

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

April 6, 2022

Honorable Martha Williams
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20250

Honorable Richard W. Spinrad, Ph.D.
Under Secretary of Commerce for Oceans and Atmosphere & Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Director Williams and Administrator Spinrad:

I write to request that you expeditiously rescind and revise the five problematic anti-science regulations promulgated under Endangered Species Act (ESA) sections 4 and 7 by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) issued under the Trump administration. This handout to polluters resulted in seventeen states, two cities, and many environmental groups promptly filing several lawsuits challenging the regulations.¹

I welcomed the Biden administration's announcement on June 4, 2021, that it would rectify the wrongdoings of the Trump administration. Fixing the Trump-era regulations that only benefited polluters is critical in protecting biodiversity and returning public confidence in our ability to prevent the extinction of threatened and endangered species. However, I am dismayed by the lack of progress your agencies have made and, more specifically, your reasoning for the delay that you are too busy to work on both the litigation and the rules because of the litigation.²

¹ Currently, there are three related cases being handled by the same judge in the U.S. District Court for the Northern District of California: *Center for Biological Diversity v. Haaland*, 19-cv-5206 (N.D. Cal. filed Aug. 21, 2019); *California v. Haaland*, 19-cv-6013 (N.D. Cal. filed Sept. 25, 2019); *Animal Legal Defense Fund v. Haaland*, 19-cv-06812 (N.D. Cal. filed Oct. 21, 2019). A fourth case, *California v. Haaland*, 21-cv-00440-JST (N.D. Cal. filed Jan. 19, 2021), was stayed by the court on September 20, 2021, under the stipulation that the Services will rescind or revise the 2020 critical habitat rules. One rule had re-defined critical habitat to exclude areas that do not currently or periodically contain the requisite resources or conditions even if such areas could contain those features in the future after restoration activities or other changes occur. It is our understanding that this rescission of the "Habitat Definition Rule" was submitted to the White House on March 8, 2022, for final review, therefore, the Committee is not asking about the status of the Habitat Definition Rule.

² Third Declaration of Gary D. Frazer ¶¶ 13-14 and Fourth Declaration of Samuel D. Rauch ¶¶ 9-10, *State of California v. Haaland*, Case No. 4:19-cv-06013-JST (N.D. Cal.).

Specifically, in June 2021, the Services announced their intent to revise, rescind, or reinstate the five ESA regulations finalized by the previous administration. It is my understanding that you, first, had planned to propose revising the regulations for listing species and designating critical habitat to reinstate the prior regulatory language that listing determinations are made “without reference to possible economic or other impacts of such determination.”³ Second, the Services planned to propose revising the definition of “effects of the action,” and associated provisions to that portion of the ESA section 7 rule and as well as consider other potential revisions to both rules.⁴ Additionally, FWS announced its intent to reinstate its “blanket 4(d) rule” that establishes the default of automatically extending all ESA endangered protections to those species listed as threatened.

I understand the judge in the three related cases mentioned above denied the Services’ motion to stay the litigation while you work on revising or rescinding the 2019 ESA rules. However, prior to this denial, the Services had already made significant progress on draft proposals to revise or rescind the rules and were even in the process of being cleared by senior agency officials.⁵ Thus, the Committee has serious concerns about your explanation to the court that the Services’ “focus” had to shift back to the litigation and could no longer work on the proposed rule revisions due to resource constraints.⁶

I request that you expedite the rulemaking process for these regulations and inform the Committee on the status of the proposed revisions and rescissions of the 2019 ESA rules that were announced last June and the review of all the 2019 rules. Significant progress on these rule proposals will go a long way in ending the litigation caused by the Trump administration and restoring much-needed protections for endangered and threatened species as well as the public’s trust in both agencies. To restore the integrity of the ESA, we urge you to fulfill your duties and work on *both* the litigation and the rules.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources

³ *Id.*

⁴ Press Release. U.S. Fish and Wildlife Service and NOAA Fisheries to Propose Regulatory Revisions to Endangered Species Act. (June 4, 2021). www.fws.gov/press-release/2021-06/us-fish-and-wildlife-service-and-noaa-fisheries-propose-regulatory-revisions.

⁵ Third Declaration of Gary D. Frazer ¶13 and Fourth Declaration of Samuel D. Rauch ¶ 9, *State of California v. Haaland*, Case No. 4:19-cv-06013-JST (N.D. Cal.).

⁶ Frazer Decl. ¶¶13-14; Rauch Decl. ¶¶ 9-10.