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April 30, 2018

The Honorable Ryan Zinke
Secretary of Interior
U.S. Department of Interior
1849 C St. NW

Washington, DC 20240

Re: Opposition to the Proposed Rule to Withdraw the Blanket 4(d) Rule for All Threatened Species Protected by the Endangered Species Act

Dear Secretary Zinke,

On behalf of our organizations and millions of members, we strongly oppose the Department of Interior's proposal to rescind the longstanding regulations ("blanket rule") by which the U.S. Fish and Wildlife Service extended the full protections afforded to endangered species under Section 9 of the Endangered Species Act ("the Act") to all threatened species.¹ As discussed in greater detail below, we are gravely concerned that rescission of the blanket rule will further slow the listing process, invite political interference, ultimately provide less or even no protections to threatened species, and shroud government decisions from public view and scrutiny. For all of these reasons, we ask that the rule be withdrawn from White House review.

For over 40 years, the blanket rule has served as a clear, legally defensible and effective conservation tool, ensuring threatened species receive needed protections. The blanket rule has not been a barrier to the Service issuing special rules for species where necessary. Indeed, the agency has issued special rules for more than 70 listed species. There is thus little reason to rescind the blanket rule beyond the Trump administration's overt opposition to protections for our land, air, water and wildlife.

Rescission of the blanket rule will further burden the Service's listing program, which has perpetually faced a backlog of species awaiting protection, including a current backlog of over 500 species. On average, the Service has taken 12 years to list species, despite that according to the Act, the process should only take two.² Adding a requirement that the Service issue a rule defining prohibited activities with every threatened listing will only further burden the listing program and lead to further delays in life-saving protections for species. This has serious consequences—at least 47 species have gone extinct waiting for protection.

Loss of the blanket rule will also further expose the listing process to political maneuvering and interference. Under the Act, decisions about listing species are required to be based solely on best available science, but political interference has been a persistent problem. Surveys conducted by the Union of Concerned Scientists consistently show strong majorities of the agency's own scientists believe that politics too often interferes in agency decisions.³

We have serious concerns that such interference will lead to weaker protections for threatened species or even worse, endangered species being listed as threatened to allow for exemptions from protection. In both cases, the result will be increased risk of extinction.

We have already seen a number of instances where in response to industry pressure, species have been denied needed protections in special rules, including rules for the lesser prairie chicken,⁴ northern long-eared bat⁵ and streaked horned-lark.⁶ In each instance, the species were listed as threatened rather than endangered to allow a special rule exempting serious threats even though the species are clearly at risk of extinction in all or significant portions of their range. Such exemptions upend the regulatory framework of the Act. Key

¹ 50 C.F.R. § 17.31(a).

² Puckett, E.E., D.C. Kesler, D.N. Greenwald. 2016. Taxa, petitioning agency, and lawsuits affect time spent awaiting listing under the US Endangered Species Act. *Biological Conservation* 201 (2016) 220–229.

³ See Union of Concerned Scientists, Surveys of Scientists at Federal Agencies, available at: <https://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/surveys-scientists-federal#.WsvCYC7waUm>

⁴ 79 Fed. Reg. 20073 (2014).

⁵ 81 Fed. Reg. 1900 (2016).

⁶ 78 Fed. Reg. 61451 (2013).

mechanisms for conserving listed species, such as Habitat Conservation Plans and Incidental Take Permits are predicated on the underlying prohibition against unpermitted take, and would not be applicable in its absence. Moreover, the distinction between a threatened and endangered species is often murky, making a presumption that a threatened species will benefit from Section 9's prohibitions against take and trade prudent unless it is clear that the species does not need such protection.

As groups that represent millions of Americans, we are further concerned that this proposal would diminish government transparency and accountability. Rescinding the blanket rule could allow the U.S. Fish and Wildlife Service to withhold the protections of Section 9 when listing a species as threatened without explaining its reasons for doing so, increasing the possibility for political interference in the agency's decision-making. In the absence of a rule and public comment period, the public would be denied the opportunity to provide input regarding that decision, and could be unable to hold the agency accountable where it has failed to provide a species the protection it needs.

The Endangered Species Act was enacted with overwhelming bipartisan support, remains our nation's strongest environmental law, and continues to receive strong public support. In passing the Act, Congress adopted a policy of "institutionalized caution," such that all threatened and endangered species received the benefit of the doubt when agencies considered taking actions that could harm any listed species.⁷ This proposal contradicts the clear intent of Congress and instead places the profits of industry special interests above those of our most imperiled wildlife.

Thank you for your consideration,

Adventure Scientists
Advocates for Snake Preservation
Alameda Creek Alliance
Alaska Clean Water Advocacy
Alaska's Big Village Network
All-creatures.org
Anacostia Riverkeeper
Animal Legal Defense Fund
Animal Welfare Institute
Animals Are Sentient Beings, Inc.
Animas Valley Institute
Basin and Range Watch
Battle Creek Alliance
Bird Conservation Network
Black Warrior Riverkeeper
Blue Heron Productions
Blue Mountains Biodiversity Project
Born Free USA
Boulder County Audubon, Boulder, CO 1600 members
Boulder Rights of Nature, Inc.
California Wolf Center
Campaign to Fight Toxic Prisons
Cascades Raptor Center
Center for Biological Diversity
Center for Environmental Policy, Bard College
Center for Food Safety

⁷ Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978).

Center for Snake Conservation
Christians Caring for Creation
Citizens Committee to Complete the Refuge
Ciudadanos Del Karso
Clean Air Watch
Columbia Riverkeeper
Community Works CIC
Conservation Alabama Foundation
Conservation Congress
Conservation Northwest
Conservatives for Responsible Stewardship
Cottonwood Environmental Law Center
DC Environmental Network
Defenders of Wildlife
Defiance Canyon Raptor Rescue
Delaware Ecumenical Council on Children and Families
Desert Tortoise Council
Dogwood Alliance
Don't Waste Arizona
Earthjustice
Earthworks
Eastern Coyote/Coywolf Research
Ebbetts Pass Forest Watch
Eco-Eating
Ecology Party of Florida
Endangered small animal conservation fund
Endangered Species Coalition
Environmental Committee for the SLV
Environmental Protection Information Center
Fairmont, MN Peace Group
Food & Water Watch
For the Fishes
Friends of Blackwater, Inc.
Friends of the Bitterroot
Friends of the Earth - U.S.
Fund for Wild Nature
Georgia ForestWatch
Geos Institute
Great Old Broads for Wilderness
GreenFaith
Greening Forward
GreenLatinos
Greenpeace USA
Gulf Restoration Network
Hawk Mountain Sanctuary
Hilton Pond Center for Piedmont Natural History
Howling For Wolves
Hui Aloha Aina o Ka Lei Maile Alii
Humane Society International
Humane Society Legislative Fund
Idaho Sporting Congress, Inc.

inNative (consulting firm)
International Fund for Animal Welfare
Kate and Company
Kettle Range Conservation Group
Klamath Forest Alliance
Klamath Riverkeeper
Lahontan Audubon Society
Lancaster County Conservancy
Lehigh Valley Audubon Society
Living Rivers
Los Padres ForestWatch
Massachusetts Forest Watch
Missouri Coalition for the Environment
Monmouth County Audubon Society
More Gardens! Fund
MountainTrue
National Parks Conservation Association
National Wolfwatcher Coalition
Native Plant Conservation Campaign
Natural Resources Defense Council
NC WARN
Nevada Wildlife Alliance
NH Audubon
Northeast Oregon Ecosystems
Northwest Environmental Advocates
Occidental Arts and Ecology Center
Oceana
Olympic Forest Coalition
Oregon Natural Desert Association
Palm Beach County Environmental Coalition
Pesticide Free Zone
Prairie Rivers Network
Project Coyote
Public Lands Project
Quality Parks
Raptor Services, LLC
Raptors Are The Solution
RESTORE: The North Woods
Rock Creek Alliance
Rocky Mountain Wild
San Bernardino Valley Audubon Society
San Juan Citizens Alliance
San Luis Valley Ecosystem Council
Santa Cruz Bird Club
Santa Cruz Mountains Bioregional Council
Save Animals Facing Extinction
Save Our Cabinets
Save Our Sky Blue Waters
Save The Colorado
SAVE THE FROGS!
Save the Manatee Club

Save Wolves Now Network
Sequoia ForestKeeper®
Sheep Mountain Alliance
Sierra Club
Slow Food USA
Spirit of the Sage Council
Sustainable Arizona
SustainUS
The Alliance for Appalachia
The Humane Society of the United States
The Interfaith Council for the Protection of Animals and nature
The Lands Council
Turtle Island Restoration Network
Union of Concerned Scientists
Upper Peninsula Environmental Coalition
Upstate Forever
Uranium Watch
Utah Native Plant Society
Utah Physicians for a Healthy Environment
Valley Women's Club of the San Lorenzo Valley, Inc.
Ventana Wilderness Alliance
Waste Farmers
Watershed Alliance of Marin
West Virginia Highlands Conservancy
Western Environmental Law Center
Western Nebraska Resources Council
Western Watersheds Project
Wild Horse Education
WILDCOAST
WildEarth Guardians
Winyah Rivers Foundation
Wolf Conservation Center
Wyoming Untrapped