

September 20, 2018

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Proposed Rescission of the Blanket 4(d) Rule for Protection of Threatened Species

Dear Secretary Zinke,

On behalf of our organizations and millions of members, we write to urge you to withdraw the proposed rescission of the regulation automatically extending protections to threatened species under Section 4(d) of the Endangered Species Act (“blanket 4(d) rule” or “rule”).¹ For nearly 40 years, the blanket 4(d) rule has provided protections afforded to endangered species to threatened species as a default, helping to ensure that no harm happens while the U.S. Fish and Wildlife Service considers a species-specific regulation. By prohibiting take of threatened species, including harm, harassment, and killing by any person, the blanket 4(d) rule has prevented harm to hundreds of species from piping plovers to sea otters. Rescinding the rule would undercut recovery and increase extinction risk for threatened species across the country, as well as increase inefficiency at the Service.

If the proposal is adopted, the Service will not give newly listed threatened species any take protections unless and until the Service issues a separate, individual rule specifying prohibited activities. The Service maintains that it has issued such individual rules for species listed as threatened in recent years, but the record shows otherwise. Of the 328 species FWS has listed as threatened, fewer than half have special rules.² The Service’s listing program already lacks the necessary funding and resources to complete its duties under the Act, facing a backlog of more than 500 species awaiting consideration for protection. Adding an additional duty to develop individual rules for threatened species will only further burden this already overwhelmed program, resulting in even greater delays in listing of the many species awaiting protection, including both threatened and endangered species, ultimately placing hundreds of species at greater risk of extinction.

The Service justifies rescinding the blanket 4(d) rule as necessary to align its practices with those of the National Marine Fisheries Service (NMFS), which has no similar rule. Yet the Service is responsible for far more imperiled species. NMFS manages only 67 threatened species and does not have a backlog of species awaiting consideration, whereas the Service manages 328 threatened species and as noted above, has a backlog of hundreds of species awaiting basic protection. And even with its substantially smaller workload, NMFS has previously neglected to publish rules for threatened species or only done so years after species were listed. For example,

¹ *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Prohibitions to Threatened Wildlife and Plants*, 83 Fed. Reg. 35,174 (July 25, 2018).

² Defenders of Wildlife White Paper Series, *Section 4(d) Rules: The Peril and the Promise* (2017), at 5-6, <https://defenders.org/sites/default/files/publications/section-4d-rules-the-peril-and-the-promise-white-paper.pdf>.

although NMFS designated 20 species of coral as threatened in 2014, it still has not issued a 4(d) rule to protect any of them from harm.

Rescinding the blanket 4(d) rule may also have serious, unintended consequences. Without a prohibition on take of threatened species, private parties will have little to no incentive to undertake voluntary conservation efforts, such as safe harbor agreements and habitat conservation plans, hampering species recovery. Rescission of the rule will also expose the listing program to increased political pressure from special interests. Already a persistent problem, these groups advocate for threatened rather than endangered listings and seek exemptions from the take prohibition for their particular industries, undermining the scientific integrity of the listing process and ultimately resulting in species receiving less protection than needed.

For all these reasons, we strongly recommend this proposal be withdrawn. If the goal is truly to harmonize the approach of the two agencies, we recommend that instead of slashing protections for threatened species, NMFS adopt a similar default or blanket 4(d) rule, so that all species are afforded the same protective and precautionary approach to their conservation.

Sincerely,

Center for Biological Diversity
Defenders of Wildlife
Earthjustice
Natural Resources Defense Council
350.org
Alaska Wilderness League
All-Creatures.org
Allegheny Highlands Alliance
Alliance for the Wild Rockies
Altamaha Riverkeeper
American Bird Conservancy
American Indian Mothers Inc.
American Rivers
Animal Legal Defense Fund
Animal Welfare Institute
Animals Are Sentient Beings, Inc.
Animas Valley Institute
Arkansas Audubon Society
Arkansas Valley Audubon Society
Atchafalaya Basinkeeper
Audubon Colorado Council
Audubon Society of Central Arkansas
Backcountry Fly Fishers Naples
BALANCE Edutainment
Basin and Range Watch
Battle Creek Alliance/Defiance Canyon Raptor Rescue

Bayou City Waterkeeper
Berkshire Environmental Action Team (BEAT)
Beyond Nuclear
Bird Conservation Network
Black Warrior Riverkeeper
Bold Alliance
Born Free USA
Boulder Rights of Nature, Inc.
Boulder Waterkeeper
Cahaba Riverkeeper
California Chaparral Institute
California Native Plant Society, San Diego Chapter
Californians for Western Wilderness
Cascades Raptor Center
Cascadia Wildlands
Center for a Sustainable Coast
Center for Food Safety
Central Valley Safe Environment Network
Citizens Campaign for the Environment
Citizens' Environmental Coalition
Climate Hawks Vote
Coalition for Sonoran Desert Protection
Columbia River Estuary Action Team
Conservancy of Southwest Florida
Conservation Congress
Conservation Law Foundation
Conservation Northwest
Coosa River Basin Initiative/Upper Coosa Riverkeeper
Coosa Riverkeeper
Cottonwood Environmental Law Center
Crawford Stewardship Project
DC Environmental Network
Delaware Ecumenical Council on Children and Families
Denver Audubon
Don't Waste Arizona
Earth Day Initiative
Earthworks
Eastern Coyote/Coywolf Research
EcoFlight
Endangered Habitats League
Endangered Small Animal Conservation Fund
Endangered Species Coalition
Environment America
Environmental Action Committee of West Marin
Environmental Center of San Diego
Environmental Defense Center

Environmental Protection Information Center
Evergreen Audubon
Fallbrook Land Conservancy
Food & Water Watch
Footloose Montana
Franciscan Action Network
Friends of Arthur R. Marshall Loxahatachee National Wildlife Refuge
Friends of Harbors, Beaches and Parks
Friends of Point Arena-Stometta Lands
Friends of the Bitterroot
Friends of Blackwater
Friends of the Earth
Friends of the Eel River
Friends of the Inyo
Friends of the WI Wolf & Wildlife
Friends of the Wild Swan
Fund for Wild Nature
GARDEN, Inc.
Georgia ForestWatch
Geos Institute
Golden West Women Flyfishers
Grand Valley Audubon Society
Great Old Broads for Wilderness
Greater Hells Canyon Council
Greater Yellowstone Coalition
Green Riverkeeper
GreenFaith
Greenpeace
Gulf Restoration Network
Gunpowder RIVERKEEPER®
Hands Across the Sand
Hilton Pond Center for Piedmont Natural History
Honor the Earth
Humane Society Legislative Fund
Humboldt Baykeeper
Idaho Conservation League
In Defense of Animals
International Fund for Animal Welfare (IFAW)
International Marine Mammal Project of Earth Island Institute
Juniata Valley Audubon Society
Kalmiopsis Audubon Society
Kentucky Heartwood
Kettle Range Conservation Group
Kickapoo Peace Circle
Klamath Forest Alliance
Kootenai Environmental Alliance

KS Wild
Lake Worth Waterkeeper
League of Conservation Voters
Los Padres ForestWatch
Lost Coast Interpretive Association
Lower Ohio River Waterkeeper
Madison Audubon Society
ManaSota-88, Inc.
Maryland Ornithological Society
Mass Audubon
Massachusetts Forest Watch
Matanzas Riverkeeper
Miami Waterkeeper
Milwaukee Riverkeeper
Missouri Coalition for the Environment
Mt. Diablo Audubon Society
National Parks Conservation Association
National Wolfwatcher Coalition
Native Fish Society
Nevada Wildlife Alliance
New Mexico Audubon Council
New Mexico Wilderness Alliance
Northeast Oregon Ecosystems
Northern Jaguar Project
NY4WHALES
Ocean Conservancy
Ocean Conservation Research
Oceana
One More Generation
Oregon Natural Desert Association
Our Children's Earth Foundation
Potomac Riverkeeper Network
Predator Defense
Preserve Lamorinda Open Space
Protect Our Water
Protect Our Wildlife
Public Employees for Environmental Responsibility
Public Interest Coalition
Public Lands Project
Quad Cities Waterkeeper Inc.
Quality Parks
Rainier Audubon Society
Raptors Are The Solution
RE Sources for Sustainable Communities
Reef Relief
RESTORE: The North Woods

Rio Grande Waterkeeper
Riverkeeper, Inc.
Roaring Fork Audubon Society
Rocky Mountain Wild
Russian Riverkeeper
San Bernardino Valley Audubon Society
San Diego Coastkeeper
San Francisco Baykeeper
San Joaquin Raptor/Wildlife Rescue Center
San Luis Valley Ecosystem Council
Sanibel Captiva Conservation Foundation
Save Animals Facing Extinction
Save Our Allegheny Ridges
Save Our Sky Blue Waters
Save Our Wild Salmon Coalition
Save The Colorado
Save The Cumberland Inc.
SAVE THE FROGS!
Save the Manatee Club
Save the Scenic Santa Ritas
Save Wolves Now Network
Sea Shepherd Legal
Selkirk Conservation Alliance
Seneca Lake Guardian, A Waterkeeper Affiliate
Sequoia ForestKeeper®
Seven Generations Ahead
Sierra Club
Sisters of Charity of Nazareth Western Province Leadership
Snake River Waterkeeper
South Florida Audubon Society
South Yuba River Citizens League
Southern Environmental Law Center
Southern Utah Wilderness Alliance
Southwest Environmental Center
Spokane Riverkeeper
Students for the Salish Sea
Suncoast Waterkeeper
Surfrider Foundation
Swan View Coalition
Tampa Bay Waterkeeper
Tennessee Environmental Council
Tennessee Riverkeeper
The Humane Society of the United States
The Lands Council
The Otter Project
The Rewilding Institute

The Safina Center at Stony Brook University
Toxic Free NC
Tucson Audubon Society
Turtle Island Restoration Network
Urban Bird Foundation
Ventana Wilderness Alliance
Vet Voice Foundation
Waterkeeper Alliance
Waterkeepers Hawaiian Islands
WE ACT for Environmental Justice
West Virginia Highlands Conservancy
Western Watersheds Project
Whale and Dolphin Conservation
Whidbey Environmental Action Network
Wild and Scenic Rivers
Wild Fish Conservancy
Wild Horse Education
Wild Nature Institute
WildEarth Guardians
Wilderness Watch
Wilderness Workshop
Wildlife Rescue & Rehabilitation, Inc.
WildPlaces
WildWest Institute
Wishtoyo Foundation
Wolf Conservation Center
Wolf Hollow
Xun Biosphere Project
Yellowstone to Uintas Connection