

February 6, 2013

Public Comments Processing  
Attn: FWS-R9-ES-2011-0073  
Division of Policy and Directives Management  
U.S. Fish & Wildlife Service  
4401 N. Fairfax Drive  
PDM-2042  
Arlington, VA 22203

**Re: Docket No. FWS-R9-ES-2011-0073, Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Impact Analyses of Critical Habitat.**

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the joint notice of proposed rulemaking issued by the United States National Oceanic and Atmospheric Administration (NOAA) and the United States Fish and Wildlife Service (FWS) regarding revisions to the critical habitat analysis process.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are subject to Endangered Species Act (ESA) regulations. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to multiple federal regulatory requirements. ARTBA's private sector members plan, design, construct and provide supplies for federal-aid transportation improvement projects. This document represents the collective views of our 5,000 member companies and organizations.

NOAA and FWS propose to alter the process for announcing "critical habitat" for endangered species. "Critical habitat" is an environment that is necessary for an endangered order threatened species to subsist. Currently, the agencies issue a determination of critical habitat and subsequently issue an economic analysis evaluating the decision. The proposed rule would attempt to streamline this process by having the economic analysis issued at the same time as the critical habitat designation.

ARTBA appreciates and supports this proposal to streamline the ESA regulatory process. In general, ARTBA has long championed efforts to reduce process delays that preserve existing regulatory safeguards. Currently, the environmental review and approval process for



transportation projects, which includes ESA considerations, can take anywhere from nine to 19 years to complete. This is simply too long. By taking two segments of the ESA process and issuing them at the same time, NOAA and FWS will reduce delay while maintaining existing levels of protection for endangered species.

Proper determination of critical habitat designation is a very important issue for both state and local governments as well as businesses located in areas impacted by ESA concerns. A determination of critical habitat can literally remove hundreds of miles from the possibility of any type of development. In the transportation arena, this is especially relevant as states promulgate transportation plans year, if not decades, in advance. If an entire area is suddenly put “off limits” by an overly broad critical habitat designation, carefully designed plans for economic development might be unnecessarily placed in jeopardy. At a minimum, all economic analysis necessary for a critical habitat determination should be based on the best economic data available and incorporate an area’s planned transportation improvements.

Also, it is important that determinations be made in a neutral fashion without any sort of bias for or against critical habitat designation. For this reason, ARTBA asks NOAA and FWS to ensure all economic analyses issued include a detailed explanation of how the agencies arrived at their conclusion. This would include any assumptions made by the agencies in favor of critical habitat designation and a complete listing of all sources considered when determining the final economic impact of any recommended imposition of critical habitat. The more thorough the economic analysis, the better comments received by the agencies will be in response.

In conclusion, ARTBA supports the efforts of NOAA and FWS to reduce delay in the ESA regulatory process. However, critical habitat designations carry significant impacts and the agencies should strive to be as thorough and transparent as possible when making these decisions.

Sincerely,



T. Peter Ruane  
President & C.E.O