

September 20, 2018

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

The Honorable Wilbur Ross
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Proposed Changes to Endangered Species Act § 7 Regulations

Dear Secretary Zinke and Secretary Ross,

On behalf of our organizations and millions of members, we write to urge you to withdraw the proposed changes to the regulations that implement Section 7 of the Endangered Species Act.¹ Section 7 consultation is the key check-and-balance on federal agency actions to ensure that those actions do not (1) jeopardize species' survival and recovery and (2) destroy or degrade critical habitat. The consultation provisions of the Act have ensured that the federal government's activities do not harm endangered species or their habitat by mandating review by the federal wildlife agencies. Unfortunately, the Trump administration's proposed changes would undermine the conservation of endangered and threatened species nationwide, weaken their critical habitat, delay their recovery, and ultimately make recovery of endangered animals and plants far more costly and difficult.²

Consultation is the heart of the Endangered Species Act. It has been instrumental to the ESA's remarkable success in preventing the extinction of imperiled animals and plants; 99% of species listed under the Endangered Species Act survive today. The Supreme Court explained that the Act represents "the institutionalization of caution," *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978), and Congress clearly intended the consultation process to give "the benefit of the doubt" to species based on the best available scientific information.³

Simply put, the Trump administration is considering fundamental changes to the way section 7 consultation works. Despite this, many portions of the proposal simply seek comment on broad concepts. Adopting any of these "unwritten yet announced" changes would be arbitrary and invalid. Given that endangered species already face numerous threats, the proposal to exempt the ongoing effects of federal projects from consideration in consultation would undermine protection.

¹ *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation*, 83 Fed. Reg. 35,178 (July 25, 2018).

² Some of organizations that are signatories to this letter are also submitting comprehensive comment letters regarding the proposed changes to the Act's implementing regulations. This letter reflects our collective concerns about the proposal and general recommendations from the environmental community.

³ Oliver A. Houck, *The "Institutionalization of Caution" Under § 7 of the Endangered Species Act: What Do You Do When You Don't Know?*, 12 *Env'tl. L. Rep. (Env'tl. L. Inst.)* 15,001, 15,001 (1982)

Another change would limit § 7 consultation to actions within the jurisdiction of the regulatory agency – leaving out actual, concrete harms caused by a proposed action if those harms happened to fall outside that agency’s sphere. Both these proposals would put blinders on the expert wildlife agencies during the consultation process – the harm to species and habitat would still occur, but it would no longer be assessed as the Act requires.

Equally troubling, the Trump administration proposal would allow the Fish and Wildlife Service and National Marine Fisheries Service to ignore harm caused by federal actions if those harms are manifested through “global processes.”⁴ This proposal is clearly aimed at eliminating the need to consider the impacts of climate change on imperiled species. While many federal actions do not contribute to climate change and its impacts on endangered species, those resulting in significant increases in greenhouse gas emissions should be the subject of Endangered Species Act consultation to ensure that polar bear, coral reefs, and other climate-sensitive species are not pushed towards extinction.

The Trump administration proposal also seeks to undermine mitigation measures to offset harmful impacts. By proposing to add language that mitigation measures require “no specific binding plans or a clear, definite commitment of resources,” the proposal would allow vague, undefined, and uncertain promises of mitigation to outweigh admitted adverse impacts.

The Trump administration’s proposed rollbacks to the Section 7 regulations also ignore the basic fact that the single largest driver of extinction here and around the world is habitat loss.⁵ If we do not protect the last few places that endangered wildlife and plants call home, then those highly imperiled species simply have no future. In passing the Endangered Species Act in 1973, Congress recognized how important it is to address and stem the tide of habitat loss if we are to save species from extinction:

Man can threaten the existence of species of plants and animals in any of a number of ways, by excessive use, by unrestricted trade, by pollution or by other destruction of their habitat or range. The most significant of those has proven also to be the most difficult to control: the destruction of critical habitat.⁶

To address habitat loss, Congress prohibited all federal agencies from taking action that would result in the “destruction or adverse modification” of critical habitat. Yet the proposal by the Trump administration would turn that firm prohibition against destroying critical habitat into nothing more than a paper tiger.

By only restricting federal agency actions that “diminish[] the value of critical habitat as a whole,” this proposal will ensure the wildlife agencies turn a blind-eye to the vast majority of actions that harm critical habitat.⁷ This change completely ignores that habitat loss occurs gradually and incrementally over time and will all but ensure species are driven extinct through death-by-a-thousand-cuts.

⁴ 83 Fed. Reg. at 35,185.

⁵ Pimm, S.L. and P. Raven, 2000. *Biodiversity: Extinction by numbers*. Nature, 403:853-858; Pimm, S.L. et al., 2014. *The biodiversity of species and their rates of extinction, distribution, and protection*. Science 344: DOI: 10.1126/science.1246752

⁶ H.R. Rep. 43-412

⁷ 83 Fed. Reg. at 35,179.

Finally, there is no need to impose a 60-day deadline on informal consultations when the factual data clearly demonstrate that the consultation process is overwhelmingly completed within the time-frames set forth under the Endangered Species Act. In fact, most informal consultations are already completed in less than 30 days. An arbitrary deadline for the rare consultations that require additional time because of the substantial impacts those projects could pose to endangered species could lead to hasty and ill-advised determinations.

The Administration's proposed regulatory changes thwart the plain meaning of the Act and ignore the clear intent of Congress. If finalized, these regulations would give industry the benefit of the doubt in the consultation process and place endangered species at substantially greater risk of extinction.

For these reasons, we strongly recommend that the proposed Section 7 regulations be withdrawn.

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 Loxahatchee 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