THE WHITE HOUSE

Office of the Press Secretary

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MEMORANDUM FOR THE SECRETARY OF THE INTERIOR

SUBJECT: Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens

Today, compelled by court order, the Department of the Interior (Department) proposed critical habitat for the northern spotted owl. The proposal is an initial step in gathering important information that will inform a final decision on what areas should be designated as critical habitat for the spotted owl, based on a full evaluation of all key criteria: the relevant science, economic considerations, the impact on national security, and a balancing of other factors.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), explicitly states that our "regulatory system must protect public health, welfare, safety, and our environment while *promoting economic growth, innovation, competitiveness, and job creation*" (emphasis added). Consistent with this mandate, Executive Order 13563 requires agencies to tailor "regulations to impose *the least burden on society*, consistent with obtaining regulatory objectives" (emphasis added). Executive Order 13563 also requires agencies to "identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice" while selecting "those approaches that maximize net benefits." To the extent permitted by law, our regulatory system must respect these requirements.

The Endangered Species Act (ESA) states: "[t]he Secretary shall designate critical habitat . . . on the basis of the best scientific data available and *after taking into consideration the economic impact*, the impact on national security, and *any other relevant impact*, of specifying any particular area as critical habitat" (emphasis added). 16 U.S.C. 1533(b). The ESA also provides that "[t]he Secretary may *exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat*, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned" (emphasis added). Id. Under the ESA, scientific, economic, and other considerations are relevant to critical habitat designations. Under a regulation issued by the Department in 1984, however, the economic analysis follows the scientific assessment, rather than being presented simultaneously with it; one of the purposes of this memorandum is to direct you to propose revisions to that regulation.

Consistent with the ESA and Executive Order 13563, today's proposed rule emphasizes the importance of flexibility and pragmatism. The proposed rule notes the need to consider "the economic impact" of the proposed rule, outlines a series of potential exclusions from the proposed critical habitat, and asks for public comments on those exclusions and on other possible exclusions. Private lands and State lands are among the potential exclusions, based on a recognition that habitat typically is best protected when landowners are working cooperatively to promote forest health, and a recognition -- as discussed in the proposed rule -- that the benefits of excluding private lands and State lands may be greater than the benefits of including those areas in critical habitat.

Importantly, the proposed rule recommends, on the basis of extensive scientific analysis, that areas identified as critical habitat should be subject to active management, including logging, in order to produce the variety of stands of trees required for healthy forests. The proposal rejects the traditional view that land managers should take a "hands off" approach to forest habitat in order to promote species health; on-going logging activity may be needed to enhance forest resilience.

In order to avoid unnecessary costs and burdens and to advance the principles of Executive Order 13563, consistent with the ESA, I hereby direct you to take the following actions:

(1) publish, within 90 days of the date of this memorandum, a full analysis of the economic impacts of the proposed rule, including job impacts, and make that analysis available for public comment;

(2) consider excluding private lands and State lands from the final revised critical habitat, consistent with applicable law and science;

(3) develop clear direction, as part of the final rule, for evaluating logging activity in areas of critical habitat, in accordance with the scientific principles of active forestry management and to the extent permitted by law;

(4) carefully consider all public comments on the relevant science and economics, including those comments that suggest potential methods for minimizing regulatory burdens;

(5) give careful consideration to providing the maximum exclusion from the final revised critical habitat, consistent with applicable law and science; and

(6) to the extent permitted by law, adopt the least burdensome means, including avoidance of unnecessary burdens on States, tribes, localities, and the private sector, of promoting compliance with the ESA, considering the range of innovative ecosystem management tools available to the Department and landowners.

Executive Order 13563 states that our regulatory system "must promote predictability and reduce uncertainty." Uncertainty on the part of the public may be avoided, and public comment improved, by simultaneous presentation of the best scientific data available and the analysis of economic and other impacts. Accordingly, in order to provide more complete information in the future regarding potential economic impacts when critical habitat proposals are first offered to the public, I direct you to take prompt steps to propose revisions to the current rule (which, as noted, was promulgated in 1984 and requires that an economic analysis be completed *after* critical habitat has been proposed) to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

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