the plan area. And now we know, from *Weyerhaeuser*, that it was an illegal rule. FWS also refused to do an adequate economic analysis or to consider economic impacts, even though this is required by Section 4(b)(2) of the ESA.

A few Members of Congress have questioned the legality of changes that were made between the proposed rule and what was finalized in January. These claims are not supported by the facts. In addition to incorporating public input from the rulemaking process, the Secretary of the Interior followed his legal duty to consider economic impacts and exercised discretion under the ESA to make exemptions for economic reasons.

In so doing, the Secretary was recognizing that the previous designations resulted in an annual loss of an estimated \$100 million in Gross Domestic Product, \$66 million in worker earnings, and more than 1,200 jobs, the closure of businesses, the loss of forest products infrastructure critical to maintaining forest health, and the loss of revenues to county governments that sustain essential public services- all on land that provides little benefit to the NSO.

The resulting 2021 rule provides for critical habitat on over 6.8 million acres of federal land, which is comparable to the 6.8 million acres the FWS designated in 1992. This critical habitat does not include the millions of acres that are also set aside as National Parks, National Wildlife Refuges, and Wild & Scenic and congressionally designated Wilderness areas. It also does not include the many millions of acres that are protected under Habitat Conservation Plans (HCPs) governing management of many private and state lands, including 1.6 million acres of state lands in Washington. The 2021 rule also defers to Tribal management lands now held in trust for the Cow Creek Band of the Umpqua Tribe of Indians and for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. (The delay of the rule also delays the removal of critical habitat on these Tribal lands.)

After nearly a decade of lost opportunities, the 2021 rule will better allow FWS and other federal agencies to implement the overarching recommendations of NSO Recovery Plan. The Recovery Plan calls for the use of active forest management tools to help mitigate the risks of stand-replacing wildfires, which today represents the greatest threat to NSO habitat. Statistics from Oregon's 2020 wildfire season illustrate the immediate nature of this threat.

According to U.S. Forest Service data, nearly half a million acres of federally managed forest land burned in western Oregon in 2021, where approximately 280,000 acres burnt at moderate and high severity. The Holiday Farm, Beachie, and Lionshead fires alone caused the loss of 45,220 acres of suitable NSO habitat on the Willamette National Forest. For comparison, the Northwest Forest

Plan 20-year monitoring report indicated that 5,805 acres of suitable NSO habitat was lost annually across the entire range of the species due to timber harvest on federally managed lands. **This means that more owl habitat was lost due to wildfire on a single National Forest in a single year than over the course of seven years of timber harvests on 17 National Forests.**

FWS must also take action to address the other primary threat to the NSO, competition with the barred owl. In a 2019 Species Assessment for the NSO, FWS acknowledged that “competition with barred owls, a species not native to the Pacific Northwest, has been identified as the *primary factor* associated with the observed population declines.” That assessment also concluded that “implementation of management that can effectively reduce the impact of barred owls on northern spotted owl population performance is *imperative*.”

Ultimately, this determination by FWS indicates that declining spotted owl populations are more a result of barred owl competition and the loss of habitat to wildfire, than sustainable timber harvesting. Yet, considerable time and taxpayer resources have been dedicated to locking up and ignoring habitat rather than controlling barred owls—contrary to FWS’s own findings and recovery plan. Furthermore, attempts to “protect” theoretical future NSO habitat as critical habitat have proven counterproductive to efforts to protect against NSO habitat’s largest threat: wildfire.

Reducing competition from the Barred Owl, combined with actively managing federal lands to reduce severe wildfire risks, can help reverse the decline of NSO populations and habitat that have only accelerated notwithstanding previous, larger critical habitat designations.

In closing, we urge you to implement the 2021 rule without further delay. We respectfully ask that the Administration not engage in political posturing over this important issue by further delaying a legally and scientifically justified rule that has real-world and devastating consequences for our rural communities and the health of our forests.

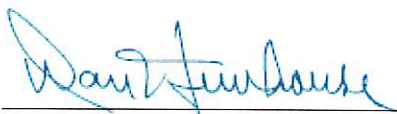
Sincerely,



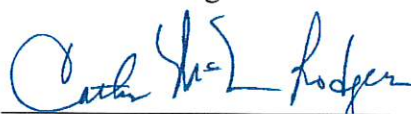
Cliff Bentz
Member of Congress



Bruce Westerman
Member of Congress



Dan Newhouse
Member of Congress



Cathy McMorris Rodgers
Member of Congress



Lauren Boebert
Member of Congress



Jaime Herrera Beutler
Member of Congress



Doug LaMalfa
Member of Congress



Tom McClintock
Member of Congress



Jay Obernolte
Member of Congress