December 22, 2025

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Kimberly Damon-Randall
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National Marine Fisheries Service
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Re: Revision of the Regulations for Listing Species and Designating Critical Habitat, Docket No. FWS–HQ–ES–2025–0039, FXES11110900000–256–FF09E23000; Docket No. 251105–0168

Dear Mr. Tirpak and Ms. Damon-Randall:

The undersigned organizations and our millions of members and activists nationwide write to oppose the proposed regulations implementing section 4 of the Endangered Species Act, 16 U.S.C. § 1533 *et seq.* Listing Endangered And Threatened Species and Designating Critical Habitat, 90 Fed. Reg. 52,607 (Nov. 21, 2025) [hereinafter "Proposed Rule"]. This proposal would dramatically weaken protections for imperiled species by withholding or reducing protections and limiting designation of critical habitat. The proposed rule should be withdrawn in its entirety.

BACKGROUND

The Endangered Species Act is the nation's most important wildlife protection law. Since its enactment in 1973, the ESA has prevented the extinction of over 2,000 foreign and domestic plant and animal species. The purpose of the ESA is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531(b).

At the heart of this program is Section 4 of the Act, which directs the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to determine whether species are either threatened or endangered. *Id.* § 1533. The Act defines an "endangered" species as those that are "in danger of extinction throughout all or a significant portion of its range." *Id.* § 1532(6). A "threatened species" is one that "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.* § 1532(20). The Services' determinations of whether either designation is required are to be made "solely based on the best scientific and commercial data available." *Id.* § 1533(b)(1)(A).

Section 4 requires the Services to, concurrent with the listing of species and "to the maximum extent prudent and determinable," designate critical habitat for listed species. *Id.* § 1533(a)(3)(A). Critical habitat is defined as areas outside the current occupied range of the

species that are determined to be "essential for the conservation of the species," as well as occupied areas if they contain those physical or biological features that are "essential to the conservation of the species" and which "may require special management considerations or protection." *Id.* § 1532(5)(A)(i), (ii). Once the Services designate critical habitat, all Federal agencies are obligated to consult with the Services to "insure" that any agency action does not "result in the destruction or adverse modification of critical habitat." *Id.* § 1536(a)(2).

ANALYSIS

The Proposed Rule amending the Services' Section 4 regulations would weaken protections for imperiled species, making it more difficult for them to survive and recover. The rule undermines species protections by illegally introducing economic analysis into listing, making it harder to list species as threatened, and promoting premature delisting without regard for a species' recovery. In addition, the rule would restrict designation of critical habitat, which would leave the ecosystems species depend on without adequate protections. For these reasons, the Proposed Rule should be withdrawn in its entirety.

A. The Proposed Rule Will Make It Harder to Protect Imperiled Species.

Overall, the proposed amendments to the listing regulations will make it harder to protect species in trouble. First, the Proposed Rule attempts to illegally insert economic considerations into listing decisions. Second, the rule amends the definition of "foreseeable future" in a manner that would restrict the agencies' ability to consider sound scientific predictions when making listing determinations for threatened species. And third, the Proposed Rule removes any reference to species recovery from the regulations about delisting species, which could encourage or justify decisions to take species off the list prematurely. These proposals should all be withdrawn.

1. The ESA prohibits consideration of economic factors during listing.

The Services propose to delete from 50 CFR 424.11(b) the requirement that listing decisions must be made "without reference to possible economic or other impacts of such determination." This proposal undermines Congress's clear intent to prohibit economic considerations from influencing listing decisions. The Services also fail to explain their decision to revert to the version of this regulation proposed in 2019. The Services' 2019 explanation of its proposal cannot be used to justify their current policy reversal and only underscores the unlawful intent of deleting this key phrase.

The Services' existing regulations—which prohibit listing decisions from referencing "economic or other impacts" of listing, 50 C.F.R. 424.11(b)—represent the "best reading" of section 4. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024). The ESA does not permit the Services to incorporate economic or other unnamed factors into listing decisions. Instead, those decisions must be made "solely on the basis of the best scientific and commercial data available." 16 U.S.C. § 1533 (b)(1)(A). The Secretary must use this science to evaluate the five statutory listing factors, none of which incorporate economic considerations. *See* 16 U.S.C. § 1533(a)(1); *see also, e.g.*, *New Mex. Cattle Growers Ass'n v. U.S. Fish and Wildlife Serv.*, 248 F.3d 1277, 1282 (10th Cir. 2001) (citing five statutory factors to determine "economic analysis is

not a factor in the listing determination"). The Services themselves have conceded that "[t]he word 'solely' was added in the 1982 amendments to the Act to clarify that the determination of endangered or threatened status was intended 'to prevent non-biological considerations from affecting such decisions.'" 83 Fed. Reg. at 35,194 (quoting H.R. Rep. No. 97–567 at 19–20 (1982) (internal citation omitted)). As the Supreme Court stated in *Tennessee Valley Authority v. Hill*, "[t]he plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction, whatever the cost. This is reflected not only in the stated policies of the Act, but in literally every section of the statute." 437 U.S. 153, 184 (1978). Accordingly, the single best reading of the ESA is that economic considerations should not be permitted to influence listing decisions at all. The best way to effectuate that intent is to retain the express prohibition currently found in section 424.11(b).

The 2019 proposed rule further undermines the legality of the Services' current proposal. There, the Services explained that they intended to allow discussion of "economic, or other impacts" in their analysis of whether a species should be listed as threatened or endangered. *See* 83 Fed. Reg. 35,194. Recognizing that their proposal was inconsistent with the text of section 4, the Services insisted that they would not rely on economic factors, but instead merely use them to inform the public. This doesn't make sense. Economic analysis is a difficult, costly undertaking. The already over-stretched Services would not undertake such a burdensome analysis merely to inform the public. Rather, this proposal was—and is—an attempt to get around the statutory language and allow economic and other factors to illegally infect the agencies' determination. It is contrary to the language and the spirit of the ESA.

The Services do not explain how deleting the express prohibition would accord with the ESA. Instead, they simply assert that "[b]ased on [the Services'] subsequent review of the 2024 rule, the language of the Act, and recent case law, we have concluded that reverting to the 2019 regulatory text best aligns with the Act." Proposed Rule at 52,609. This is not an adequate explanation to return to the 2019 regulatory text, which survived only four years and represented a stark departure from the Services' prior, decades-long interpretation of the statute. The proposal is unlawful for this additional reason.

Finally, given the Services' resource constraints, the proposal is also impractical. By their own frequent admission, the Services lack the resources necessary to carry out their obligations under the Act. *See, e.g.*, FWS, *National Domestic Listing Workplan* (updated May 2024)[1] (describing prioritization process for hundreds of species that are pending consideration for listing). The Services consistently fail to meet their deadlines to evaluate listing petitions, designate critical habitat, and develop recovery plans. *Id.* Adding an additional, illegal consideration to the Services' listing process would only make this problem worse and could divert scarce resources from the Services' mandatory obligations. The Services should withdraw this illegal, unexplained, and irrational proposal.

2. The Services' proposed definition of "foreseeable future" could prevent the agencies from using the best available science.

[1] *Available at* https://www.fws.gov/sites/default/files/documents/2024-05/national-domestic-listing-workplan-2024.pdf.

The ESA defines a "threatened" species as one that is "likely to become an endangered species within the foreseeable future." 16 U.S.C. § 1532(20). Current regulations state that the "foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats." 50 CFR 424.11(d). The Services now propose to change this definition to require that both future threats and species' responses to those threats must be "likely." This change, which restores regulatory text finalized in 2019 and amended in 2024, is entirely unexplained and could preclude the agencies from relying on the best available science, in violation of the ESA.

The Proposed Rule fails to explain the most consequential change in the proposed text: that the foreseeable future extends only as far as the Services "can reasonably determine that both the future threats and the species' responses to those threats are likely." The current text states: "The foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats." The proposed text newly requires a determination that both future threats and a species' response to those threats are "likely." This could require a determination about the probability of specific outcomes, which is a significant departure from the current, more flexible requirement that predictions be "reasonably reliable." The Services' failure to acknowledge or explain this change means that it "cannot carry the force of law." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016)

The Services' proposed definition could restrict the Services' ability to use reliable research and analysis constituting the "best available science" in determining whether a species should be listed as threatened. Section 4 requires that the Services base all listing determinations on "the best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A). By limiting the foreseeable future to a timeframe within which threats are "likely," the proposed language could prohibit the agencies from relying on sound science. For example, a particular model or study may be able predict a range of scenarios, none of which are alone "likely," but the general trend of which are "foreseeable." Similarly, a study could propose that there is a range of probabilities, *i.e*., between a 10% and 50% chance, that a species will succumb to a threat. *See, e.g.*, Brice X. Semmons et al., *Quasi-extinction Risk and Population Targets for the Eastern, Migratory Population of Monarch Butterflies*, 6 Scientific Reports, at 1 (Mar. 21, 2016) (explaining that a population of monarchs had a "substantial probability of quasi-extinction, from 11-57% over 20 years"). In each of these scenarios, the best available science requirement would mandate that the Services must be able to rely on these sound predictions, but the new "likely" standard could prohibit such reliance. This is flatly inconsistent with the law's requirements and cannot be allowed.

Even the Services' explanations of seemingly non-substantive changes to the definition do not withstand scrutiny. For example, the Services explain that "stating that 'foreseeable future' requires a determination that '*both* the future threats *and* the species' responses to those threats must be likely' would clarify that these requirements are conjunctive." Proposed Rule at 52,610 (emphasis in original). But current language requires "reasonably reliable predictions about the threats to the species *and* the species' responses to those threats." (emphasis added). The Services make no attempt to explain how the current language, referring to "threats . . . and . . . responses," could be read to be disjunctive. They articulate no rational basis for this additional change.

3. The Proposed Rule could illegally facilitate premature species delisting.

The Proposed Rule would also change the criteria for delisting species in a way that makes it easier to remove protections. First, the Services propose to delete any reference to recovery in the criteria. Second, the proposal would allow the Services to re-litigate an initial listing determination even without new information. Both proposals are unwise and do not reflect the best reading of the ESA. The Services also fail to provide any explanation or basis for the second change.

The best reading of the ESA is that recovery is the primary basis for delisting. The overarching purpose of the statute is to provide for the "conservation" of listed species, a term defined to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which [protections] are *no longer necessary*." 16 U.S.C. § 1532(3) (emphasis added). In other words, the central purpose of the ESA is to recover listed species. Accordingly, the decision to delist a species should hinge on whether recovery has been achieved or is no longer possible because a species is extinct.

The current regulation reflects the best reading of section 4 when considered in the context of the overarching purpose of the ESA. It states that a species will be delisted if:

> [B]ased on consideration of the [statutory listing factors], that the best scientific and commercial data available substantiate that:
>
> (1) The species is extinct;
>
> (2) The species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species;
>
> (3) New information that has become available since the original listing decision shows the listed entity does not meet the definition of an endangered species or a threatened species; or
>
> (4) New information that has become available since the original listing decision shows the listed entity does not meet the definition of a species.

50 C.F.R. § 424.11(e). These factors appropriately center recovery and extinction in delisting decisions while leaving room for the Services to revisit initial listings on the basis of new information. The regulation also expressly refers to the listing factors in section 424.11(c), leaving no question about the factors to be considered when making delisting determinations.

The proposed changes unnecessarily muddy these determinations. The current regulations expressly state what the Services purportedly seek to clarify with their proposed change: that delisting determinations should be made based on the listing factors at 16 U.S.C. § 1533(a)(1) and 50 C.F.R. § 424.11(c). They cannot be clearer. And the Services provide no evidence that the standard for delisting is *unclear*. The only concrete support the Services cite in the proposal—an unexplained citation to *Friends of Blackwater* v. *Salazar,* 691 F.3d 428 (D.C. Cir. 2012)—does not suggest any lingering ambiguity or uncertainty. That court upheld the Services' interpretation

of the statute that delisting should be based on the statutory listing criteria and did not require that a species met criteria set out in a recovery plan. *Id.* at 434. Eliminating any reference to recovery in section 424.11(d) would not provide any additional clarity, but only unlawfully obscure the statute's focus on recovery.

The Services' proposal to allow the agencies to relitigate listing determinations without any new information is not announced at all in their explanation of the proposed rule. Only by reading the proposed regulatory text at the end of the notice and comparing it with existing regulations can one see that a change has been proposed. The current text provides that delisting is appropriate where "*[n]ew information* that has become available since the original listing decision shows that the listed entity does not meet the definition of an endangered species or a threatened species; or "*[n]ew information* that has become available since the original listing decision shows the listed entity does not meet the definition of a species." 50 C.F.R. § 424.11(e)(3), (4). These bases are replaced with just one: that "[t]he listed entity does not meet the statutory definition of a species." 90 Fed. Reg. 52,610. The proposed change would allow the Services to revisit whether a species qualifies as an endangered species or threatened species without identifying any new information about the species' status—simply inviting re-litigation of prior determinations. The Services' failure to announce or explain this change is arbitrary and capricious.

Together, these proposed changes enhance the Services' ability to review existing species listings and remove protections without determining that a species has recovered. They are deregulatory changes disguised as attempts to "clarify" or "streamline" delisting requirements. They lack any rational basis and would undermine the conservation of species in need of protection, contrary to section 4 and the overarching purposes of the ESA.

C. The Proposed Rule Narrows the Scope of Critical Habitat Designation.

The ESA was designed "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). This express provision comports with Congress's view that habitat destruction constitutes the greatest threat to the continued existence of species—and is "the most difficult [threat] to control." H.R. Rep. No. 43-412, at 144 (July 27, 1973). And yet the Services' proposals constrain the reach of the tool entrusted to them to combat this difficult, and centrally important, threat.

Critical habitat designation is an integral component of successful species protection. In fact, one study found that species with designated critical habitat for at least two years were twice as likely to be improving in status and less than half as likely to be declining in status—independent of the effects of time listed and the presence of recovery plans for species. Martin F.J. Taylor et al., *The Effectiveness of the Endangered Species Act: A Quantitative Analysis*, 55 Bioscience, at 360-367 (Apr. 1, 2005). Another study found that "[d]esignating critical habitat shifted 11% of species from declining to stable." Jeffrey J. Rachlinsky, *Noah by the Numbers: An Empirical Evaluation of the Endangered Species Act*, 82 Cornell L. Rev. 356, 379 (1997).

Despite the central importance of critical habitat designation to the success of the ESA, the Proposed Rule unlawfully constrains its protections. First, the proposal maintains an

impermissibly broad scope of the "not prudent" exception to exempt species from critical habitat designation in circumstances inconsistent with the law. *See* 90 Fed. Reg. at 52,611. Then, the Services propose to limit designation of unoccupied critical habitat based on illegal and unsubstantiated factors. *See id.* at 52,615. These proposals must be withdrawn.

1. The Services' expansion of the "not prudent" exception to critical habitat is contrary to the ESA.

The Services propose to add an additional circumstance in which designation of critical habitat "may" not be prudent and move language indicating that the list of circumstances is non-exhaustive. The revised regulations would leave species without critical habitat protections in circumstances where designation would benefit a species' conservation, contrary to the ESA and its purpose.

The Services' proposal contradicts the best reading of section 4 by exempting species from critical habitat designation even where the Services cannot establish that designation would not benefit the species. Section 4 requires the Services to designate critical habitat "to the *maximum extent* prudent," 16 U.S.C. § 1533(a)(3)(A) (emphasis added), expressly indicating that the exception is intended to be as narrow as the definition of "prudent" allows. The legislative history confirms this reading. Indeed, the House Committee on Merchant Marine and Fisheries expressly announced this intent in 1978, explaining that "[i]t is only in rare circumstances where the specification of critical habitat concurrently with the listing would not be beneficial to the species." H.R. Rep. No. 95-1625, at 17 (1978) (commenting on the addition of the "to the maximum extent prudent" language). *See also Nat. Res. Def. Council v. U.S. Dept. of Interior*, 113 F.3d 1121, 1126 (9th Cir. 1997) (finding the Services' "expansive construction of the 'no benefit' prong to the imprudence exception is inconsistent with clear congressional intent."); *Enos v. Marsh*, 769 F.2d 1363, 1371 (9th Cir. 1985) (finding ESA legislative history indicates FWS "may only fail to designate a critical habitat under rare circumstances."); *Northern Spotted Owl v. Lujan*, 758 F. Supp. 621, 626 (W.D. Wash. 1991) ("Th[e] legislative history leaves little room for doubt . . . designation of critical habitat is to coincide with the final listing decision absent extraordinary circumstances."). The Services' interpretation of the Act's language would result in an expansion of the "not prudent" exception, contrary to this clear intent. The Services must amend section 424.12(a) to limit "not prudent" determinations to circumstances where designation would not benefit the conservation of species.

Nevertheless, the Services propose to restore an exemption to critical habitat requirements where habitat destruction results from "causes that cannot be addressed [through] . . . consultation." Proposed Rule at 52,611. This proposal apparently aims to withhold critical habitat from species threatened by climate change. *See* 84 Fed. Reg. 45,020, 45,042 (Aug. 2, 2019) ("[e]xamples would include species experiencing threats stemming from melting glaciers, sea level rise, or reduced snowpack but no other habitat-based threats."). Both in the 2019 rulemaking and again in 2025, the Services fail to explain how this example, which describes circumstances in which critical habitat designation could benefit and certainly would not harm the species, fits the meaning of the term "not prudent" under the ESA.

Species suffering from the effects of climate change may be most in need of critical habitat protection. Moreover, critical habitat could facilitate species migration. For instance, the

Western snowy plover is one of the species most threatened by sea-level rise because its habitat lies along the coasts. But because that threat is compounded by "human-made barriers to the gradual inland migration of these habitat types," Matthew E. Aiello-Lammens et al., *The Impact of Sea-Level Rise on Snowy Plovers in Florida: Integrating Geomorphological, Habitat, and Metapopulation Models*, 17 Global Change Biology 3644, 3644 (Jul. 9, 2011), designation of inland areas outside of the plover's current range could provide habitat in the future as sea levels rise, ultimately saving the species from extinction.

The Service's proposed addition is unlawful for an additional reason: it fails to acknowledge that critical habitat provides benefits beyond those conferred by section 7 consultations. For example, the Service has explained that critical habitat can "focus[] conservation activities on the most essential areas to prevent further [population declines], provide[] educational benefits by creating greater public awareness" of listed species and their conservation, and "preventing inadvertent harm to the species." Determination That Designation of Critical Habitat is Not Prudent for the Rusty Patched Bumble Bee, 85 Fed. Reg. 54,281, 54,284 (Sep. 1, 2020). Accordingly, even where critical habitat would not result in benefits stemming from consultation—itself an extremely rare circumstance—designation would still be beneficial and, therefore, prudent.

Overall, the Services' proposal to expand the critical habitat exemption for circumstances in which it is "not prudent' would expand that category beyond what Congress intended. It should be withdrawn.

2. The Services' proposal to limit designation of unoccupied critical habitat is arbitrary and capricious and will undermine species recovery.

The Proposed Rule limits the Services' authority to designate unoccupied critical habitat, which is crucial to species recovery. The ESA explicitly authorizes designation of critical habitat that is unoccupied at the time of listing. 16 U.S.C. § 1532(5)(a)(ii). The Services' proposal would allow designation of unoccupied habitat only where occupied habitat is "inadequate to ensure the conservation of the species" and where there is "a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species." 90 Fed. Reg. 52,615. This change does not reflect the best reading of section 4 and the Services fail to justify the proposed changes, which would leave important unoccupied habitat unprotected.

The Service's proposal does not reflect the best reading of the definition of critical habitat. By proposing to require that unoccupied habitat can be designated only when it contains one or more "physical or biological features" that are essential to a species' conservation, the Services ignore an important statutory distinction between occupied and unoccupied habitat. Congress expressly required that occupied habitat must contain "those physical or biological features . . . essential to the conservation of the species," 16 U.S.C. § 1533(5)(A)(i); it did not include that requirement in the definition of unoccupied critical habitat, *id.* § 1533(5)(A)(ii). The Service has previously emphasized the importance of this distinction. *See* 81 Fed. Reg. at 7434. Inserting the same requirement with respect to unoccupied habitat unlawfully circumvents Congress's conscious choice to allow designation of unoccupied habitat whenever those areas were essential to the conservation of the species. *See Russello v. United States,* 464 U.S. 16, 23

(1983) ("Where Congress includes particular language in one section of a statute but it omits in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)).

The Services' rationale for its proposal also ignores the significant and growing importance of unoccupied critical habitat for listed species. First, unoccupied areas are critical for species recovery. Listed species often occupy only a small percentage of their historic range, due to stark population declines. *See, e.g.*, FWS, *Rusty Patched Bumble Bee (Bombus Affinis)* (last visited Sept. 23, 2018) (explaining that the endangered rusty patched bumble bee is "likely to be present in only 0.1% of its historical range").[2] In these cases, occupied habitat is far too small to support a recovering population, which will need an expanded range. Second, unoccupied habitat will become even more important for species as their habitat shifts due to climate change. Forister et al. at 2088 (collecting sources and concluding that both "poleward shifts of latitudinal ranges" and "upslope shifts of elevational ranges" are "clear and well-documented"). In these circumstances, designating unoccupied habitat is at least as important as designating occupied habitat, as changes in climate are already forcing species to migrate from their current range to previously unoccupied areas. But whether unoccupied habitat is essential because of species' contracted range or due to climatic shifts, critical habitat is particularly crucial because no other part of the ESA provides protection for habitat outside the current range of the species. Designation of this habitat as critical habitat is the only way to protect it under the law.

These unique benefits of unoccupied habitat contradict the Service's assertion that its step-wise approach "more appropriately reflects how areas are prioritized biologically." 90 Fed. Reg. 52,612. They also disprove the agency's assertion that "[t]o say that an area that is currently *uninhabitable* for a species at the time of listing is ''essential'' for the conservation of such species defies logic." *Id*. Because its rationale ignores important considerations and runs counter to evidence before the agency, the proposed step-wise approach to designation is arbitrary and unlawful. *See Motor Vehicle Manufacturers Assoc. of the U.S., Inc. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (June 24, 1983).

The Services' proposal is also an arbitrary and capricious change in position without rational explanation. *See State Farm*, 463 U.S. at 41-42. It fails to address its previous rationales for abandoning the step-wise designation of critical habitat, including that the step-wise approach "may result in a designation that is geographically larger but less effective as a conservation tool." 81 Fed. Reg. at 7,434. This explanation directly contradicts the Service's intent to address unvalidated "concerns that the Services," under their current approach, "would inappropriately designate overly expansive areas of unoccupied critical habitat." 90 Fed. Reg. at 52,611.

To the extent that the Services suggest any portion of their proposal is compelled by the Supreme Court's decision in *Weyerhaeuser Co. v. U.S. Fish and Wildlife Service*, 586 U.S. 9 (2018), that is incorrect. There, the Court only held that for an area to be considered "critical habitat," it must first be "habitat." It did not define "habitat" for purposes of this analysis and its

[2] *Available at* https://www.fws.gov/midwest/endangered/insects/rpbb/.

decision does not constrain the Services determination of when to designate unoccupied critical habitat. For reasons explained more fully in NRDC's comments on the Services' 2020 proposal to define "habitat," both the ESA and the plain meaning of the term "habitat" compel an interpretation that includes areas that will support a species in the future, both occupied and unoccupied areas, areas that contribute indirectly to species conservation, and areas that support just a single individual of a species. *See* NRDC, RE: Proposed Definition of "Habitat" for Purposes of Critical Habitat Designation under the Endangered Species Act, 16 U.S.C. § 1533 (Sep. 4, 2020) (Attached as Ex. A).

CONCLUSION

The Proposed Rule will not make the ESA more effective or efficient. Instead, it will undermine the Act's protections for species on the brink of extinction by erecting unnecessarily heightened barriers to listing and enabling species to be delisted without recovery. Moreover, the Proposed Rule narrows the scope of critical habitat designation in numerous circumstances, crippling one of the Services' principal tools for species conservation. Finally, numerous proposed changes are arbitrary and capricious, as the Proposed Rule fails to provide a reasoned basis for the Services' departures from past policy choices. The Services should withdraw the Proposed Rule in its entirety.

Respectfully submitted,

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Senior Attorney, Nature, NRDC

On behalf of:

Alliance for Sustainability
American Bird Conservancy
Animal Welfare Institute
Center for Food Safety
Conservancy of Southwest Florida
Endangered Species Coalition
Endangered Habitats League
Environmental Defense Center
Environmental Protection Information Center
Friends of Minnesota Scientific and Natural Areas
Friends of the Mississippi River
International Marine Mammal Project, Earth Island Institute
Kettle Range Conservation Group
Klamath Forest Alliance
Los Angeles Audubon Society
Maine Audubon
Massachusetts Audubon
Massachusetts Pollinator Network

Minnesota River Valley Audubon Chapter
National Wolfwatcher Coalition
Natural Resources Defense Council
New Jersey Audubon
People & Pollinators Action Network
Pollinator Friendly Alliance
Prairie Hills Audubon Society
Save the Sound
South Carolina Aquarium
Starry Skies North
The Urban Wildlands Group
Vote Climate
Wyoming Untrapped