

Congress of the United States
Washington, DC 20510

May 4, 2018

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

Dear Secretary Zinke:

We are writing to express our concerns about the leaked proposal to eliminate the 1978 Fish and Wildlife Service (FWS) regulation under the Endangered Species Act (ESA), referred to as the “blanket 4(d) rule,” that extends the prohibition of take to all threatened species.

Section 9 of the ESA prohibits any activity that would harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any species listed as “endangered.” As the 1978 regulation currently stands, a species listed as “threatened” will, by default, also receive section 9 protections, if the FWS does not issue a modified 4(d) rule. The existing blanket rule covers approximately 100 species, including the Northern spotted owl, the Red Knot and the American crocodile.

In contrast, the new proposal by the FWS will, by default, not give future species listed as threatened any protections against take, unless the FWS issues a species-specific 4(d) rule. This change could undermine the effectiveness of the ESA, if it is not implemented thoughtfully and carefully. These default protections are an important backstop that may help prevent threatened species from becoming listed as endangered.

While customized protections through modified 4(d) rules could aid in the recovery of threatened species and incentivize stakeholder collaboration, FWS can already customize protections under the existing rule. We fear FWS’ intention is actually not to better address the needs of threatened species but rather to cater exclusively and completely to oil, gas, and agricultural industries that must currently avoid harming species and their habitats.

Specifically, Susan Combs, your Acting Assistant Secretary for Fish, Wildlife and Parks, has compared proposed endangered species listings to “incoming Scud missiles.”¹ Combs is known to have strong ties to ranching and oil industries. She has also questioned valid science behind many listing proposals, which seems to be a troubling theme at your Department.² She fought

¹ Darryl Fears, “A fierce opponent of the Endangered Species Act is picked to oversee Interior’s wildlife policy,” *The Washington Post*, April 4, 2018.

² Joe Davidson, “Trump creates ‘hostile environment’ for federal government scientists. One speaks out about reprisals,” *The Washington Post*, July 25, 2017.

unsuccessfully to have the iconic golden-cheeked warbler removed from the Endangered Species List, despite ongoing impacts to the species from decades of habitat loss.

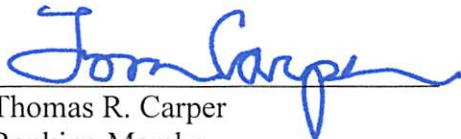
David Bernhardt, your Deputy Secretary, also has a long record of advocating to weaken the Endangered Species Act. As Interior Solicitor in 2007, Bernhardt issued guidance recommending that agencies focus on species most at risk in their current locations, as opposed to throughout their historic ranges as the ESA intends.³ Climate change is one of the most significant threats to many endangered species, yet Bernhardt does not believe this science should be considered in listing or critical habitat designation decisions.⁴

Given these track records, we have no reason to believe that this new 4(d) rule, or any other ESA rule coming out of this Administration, is being proposed in the interest of protecting our nation's treasured wildlife. I urge you to not move forward with this proposal or any other forthcoming efforts that could undermine the ESA.

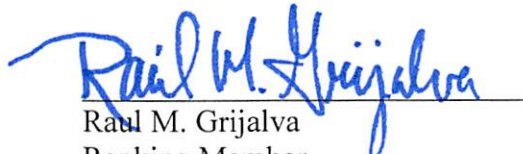
The ESA is our nation's most effective law in protecting wildlife in danger of extinction and has prevented more than 99% of listed species from going extinct.⁵ The ESA has also recovered many iconic species, such as the American bald eagle, the humpback whale, the brown pelican and the Louisiana black bear. Instead of rolling back critical safeguards, we should implement measures to strengthen this bedrock environmental law and protect species and their habitats from permanent extinction.

With best personal regards, we are,

Sincerely yours,



Thomas R. Carper
Ranking Member
Senate Committee on Environment
and Public Works



Raul M. Grijalva
Ranking Member
House Committee on Natural Resources

³ Lawrence Hurley, "Interior Returns to Drawing Board After Withdrawing Legal Memo on Endangered Species," *The New York Times*, May 24, 2011.

⁴ *Oversight Hearing on Recent Changes to Endangered Species Habitat Designation and Implementation: Hearings before the Committee on Natural Resources*, U.S. House of Representatives, 114th Cong. (2016) (Testimony of David Bernhardt).

⁵ "Endangered Species Recovery Program," United States Fish and Wildlife Service.