

June 30, 2005

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Ecological Services  
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Re: Proposed Designation of Critical Habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River Populations of Bull Trout

Dear Mr. Young:

The Pacific Rivers Council (PRC) is a nonprofit conservation organization advocating the protection and restoration of rivers, their watersheds, and native species diversity. We have reviewed the draft economic analysis of the proposed designation of critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout.

Although the Federal Register notice for the reopening of the comment period<sup>1</sup> indicated that comments would be accepted until June 2, 2005, we request that the Fish and Wildlife Service (FWS) consider our comments before publishing a final rule designating critical habitat. We understand that the June 15, 2005, date for submitting a final rule set forth in the court-approved settlement has been extended 90 days. We hope that this extension will provide the time necessary to consider these comments.

PRC asserts that FWS should appropriately value the protections afforded by critical habitat. Any valid economic analysis of critical habitat must consider economic benefits in addition to economic costs of the designation. Although the draft economic analysis claims that it attempts to capture some of the ancillary economic benefits of the designation, it explicitly does not rely on economic measures to evaluate the direct economic benefits of the designation. This approach is flawed. The Endangered Species Act (ESA) indicates that "[t]he Secretary shall designate critical habitat . . . on the basis of the best scientific data available and after taking into consideration the economic impact, . . . and any other relevant impact, of specifying any particular area as critical habitat." 16 U.S.C. § 1533(b)(2). A defensible consideration of "the economic impact" of designation must include consideration of both the economic costs and benefits of designation. The economic impact must reflect the net cost or net benefit of designation.

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<sup>1</sup> 70 Fed. Reg. 22835 (May 3, 2005)

The bull trout draft economic analysis contains a section entitled "Benefits" at page 9, section 1.2.4. This section implies that the need to evaluate economic benefits arises from Executive Order 12866, applicable to regulatory actions. However, the ESA itself requires consideration of economic impacts, which as explained above necessarily requires evaluating both costs and benefits to accurately assess the impacts. Furthermore, the "benefits" section states that "for implementing Executive Order 12866, OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research."<sup>2</sup> This guidance, however, does not provide a means for FWS to escape its duty to evaluate economic benefits because the need to evaluate economic impacts arises under the ESA itself. Furthermore, the analysis fails to cite other relevant OMB guidelines, which state that "[a] complete regulatory analysis includes a discussion of non-quantified as well as quantified benefits and costs . . . . When there are important non-quantified monetary values at stake, you should also identify them in your analysis so policymakers can compare them with the monetary benefits and costs."<sup>3</sup> Although the economic analysis mentions non-quantified benefits such as amenity values, it fails to thoroughly discuss and identify these benefits.

Quantification of economic benefits may be a difficult task, but quantification of economic costs of designation is also a resource intensive process. Congress, in passing the ESA, made "it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities, thereby adopting a policy which it described as 'institutionalized caution.'" *TVA v. Hill*, 437 U.S. 153, 194 (1978); see H.R. Rep. No. 93-412, 4-5 (1973). Given that the balance has been struck *in favor* of endangered species protection, at least an equal amount of time, energy, and language should be devoted to the estimation of economic benefits as is given to economic costs. Without such an analysis of the benefits, the economic analysis is skewed, and it does not provide a valid basis to exclude areas from critical habitat designation on the basis of "economic impacts."

FWS's decision not to quantify direct economic impacts of the designation on the basis of infeasibility, absence of studies, and lack of resources is indefensible. It is disingenuous to suggest that such analyses are infeasible when the FWS is well aware that the economic analysis for the designation of critical habitat for the bull trout's Klamath and Columbia populations originally contained just such an analysis. The tools and methods are clearly available. However, before the economic analysis of the Klamath and Columbia populations was released to the public, the FWS excised the section on economic benefits. It is thus clear that the refusal to include economic benefits in the economic analysis was and is motivated not by a lack of resources or analytical frameworks, but by political pressure. The fact is that an economic analysis of the benefits of designating bull trout critical habitat has been done before, and it can be done again. Indeed, there is a large and growing body of literature devoted to the valuation of

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<sup>2</sup> Draft Economic Analysis of Critical Habitat Designation for Three Populations of Bull Trout, 9 (April 22, 2005) (citing U. S. Office of Management and Budget, "Circular A-4," September 17, 2003.

<sup>3</sup> U. S. Office of Management and Budget (OMB). 2003. Circular A-4, p. 3. September 17.

ecosystem services that provides alternate frameworks if the FWS does not choose to replicate the Klamath and Columbia populations' economic analysis.<sup>4</sup>

Other evaluations of economic analyses for critical habitat designations have reached the conclusion that economic benefits *can* be assessed. For example, ECONorthwest evaluated the November, 2004, proposed critical habitat for salmon and steelhead.<sup>5</sup> The economic evaluation "demonstrate[d] that the steps NOAA Fisheries would have had to take to incorporate this information into its analysis are parallel to the steps it took to incorporate information regarding the designation's economic costs."<sup>6</sup> The evaluation also pointed out that studies have shown that "the economic benefits of restoring salmon populations can exceed the costs."<sup>7</sup> Given the findings of these studies, FWS cannot defensibly claim that designation of bull trout habitat will generate specific costs when it has not even evaluated whether the economic benefits of restoring these populations outweigh the costs.

Economic benefits of critical habitat designation can occur in the form of increased residential property values adjacent to open space protected by critical habitat designations. Other benefits include recreational values, ecosystem service values, avoided costs of sprawl including the avoided costs of public services, and non-use values (existence, option, and stewardship/ bequest values). The economic analysis mentions the possibility that this designation will create certain amenity values, but does not attempt to quantify any of these benefits, nor does it discuss them in any detail. In addition, although the analysis claims to evaluate the net economic impact of the designation where data are available, including ancillary benefits of critical habitat designation, the analysis's discussion of any benefits is wholly inadequate. Economic benefits are very rarely mentioned in the substantive analysis, outside of the summary and introductory sections. If, in fact, the analysis considered any benefits, the discussion of these benefits should have been explicit and detailed. The voluminous analysis explicitly discussed the costs of the designation in depth; the analysis should have provided a similarly thorough discussion of any benefits that were considered.

We have provided a list of economic impacts, including benefits, which should be included in a critical habitat economic analysis (Table 1). The information in the table summarizes a wide body of literature that describes the potential economic benefits that might arise from critical habitat designations. FWS cannot satisfy its obligation unless it explicitly and fully describes each category of benefits that might be generated by critical habitat designations for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout.

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<sup>4</sup> See, for example, the recent book by the National Research Council, *Valuing Ecosystem Services: Toward Better Environmental Decisionmaking*. 2005.

<sup>5</sup> ECONorthwest Comments on the Draft Economic Analysis of Critical Habitat Designation for Pacific Salmon and *O. Mykiss*, prepared for Earthjustice, March 2005.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.*

**Table 1. Potential economic impacts of CHD for bull trout<sup>8</sup>**

<i>Value category</i>	<i>Potential change in value due to CHD</i>	
	<i>Benefits</i>	<i>Costs</i>
<i>Direct use values</i>	<ul style="list-style-type: none"> <li>• Increased development opportunities for some sectors</li> <li>• Reduced possibility of (local) extinction of species <i>x</i> (<i>recreation, tourism - avoided loss of consumer and producer surplus</i>)</li> <li>• Reduced possibility of (local) extinction of other ESA species (<i>recreation, tourism - avoided loss of consumer and producer surplus</i>)</li> <li>• Higher economic rents <sup>4</sup> /</li> <li>• Higher land values (<i>from preservation of high environmental quality</i>) <sup>4,7</sup></li> <li>• Increased consumer surplus (<i>increased utility of CHD-compatible recreational activities in absence of CHD-incompatible activities with negative externalities</i>) <sup>1</sup></li> <li>• Increase in net social benefit from reducing baseline activities with negative net social benefits<sup>2</sup></li> <li>• Avoided health damages</li> </ul>	<ul style="list-style-type: none"> <li>• Forgone development opportunities for some sectors<sup>3</sup></li> <li>• Lower consumer surplus (<i>due to higher prices and/or cease of CHD-incompatible uses</i>)</li> <li>• Project modifications</li> <li>• Higher transactions costs (<i>consultations</i>)</li> <li>• Reduced economic rents <sup>4</sup> /</li> <li>• Reduced land/capital asset values (<i>from uncertainty, among other things</i>) <sup>3,4</sup></li> </ul>
<i>Indirect use values (ecosystem function values)</i>	Avoided loss of ecosystem function values of area designated as CH <sup>5</sup>	
<i>Option value</i>	Avoided loss of non-market option values of area designated as CH	
<i>Non-use values</i>	Avoided loss of stewardship, existence, and intrinsic values associated with area designated as CH	
<i>Avoided cost of non-smart growth, including:</i>	Avoided negative externalities of urban sprawl <sup>6</sup>	
<i>Avoided cost of community services</i>	Avoided cost of public infrastructure associated with development projects in area designated as CH <sup>8</sup>	
<i>Maintenance of social capital</i>	Avoided loss of social cohesion and associated problems <sup>8</sup>	

*Notes:* \* Not all benefit/cost categories are applicable in every case of CHD. <sup>1</sup>E.g.: increased enjoyment of snowshoeing or cross-country skiing without presence of snowmobiles. <sup>2</sup>Example: Logging/grazing on public lands below social cost. Examples given in Rachlinski (1997) and Houck (1995). <sup>3</sup>Insofar as future development opportunities are anticipated, the lost opportunities of development will be captured, at least partly, in reduced land/capital asset values. <sup>4</sup>To the extent that land is used for marketed output, land values capture economic rents, and vice versa. <sup>5</sup>Includes the ecological regulatory function of the species of concern (especially important for keystone species). <sup>6</sup>For example, health damages from increased air pollution due to increases in private transport as a result of urban sprawl. <sup>7</sup>See for example Nelson et al. (2002). <sup>8</sup>For example, see ECONorthwest (2002).

<sup>8</sup> Table Sources: Defenders of Wildlife; General value categories based on Barbier (2000) and Brown Jr. and Shogren (1998).

In conclusion, FWS's failure to recognize the benefits of critical habitat designation is not limited to the current critical habitat proposal, or even to just bull trout critical habitat. In fact, the current "administration has aggressively suppressed valuable information regarding the benefits to local economies of habitat conservation."<sup>9</sup> This approach is guaranteed to engender further litigation and controversy, thereby hampering the needed protection and recovery of bull trout and other imperiled species. We urge FWS to forestall such unnecessary complications and delays by conducting an accurate and balanced assessment of the economic costs *and benefits* of critical habitat designations for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout.

Cordially,

Deanna Spooner  
Conservation Director

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<sup>9</sup> Unsound Economics: The Bush Administration's New Strategy for Undermining the Endangered Species Act, National Wildlife Federation, June 2004, p.4.