

# Congress of the United States

Washington, DC 20515

August 21, 2023

Martha Williams  
Director  
United States Fish and Wildlife Service  
1849 C Street, NW  
Washington, D.C. 20240

Janet Coit  
Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Director Williams and Assistant Administrator Coit:

We are writing in response to the proposed Endangered Species Act (“ESA”) regulations (Federal Register Numbers 2023-13053, 2023-13054, and 2023-13055) under consideration by the Fish and Wildlife Service and the National Marine Fisheries Service (“the Services”). These proposed rules are a significant step towards reversing some of the Trump administration’s harmful regulatory changes that undermined the effectiveness of the ESA. We urge the Services to finalize these important rules and to continue seeking ways to strengthen the ESA.

The ESA has prevented the extinction of 99% of listed species.<sup>1</sup> But the benefits of the ESA extend well beyond individual species. Critical habitat designations and habitat restoration protect millions of acres of habitat, providing invaluable ecosystem services.<sup>2</sup> This is perhaps more important today than ever in our history. As we face unprecedented extinction rates, biodiversity loss, and habitat degradation and destruction, the ESA is our strongest backstop against extinction and provides a legal framework for habitat protection and restoration.

Restoring default protections for threatened species under Section 4(d) will help threatened species recover more quickly. The blanket 4(d) rule is an efficient policy with a proven track record of success<sup>3</sup>, and we urge the Fish and Wildlife Service to finalize that rule quickly.

We encourage the Services to strengthen the draft rules to ensure the ESA is as strong as before the harmful 2019 regulation changes. We urge the Services to fully restore Section 7 and Section

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<sup>1</sup> FWS. <https://www.fws.gov/press-release/2023-06/interior-department-takes-action-strengthen-endangered-species-protections>

<sup>2</sup> FWS. Environmental Conservation Online System. Updated July 25, 2023. <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>

<sup>3</sup> FWS. Section 4(d) Rules Under the Endangered Species Act. [https://www.fws.gov/sites/default/files/documents/section-4d-rules\\_0.pdf](https://www.fws.gov/sites/default/files/documents/section-4d-rules_0.pdf)

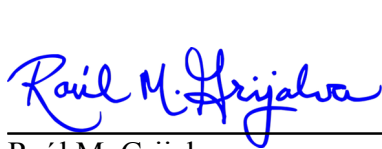
4 regulations to ensure that federal actions will not drive species to extinction or destroy protected habitats.

We also ask that you remove “as a whole” from Section 402.02 finalized rules. This language creates an enormous loophole, by allowing the piece by piece destruction of critical habitat as long as all of a species’ critical habitat is not destroyed, treating some areas of critical habitat as expendable. Removing this language will further strengthen the implementation of the ESA and ensure adequate protection for wide-ranging and migratory species that are disproportionately harmed<sup>4</sup> by this loophole.

The Services should also reverse damaging changes made in Section 424.11(e) that allow plants and animals to be prematurely delisted. Species’ recovery must meet all science-based standards before removing the backstop of ESA protections that have prevented extinction.

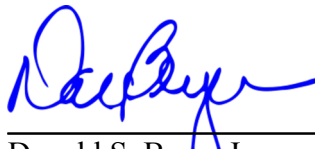
We must do everything in our power to preserve biodiversity and recover species from the brink of extinction. The Services play a central role in determining the fate of our country’s biodiversity, and we urge the Services to take this opportunity to strengthen the ESA comprehensively. In doing so, the Services would give our Nation robust tools to fight the biodiversity crisis and recover species. These changes are long overdue, and we urge the Services to act quickly to restore the full strength of the ESA.

Sincerely,



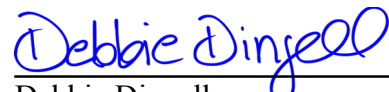
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Raúl M. Grijalva  
Member of Congress  
Chair, Committee on Natural  
Resources



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Donald S. Beyer Jr.  
Member of Congress



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Debbie Dingell  
Member of Congress



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Donald M. Payne, Jr.  
Member of Congress



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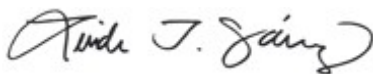
Jared Huffman  
Member of Congress

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<sup>4</sup> Williams, Sara H., Robin Steenweg, Troy Hegel, Mike Russell, Dave Hervieux, and Mark Hebblewhite. "Habitat loss on seasonal migratory range imperils an endangered ungulate." *Ecological Solutions and Evidence* 2, no. 1 (2021): e12039.

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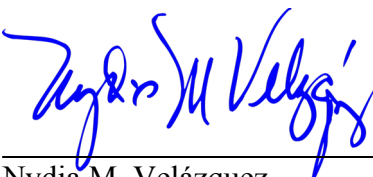
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Yvette D. Clarke  
Member of Congress



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Katie Porter  
Member of Congress



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Nanette Diaz Barragán  
Member of Congress



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Stephen F. Lynch  
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Jan Schakowsky  
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Ferrol Nadler  
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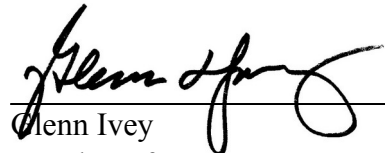
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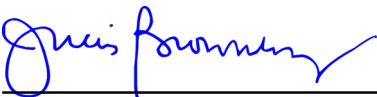
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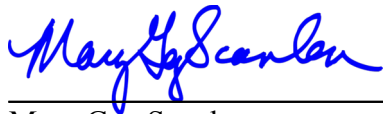


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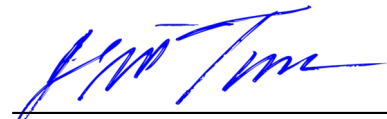
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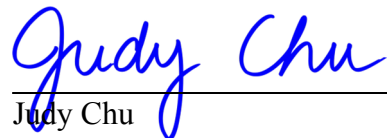
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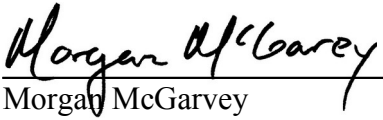
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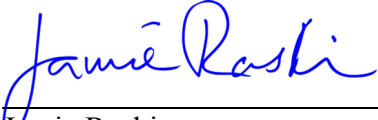
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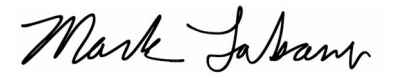
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Robert C. "Bobby" Scott  
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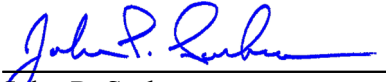
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Jasmine Crockett  
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