

October 8, 2020

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

RE: Proposed Revisions to Endangered Species Act Habitat Rules

Dear Secretary Bernhardt:

On behalf of our millions of members and supporters nationwide, we urge you to withdraw the two recent proposed rules related to habitat designation under the Endangered Species Act.¹ Protection of habitat is central to the conservation of imperiled species. The ESA's purpose is to conserve, "the ecosystems upon which endangered species and threatened species depend," as well as protect and recover endangered species and threatened species themselves. Designation of critical habitat is a key tool authorized by the ESA to ensure habitat, including unoccupied habitat needed for recovery, is conserved. Weakening agencies' authority to protect such habitat would be a severe blow to the efficacy of the Act and its ability to spare species from extinction.

On August 5, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service proposed two definitions of the word "habitat." Both options would limit rather than enhance the Services' ability to conserve species that may require habitat restoration or that may find their historic range shifting as a result of climate change. The options presented in this rule are unclear and potentially limiting at best, and explicitly restrictive at worst.

On September 4, 2020, the USFWS proposed new regulations that would expand the agency's ability to exclude areas essential to the conservation of threatened and endangered species from designation as critical habitat under the ESA. Among other problematic provisions, it states that the USFWS must exclude areas when the costs of designating them outweigh the benefits (except in cases where extinction will result). This is more restrictive than the ESA itself, which states the agency "may" exclude such areas. The proposal also reverses a longstanding presumption against excluding areas based upon economic considerations on public lands. These changes would grant economic considerations outsized weight in decisions about habitat that should prioritize species' recovery needs and be driven by the best available science.

Research shows that critical habitat designations do not affect all private development.² In fact, the ESA restricts only federal actions destroying or adversely modifying critical habitat; private activities that do not require federal permits are unaffected, and those requiring federal permits can generally proceed with minor, but essential, modifications to protect imperiled species.

¹ 85 Fed. Reg. 47333 (Aug. 5, 2020); 85 Fed. Reg. 55398 (Sept. 8, 2020).

² Jacob W. Malcom and Ya-Wei Li. *Data contradict common perceptions about a controversial provision of the US Endangered Species Act*. Proceedings of the National Academy of Sciences, Dec 2015. 112 (52) 15844-15849; DOI: 10.1073/pnas.1516938112.

Properly implemented, critical habitat designations advance the ESA's recovery goals by striking a science-driven balance between conservation and economic activity.

Furthermore, this is a moment when—more than ever—we need strong and effective conservation laws. One million species are at risk of extinction, many within decades, due to human activity, according to a devastating May 2019 report by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.³ The report warns that the health of ecosystems upon which humans and all other species depend is deteriorating globally at unprecedented rates, with grave implications for our economies, livelihoods, food security, health, and quality of life worldwide.

Protecting our natural heritage—including threatened and endangered species—is a core American value. We urge you to help save our most imperiled plants and animals from extinction by strongly and fully implementing the ESA and by withdrawing these two proposed rules.

Sincerely,

Alabama Rivers Alliance
Alaska Clean Water Advocacy
Alaska Community Action on Toxics
Alliance for the Wild Rockies
American Indian Mothers Inc
Animals Are Sentient Beings, Inc.
Animas Valley Institute
Appalachian Mountain Advocates
Arkansas Audubon Society
Audubon Society of Portland
Basin and Range Watch
Battle Creek Alliance
Berkeley Partners for Parks
Black Warrior Riverkeeper
Born Free USA
Cahaba River Society, LLC
Californians for Western Wilderness
Carolina Biodiesel, LLC
Center for Biological Diversity
Center for Food Safety
Center for Snake Conservation
Chattahoochee Riverkeeper
Citizens Against Ruining the Environment
Citizens Committee to Complete the Refuge

³ IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). <https://ipbes.net/global-assessment>.

Climate Law & Policy Project
Coalition for Sonoran Desert Protection
Coalition to Protect America's National Parks
Congaree Riverkeeper
Conservation Council For Hawaii
Conservation Law Foundation
Conservation Northwest
Cottonwood Environmental Law Center
Deer Creek Valley Natural Resources Conservation Association
Defenders of Wildlife
Dogwood Alliance
Earthjustice
Earth Ministry/Washington Interfaith Power & Light
Eastern Coyote/Coywolf Research
Eco-Eating
EcoEquity
Endangered Habitats League
Endangered Species Coalition
Environment America
Environmental Center of San Diego
Environmental Law Society at the Washington College of Law
Environmental Protection Information Center
Environmental Protection Information Center
Fal Energy Partnership
Find for Wild Nature
For the Fishes
Friends of Animals
Friends of Merrymeeting Bay
Friends of the Bitterroot
Friends of the Creeks
Friends of the Earth
Friends of the San Juans
Glynn Environmental Coalition
Grand Canyon Trust
Great Old Broads for Wilderness
Great Rivers Environmental Law Center
Greater Hells Canyon Council
Green Peace Corps
GreenFaith
GreenLatinos
Greenpeace
Hands Across the Sand
Healthy Gulf
Hoosier Environmental Council
Humane Society Legislative Fund
Hui Ho'omalu i ka Aina

Illinois Environmental Council
In the Shadow of the Wolf
Information Network for Responsible Mining
Inland Ocean Coalition
International Fund for Animal Welfare
International Marine Mammal Project of Earth Island Institute
Iowa Environmental Council
Jane Goodall Institute USA
Jemez Peacemakers
Joseph Scalia III, Psy.D.; Psychoanalyst, Conservation and Cultural Critic
Juniata Valley Audubon Society
Justice for Wolves
Kalmiopsis Audubon Society
Los Padres ForestWatch
Maine Conservation Voters
Maine Organic Farmers and Gardeners Association
Maryland Ornithological Society
Maryland United for Peace and Justice
Mass Audubon
Massachusetts Forest Watch
Mission Blue
Missouri Coalition for the Environment
Montana Environmental Information Center
Mount Diablo Audubon Society
MountainTrue
National Aquarium
National Audubon Society
National Parks Conservation Association
National Wolfwatcher Coalition
Native Plant Conservation Campaign
Natural Resources Defense Council
Nature Abounds
New Mexico Audubon Council
New Mexico Wild
NH Audubon
Northeast Oregon Ecosystems
Northern Jaguar Project
Northwest Center for Alternatives to Pesticides
Northwest Environmental Advocates
NY\$WHALES
Oasis Earth
Occidental Arts and Ecology Center
Ocean Conservation Research
Oceana
Oceanic Preservation Society
Oregon Natural Desert Association

Organic Consumers Association
Pacific Beach Coalition
Panthera
Pelican Island Audubon Society
Project Coyote
Public Lands Project
Raptors Are The Solution
Real Food Media
RESTORE: The North Woods
Rock Creek Alliance
Rocky Mountain Recreation Initiative
San Diego Coastkeeper
San Francisco Baykeeper
San Juan Citizens Alliance
Save Our Sky Blue Waters
Save The Colorado
SAVE THE FROGS!
Save the Manatee Club
Sea Turtle Conservancy
Seattle Aquarium
Sequoia ForestKeeper®
Sierra Club
SoCal 350 Climate Action
Social Compassion in Legislation
Southern Utah Wilderness Alliance
Spokane Riverkeeper
Surfrider Foundation
Sustainable Arizona
Swan View Coalition
Texas Endangered Species Team
The Cloud Foundation
The Humane Society of the United States
The International Wildlife Rehabilitation Council
The Lands Council
The Otter Project
The Safina Center
Tuolumne River Trust
Turtle Island Restoration Network
Unexpected Wildlife Refuge
Union of Concerned Scientists
Upstate Forever
Urban Bird Foundation
Virginia Organizing
Western Environmental Law Center
Western Nebraska recourses council
Western Watersheds Project

Western Watersheds Project
Wild and Scenic Rivers
Wild Arizona
WILD HORSE EDUCATION
Wild Nature Institute
WILD COAST
WildEarth Guardians
WildEarth Guardians
Wildlife Conservation Society
Wildlife Rescue & Rehabilitation
WildWest Institute
Wyoming Untrapped
Xerces
Yellowstone to Uintas Connection