

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

October 19, 2018

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

Dear Secretary Zinke:

I am writing to request your help in better understanding new guidance issued to U.S. Fish and Wildlife Service (FWS) employees regarding the restriction of information released in Freedom of Information Act (FOIA) requests.

An internal document sent to employees of the FWS' Ecological Services program, which administers the Endangered Species Act (ESA), recommends that they take a less transparent approach when responding to FOIA requests involving endangered species decisions.¹ Specifically, the guidance suggests that records that could undermine positions taken by the FWS in court should be reviewed and possibly withheld, as they could cause the federal government "foreseeable harm" by subjecting agency officials to public scrutiny and creating a "chilling effect" on the decision-making process. This guidance undermines the implementation of the Endangered Species Act, and it significantly hinders the ability of the American people to hold their federal government accountable for its actions.

FOIA requests are critical for ensuring government transparency and allowing the public access to federal government records. For example, FOIA was used to obtain documents that showed that the FWS failed to adequately assess the impacts of the Keystone XL pipeline on endangered whooping cranes.² A FOIA request revealed that the FWS ignored biologists' recommendations to strengthen protections for red wolves and eliminate regulatory loopholes that allowed the species to be illegally killed.³ Under the new guidance, the likelihood for the FWS to withhold important documents like these could increase, making it more difficult to challenge decisions that cause harm to imperiled species.

The new guidance follows a trend by your administration of dismantling protections for endangered species. The FWS recently proposed new regulations that would undermine the ESA

¹ U.S. Fish and Wildlife Service. "Guidance for Applying Deliberative Process Privilege in Processing Ecological Services FOIA Requests: Coordination with the October 20, 2017, DOJ Memorandum on Administrative Records." Internal Memorandum. <https://assets.documentcloud.org/documents/5006020/Freedom-of-Information-Act-Guidelines.pdf>

² Tobais, Jimmy. "Revealed: US moves to keep endangered species discussions secret." *The Guardian*. 18 Oct 2018. <https://www.theguardian.com/us-news/2018/oct/18/trump-administration-us-endangered-species-discussions-secret>

³ Hartl, Brett. "Emergency Petition Filed to Save Plummeting Red Wolf Population." *Center for Biological Diversity*. 24 May 2016. https://www.biologicaldiversity.org/news/press_releases/2016/red-wolf-05-24-2016.html

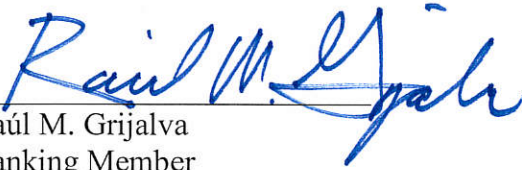
by inserting economics into science-based listing decisions, ignoring the impacts of climate change on species' habitat, and depriving threatened species from automatically receiving protections from unnecessary harm, among other initiatives that undermine endangered species protections.

Rather than further jeopardize endangered species, the FWS should operate under the presumption that openness makes for good governance. To assist us in our oversight responsibilities, we request you answer the following questions:

- When did the new guidance policy go into effect?
- What FOIA requests have been impacted since the October 20, 2017 new guidance was released? Please provide us with all information that was not released based on this new guidance.
- Who made the decision to revise the guidance?
- Please explain the policy objective of this decision to be less transparent.

We look forward to your reply.

Sincerely,


Raúl M. Grijalva
Ranking Member
House Committee on Natural Resources