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

September 17, 2015

JASON KNOX
STAFF DIRECTOR

The Honorable Sally Jewell
Secretary
Department of Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Penny Pritzker
Secretary
Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Docket No.: FWS-HQ-ES-2015-0016

Re: Endangered and Threatened Wildlife and Plants Revisions to the Regulations of Petitions
80 Fed. Reg. 29286—29296, May 21, 2015

Dear Secretary Jewell and Secretary Pritzker,

We are writing to express our concern regarding proposed changes to the regulations covering citizen petitions under the Endangered Species Act (ESA).¹ We believe that, if enacted, these regulations would substantially reduce citizen participation in implementation of the ESA, something that Congress never envisioned when it passed the Act. We are unaware of any other federal agency with such onerous requirements on the ability of citizens to petition the federal government. This proposal could serve as a dangerous precedent that weakens the ability of citizens to submit petitions under section 553 (e) of the Administrative Procedure Act (APA) across the spectrum of environmental laws. Because citizen petitions are a vital part of the democratic process, we urge you to carefully consider the consequences of finalizing this proposal in its current form.

The Fish and Wildlife and National Marine Fisheries Services (“Services”) have proposed numerous new procedural requirements for petitions to protect species under the ESA, with the implied goal of reducing their workload and shifting their responsibilities to petitioners. These new procedural hurdles would make it more likely that petitions could be rejected without consideration of the merits of the request. While a few of the proposed changes appear to be reasonable and would help the Services’ process petitions more efficiently, others – such as the requirement to pre-file petitions with species range states – appear to be unprecedented in the 70-year history of citizen petitions under the APA, and antithetical to the spirit of American federalism.

¹ 80 Fed. Reg. 29286 (May 21, 2015).

Another burdensome requirement would force a petitioner to collect “all relevant information” about a species. Since the 1982 Amendments to the ESA, Congress has been clear that it is the Services’ burden to determine which information is relevant for making a listing decision and gather that information.² Now, the Services propose to shift this burden and cost entirely onto petitioners and to demand more information than required by the ESA’s best *available* science requirement for listing decisions.³ These restrictions will dissuade many people from filing petitions under the ESA, which could significantly impact the overall effectiveness of the law. Scholarly research has demonstrated that citizens often identify and seek to protect imperiled species that are at greater risk of extinction than the species that the Services identify under the own initiative.⁴ The language of the ESA in no way supports such requirements being placed on citizen petitions.

Some of the greatest environmental progress has come from citizen petitions. A petition filed with the Environmental Protection Agency to regulate greenhouse gases led to the landmark Supreme Court decision in *Massachusetts v. EPA*, which opened the door for the Clean Power Plan, our nation’s first comprehensive effort to address greenhouse gas emissions and avert the worst impacts of climate change.⁵ Petitioning one’s government for redress of grievances has always been foundational to our system of government. This First Amendment right was codified by the APA precisely so that citizens would continue to impact the regulatory state. In this way, citizen petitions serve an important check on the powers of the federal government, and insure they abide by the laws that Congress passed.

Citizen petitions are one of the few tools that people possess to seek greater environmental protection, better worker safety and consumer protection and social justice. With increased concentration of wealth and power, citizen petitions help level the playing field for all of us. Every agency within the federal government should be doing more to encourage petitions, respond to petitions in a timely manner, and grant petitions, where appropriate. Seeking to impose burdensome requirements on petitioners is undemocratic, and contrary to the ESA. If these requirements are finalized, the end result will be that most citizen petitions will never make it across the starting-line, let alone the finish line. Given these concerns, we believe the best course of action would be to withdraw this proposal.

² See, 16 U.S.C. § 1533(b)(3)(A) (“the Secretary shall promptly commence a review of the status of the species concern.”); see also, H.R. Rep. 97-567, at 21 (1982), *reprinted in* 982 U.S.C.C.A.N. 2807, 2821 (“the Secretary need only act on those petitions that contain substantial evidence that a species is likely to qualify.... Thus, while the burden on the Secretary to proceed with the legitimate petitions is greater, the standard for petitions that qualify for consideration is also higher...”).

³ 16 U.S.C. § 1533(b)(2). Under the ESA, the Services must make all final listing determinations based on the “best scientific and commercial data available.” Courts have held that this does not require an exhaustive attempt to gather all information regarding a species. *Southwest Ctr. for Biological Diversity v. Babbitt*, 215 F. 3d 58 (D.C. Cir. 2000) (“the Secretary has no obligation to conduct independent studies” or to “find and consider any information that is arguably susceptible to discovery.”).

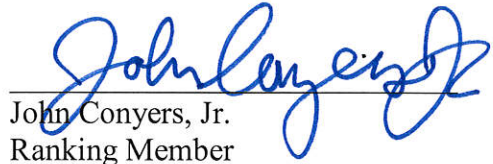
⁴ Brosi, B. J. 2012. *Citizen Involvement in the U.S. Endangered Species Act*, SCIENCE 337:802-803.

⁵ *Massachusetts v. Environmental Protection Agency*, 549 US 497, 510 (2007) (“On October 20, 1999, a group of 19 private organizations filed a rulemaking petition asking EPA to regulate ‘greenhouse gas emissions from new motor vehicles under § 202 of the Clean Air Act.’”).

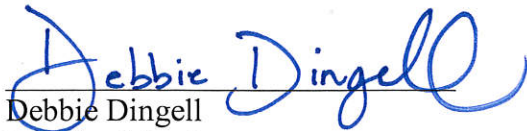
Sincerely,



Raul M. Grijalva
Ranking Member
House Committee on Natural Resources



John Conyers, Jr.
Ranking Member
House Committee on the Judiciary



Debbie Dingell
Ranking Member
House Subcommittee on
Oversight and Investigations



Henry C. "Hank" Johnson
Ranking Member
House Subcommittee on Regulatory
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Law