

*Endangered Species and Global Warming
Initiative*

AN ADMINISTRATIVE PROCEDURE ACT PETITION
BEFORE THE SECRETARIES OF THE INTERIOR,
COMMERCE, ENERGY, AGRICULTURE,
TRANSPORTATION, DEFENSE, and THE ENVIRONMENTAL
PROTECTION AGENCY

**TO
ENHANCE THE RECOVERY OF ENDANGERED SPECIES
AND ADDRESS THE GROWING IMPACTS OF GLOBAL
WARMING ON IMPERILED SPECIES**

PETITION FOR RULEMAKING TO AMEND FEDERAL REGULATIONS TO ENHANCE THE RECOVERY OF ENDANGERED SPECIES AND ADDRESS THE GROWING IMPACTS OF GLOBAL WARMING ON IMPERILED SPECIES

The Endangered Species Act (ESA) is one of America's most important and successful environmental laws: upwards of ninety percent of threatened and endangered species have improved or remained stable since coming under the protection of the Act including the green sea turtle, gray wolf, grizzly bear, piping plover, and whooping crane.¹ However, the speed of recovery has been slowed and the cost of conservation increased by an insufficient commitment by federal agencies to identify, prioritize, fund, and implement actions most likely to contribute to species recovery. The most significant impediment is the widespread failure to implement federal recovery plans or employ them as the central organizing principle of recovery programs.

Habitat loss is the first, and invasive species is the second most important threat to listed species.² Historically, most habitat loss has been driven by development, resources extraction, and pollution. Spread of invasive species is largely associated with movement of human beings who purposefully or inadvertently carry exotic species and create habitat conditions giving them an advantage over native species. Human-induced global warming is already playing a significant role in habitat loss and the spread of invasive species and has contributed to the extinction of numerous species.³ Continuation of current greenhouse gas emission trends are projected to raise the average global temperature by 3-4 degrees Celsius, leading to catastrophic extinction events.⁴ Even a hopeful scenario of limiting the increase to less than 1 degree Celsius will cause many species extinctions.⁵ Recent models predict that 12-24% of all species globally will be driven to extinction if current warming trends continue.⁶ Despite this overwhelming

¹ Suckling, K. 2006. Measuring the success of the Endangered Species: Recovery trends in the northeastern United States. Center for Biological Diversity, Tucson, AZ. Available at www.esasuccess.org

² Wilcove, D.S, David Rothstein, Jason Dubow, Ali Phillips and Elizabeth Losos. 1998. Quantifying threats to imperiled species in the United States: Assessing the relative importance of habitat destruction, alien species, pollution, overexploitation, and disease. *BioScience* 48(8):607-615.

³ Parmesan, C. 2006. Ecological and Evolutionary Responses to Recent Climate Change. *Annual Review of Ecology, Evolution, and Systematics* 37:637-69.

⁴ Hansen, J., Makiko Sato, Reto Ruedy, Ken Lo, David W. Lea, and Martin Medina-Elizade. 2006. Global temperature change. *Proceedings of the Natural Academy of Science*. 103(39):14288-14293.

⁵ Hansen et al. (op. cit.).

⁶ Malcom, Jay R., Canran Liu, Ronald P. Neilson, Lara Hansen, and Lee Hannah. 2006. Global Warming and Extinctions of Endemic Species from Biodiversity Hotspots. *Conservation Biology*. 20(2):538-548; Thomas, Chris D., Alison Cameron, Rhys E. Green, Michel Bakkenes, Linda J. Beaumont, Yvonne C. Collingham, Barend F. N. Erasmus, Marínez Ferreira de Siqueira, Alan Grainger, Lee Hannah, Lesley Hughes, Brian Huntley, Albert S. van Jaarsveld, Guy F. Midgley, Lera Miles, Miguel A. Ortega-Huerta, A. Townsend Peterson, Oliver L. Phillips, and Stephen E. Williams. 2004. Extinction risk from climate change. *Nature*. 427:145-148.

threat, no federal agency has developed regulations requiring the analysis of, preparation for, or mitigation to federal actions that impact the relationship between global warming and endangered plants and animals.

While we believe that existing law and regulations already require the mandatory development and implementation of recovery plans, as well as the consideration of global warming in all relevant decisions, we believe that new regulations explicitly describing these obligations would be useful to ensure compliance with the law and further species recovery. Thus, pursuant to the Administrative Procedure Act,⁷ 7 C.F.R. §1.28,⁸ and 43 C.F.R. § 14.1-4,⁹ and other applicable legal authority, the Center for Biological Diversity, California Trout, Center for Native Ecosystems (Colorado), Citizens for Pennsylvania's Future, Conservation Northwest (Washington), Friends of the Clearwater (Idaho), RESTORE: The North Woods (Maine), Save the Manatee Club (Florida), Turtle Island Restoration Network and Arkansas Fly Fishers hereby petition the United States Secretaries of the Departments of the Interior, Commerce, Agriculture, Energy, Transportation, and Defense, as well as the Environmental Protection Agency, to initiate rulemaking to clarify and/or amend current regulations pertaining to protections and procedures mandated by the Endangered Species Act of 1973, as amended, including measures necessary to prevent, stem or mitigate warming impacts to imperiled species.

This petition discusses the statutory basis for our request, the regulatory history of the ESA, the reasons that the Secretaries should revisit rulemaking on these regulations, and the proposed regulatory amendments and clarifications. We request separate responses to each section from each relevant Secretary. This petition proposes the following regulatory additions, revisions and clarifications:

- 1) Ensure federal agencies consider the impact of global warming in decisions affecting imperiled species and their recovery.
- 2) Require federal agencies to implement recovery plans and build recovery programs around them.
- 3) Ensure that federal actions contribute to, and do not undermine, species recovery.
- 4) Increase the utility and scientific basis of federal recovery plans.
- 5) Adopt timely recovery plans and revisions based on the best available science for all listed species.

⁷ 5 U.S.C. 553(e) requires federal agencies to “give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”

⁸ 7 C.F.R. § 1.28 states: Petitions by interested persons in accordance with 5 U.S.C. 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule. All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.”

⁹ 43 C.F.R. § 14.2 states: “Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). The petition will be addressed to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240. It will identify the rule requested to be repealed or provide the text of a proposed rule or amendment and include reasons in support of the petition.”

- 6) Enhance the role of states, counties and non-federal agencies in cooperative recovery efforts.
- 7) Increase cooperation and collaboration with private landowners in recovery efforts.
- 8) Simplify and strengthen the designation and protection of critical habitat areas to achieve recovery and account for economic benefits of conservation.
- 9) Ensure all imperiled species are considered for ESA protection in a timely manner in order to efficiently effectuate recovery.
- 10) Improve public access to information concerning recovery efforts and increase funding of endangered species recovery programs.

1. Ensure federal agencies consider the impact of global warming in decisions affecting imperiled species and their recovery.

In 2001, Secretary of the Interior Bruce Babbitt issued a Secretarial Order mandating an evaluation of climate change impacts on all aspects of agency management planning. Order No. 3226. Given the certainty that global warming is occurring, and the increased understanding of the devastating impacts it will have upon threatened and endangered species, and indeed all biodiversity including human welfare, this Order must be strengthened by becoming a binding regulation that applies to all federal agencies and their actions. Thus, in addition to the assessment of global warming contained in other sections of this petition, including but not limited to listing, consultation, critical habitat, recovery planning, species take, and incidental taking authorization, we propose the following revision to 50 C.F.R. § 402:

A. Each federal agency shall assess, to the maximum extent practicable, all of its actions in order to evaluate each action's impacts upon and contribution to global warming. This evaluation shall include a hard look examination as to whether any federal agency action may affect a listed or candidate species as a result of its contribution to global warming, or as a result of its failure in any manner to either account for a species' global warming adaptation plan or to implement a species' recovery plan. Species' recovery plans shall explicitly include global warming impacts and corrective measures based on the best available science.

B. Within two years of receipt or acceptance of this petition, the Secretaries of Interior and Commerce shall identify all listed species with the potential to be adversely impacted by global warming. Such species' status shall be re-examined in order to determine additional habitat or other conservation needs. Global warming and climate change impacts shall be included in the biennial review of species' recovery pursuant to ESA Section 4(f)(3).

2. Require federal agencies to implement recovery plans and build recovery programs around them.

Section 4(f)(1)(B), as well as Section 7(a)(1), of the Endangered Species Act requires that each recovery plan includes a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species. This section theoretically provides clarity to federal agencies, state or local agencies, or Native American tribes, and allows all such entities to incorporate into their management, via recovery implementation plans, those goals and actions described in the recovery plan. Regulations should be revised and clarified to meet this statutory requirement and to now include climate change impacts:

- The Secretaries develop and implement a recovery implementation plan in cooperation with each federal agency identified in the recovery plan to set forth specific agency actions required to achieve and monitor progress of the recovery goals identified in the recovery plans. Each federal agency affecting a listed species would set forth its own plan to work toward recovery for that species within that agency's actions, and agency plans would be coordinated by the Secretary and the agencies.
- Increase cooperation with States, Native American tribes, and private landowners to develop recovery implementation plans to achieve the recovery goals laid out in the recovery plans. These recovery implementation plans would specify actions the States, tribes, or local governments could implement to achieve recovery.

Following are the proposed revisions to 50 CFR § 424:

A. Each Federal agency that affects or is itself significantly affected by the goals or management actions set forth in a final recovery plan shall develop and implement a plan (referred to as a `recovery implementation plan'), and shall provide public notice and an opportunity for public review and comment on the recovery implementation plan before it is adopted. Each recovery implementation plan shall:

(i) identify the agency's affirmative conservation duties and management responsibilities that will contribute to the achievement of the recovery goals identified in the recovery plan;

(ii) set forth specific agency actions, timetables, and funding required to achieve and monitor progress of the recovery goals or management responsibilities of each federal agency, state agency, tribe, local government entity, or private party; and

(iii) identify any lands or waters under the agency's jurisdiction or ownership that currently provide or may provide suitable habitat for the species, identify any actions needed to acquire additional suitable habitat under section 5(a), and describe management actions the agency will take on lands or waters within its jurisdiction or ownership to contribute toward recovery of the listed species, and the protection of other non-listed but imperiled species.

B. Each federal agency shall provide technical assistance to state agencies and private parties identified in the recovery plan as having the potential to appreciably influence the status of listed species and their habitats to encourage and facilitate the development of recovery implementation plans by state agencies and private parties for such species.

C. Consistent with section 6 and other authority,, the Secretary shall work with States, tribes, and local government entities that affect or that are significantly affected by a final recovery plan, to develop State cooperative plans to achieve the goals and implement the management actions identified in the recovery plan. The Secretary shall enhance existing programs and, when appropriate, develop new programs to further facilitate coordination and collaboration with the States to achieve the goals and implement the management actions identified in the recovery plan.

3. Ensure that federal actions contribute to, and do not undermine, species recovery.

The ultimate goal of the Endangered Species Act, as described in Section 2(b), is to recover species. Section 7(a) of the Endangered Species Act mandates that all federal actions and programs comply with that goal. Therefore, federal actions should be held to the standard that they not impede or undermine recovery of the species, as well as assuring that such actions will not drive a species extinct. Regulations should be revised to make recovery consistency an explicit standard for all federal actions, including actions that impact climate change.

Following are the proposed revisions to 50 CFR §§ 17 and 402:

A. Revise 50 CFR § 402.02 as follows: The term “adverse modification” of critical habitat is defined as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival or recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.”

B. Revise 50 CFR § 402.02 as follows: The term "jeopardize" is defined as “to engage in any action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of the survival or recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

C. Revise 50 CFR § 17 as follows: Incidental take permits may be issued only if the Secretary determines in writing based on the best available science that the taking will not appreciably reduce the likelihood of the survival or recovery of the species in the wild.

D. Revise 50 CFR § 17 as follows: Conservation Plans pursuant to Sections 7 or 10 of the Act shall identify the specific actions that will contribute to specific

recovery goals set forth in the recovery plan for the affected species, and shall include an analysis of the effectiveness of the Conservation Plan at achieving those recovery goals.

4. Increase the utility and scientific basis of federal recovery plans.

Recovery plans as mandated under Section 4(f) of the Endangered Species Act are science-based blueprints that must possess real world value. The greater the specificity of the recovery goals and the actions recommended achieving those goals, the greater the likelihood that the species will recover, and recover more quickly. Regulations should be revised to:

- Describe in the recovery plan the specific recovery goals that would need to be achieved to bring a listed species to a self-sustaining level and eventual removal from the list of threatened and endangered species. Beyond basic delisting criteria, specific recovery goals would encourage the achievement of a range of staged objectives and incremental, identifiable progress toward recovery.
- Identify in the recovery plan those future actions and conditions, specifically including climate change factors, that would jeopardize the recovery of the species. This would provide clarity to private landowners, states, tribes and federal agencies, and would also encourage the planning of specific actions to avoid jeopardizing recovery of the species.
- Specify in the recovery plan those actions necessary to recover a listed species on all lands and waters covered by the recovery plan. The recovery plans should identify all parties that may significantly affect the status of a listed species, and recommend specific actions each party could implement toward recovering the listed species at specific lands and waters.

Following are the proposed revisions to 50 CFR § 424:

A. Recovery plans for endangered species shall identify specific recovery goals, including delisting criteria and downlisting criteria, and incremental recovery objectives, unless the Secretary determines based on substantial evidence in the record and the best available science that there is no circumstance under which the species can be downlisted or delisted. In such cases, recovery plans shall state why the statutory recovery goals are not achievable at the time the recovery plan is adopted or revised, and shall provide specific methods and procedures that shall be undertaken by the Secretary to ensure the continued survival of the species.

B. If the Secretary determines that detailed recovery goals, including delisting criteria and downlisting criteria, are not determinable within three years of listing, the recovery plan shall include references to all of the available scientific information regarding the species and its recovery and shall set forth a specific plan and schedule, of no longer than 3 additional years, to obtain any additional

scientific information necessary to formulate detailed recovery goals for the species, including an estimated cost of obtaining the necessary information. The Secretary shall include these costs in the yearly appropriations requests for the agencies.

C. All recovery plans shall provide a summary, with a standardized format, of the recovery goals, including delisting criteria and downlisting criteria, timelines, and implementation costs of the recovery plan.

D. Recovery plans shall identify: (i) future actions and environmental conditions that may adversely modify critical habitat or areas known to be essential to the recovery of the species; (ii) future actions and environmental conditions that may jeopardize the survival or recovery of the species; (iii) future actions and conditions that may result in take of the species; and (iv) population levels and habitat conditions that would constitute jeopardy for the species; all taking climate change impacts, and all other impacts, explicitly into account.

F. Recovery plans shall provide a list of all federal agencies, states, state agencies, tribes, local government entities, private parties and any other nation, that may influence appreciably the status of a listed species and its habitats covered by the recovery plan. Private parties need not be identified by name.

G. Recovery plans shall recommend specific recovery tasks to be implemented, including those related to climate change, in whole or in part, by each federal agency, state agency, tribe, local government entity, or private party identified in the recovery plan.

5. Adopt timely recovery plans and revisions based on the best available science for all listed species.

Recovery plans as mandated under Section 4(f) of the Endangered Species Act are science-based blueprints to guide efforts to bring listed species to a self-sustaining level and eventual removal from the list of threatened and endangered species. The current lack of specific timelines for the development and adoption of recovery plans has greatly contributed to the current situation in which more than 199 species have been listed for over three years and still lack recovery plans. Tragically, 170 species have been listed for over six years with no plan. The current administration has greatly scaled back recovery plan efforts during the last six years. The development and adoption of recovery plans for all listed species is critical to their survival and eventual recovery. Regulations should be revised to:

- Adopt a final recovery plan for each listed species within three years after listing, which is presently informal policy of the FWS. This would expedite the development of recovery plans necessary to begin implementing the actions needed for the recovery of threatened and endangered species, and would also allow adequate time for a full assessment of the scientific information and a review of the recommendations.

- Develop a schedule to adopt recovery plans for all listed species that currently lack recovery plans. It is possible that the agencies would require multiple years to address the current backlog of recovery plans.
- Describe in recovery plans the changes in status, habitat, and threats to the species since the species was listed or since the last recovery plan was adopted, as well as any recovery actions that have since been implemented, to inform the assessment and revision of plans and actions that contribute to the recovery of the species. This description must include climate change impacts and recovery actions to be taken.
- Include in revised recovery plans an evaluation of the progress made in achieving recovery objectives since the last recovery plan was adopted, and review implementation and results of actions and programs previously implemented under the recovery plan in order to incorporate the best available information and science into the revisions.

Following are the proposed revisions to 50 CFR § 424:

A. Recovery plans will be based on the best available science and information, and will be adopted for each listed species within three years after the final determination that the species is threatened or endangered unless the Secretary publishes a Federal Register notice indicating that a recovery plan will not promote the conservation of the species.

B. For all species that are listed as threatened or endangered at the time these regulations are issued and for which no recovery plans have been adopted, except for those species for which the Secretary has determined, in writing, that such a plan will not promote the conservation of the species, the Secretary shall, within one year of the date these regulations are issued, develop and publish a schedule to publish all such recovery plans. The schedule shall be completed and published in the Federal Register within one year of the date that these regulations are issued, and shall ensure that recovery plans for at least half of all such species will be completed within 5 years and that recovery plans for all such species shall be completed within 10 years.

C. Recovery plans shall be reviewed and revised periodically, but not less than once every 10 years, based on the best available science. The Secretary shall provide public notice of the review and revision process and an opportunity for public review and comment pursuant to ESA §4(f)(4). The Secretary shall publish a revised recovery plan for each species unless he [or she] determines in writing, based on the best available science, that no revision to the recovery plan is needed to ensure the recovery of the species.

D. All recovery plans and revised recovery plans shall describe:

(1) recovery actions that have been initiated or completed by federal, state, or local agencies, tribes or private parties since the species was listed;

(2) changes in population size and stability of the species since the species was listed;

(3) changes in habitat extent and quality (including designated critical habitat, essential habitat, occupied habitat and unoccupied habitat) since the species was listed; and

(4) changes in threats to populations and habitat since the species was listed.

E. Revised recovery plans shall evaluate progress made in achieving recovery plan objectives since the last recovery plan was adopted, and review implementation and results of actions and programs previously implemented under the recovery plan.

6. Enhance the role of state governments and agencies in cooperative recovery efforts.

Section 6 of the Endangered Species Act provides for cooperation between federal agencies and state governments. This authority should be more fully utilized to specifically build strong partnerships between the states and the federal government that would improve our ability to recover threatened and endangered species. Regulations should be revised to:

- Expand existing conservation programs that have proven to be effective at achieving recovery objectives through collaboration with state governments and agencies, without reducing the federal statutory obligation to conserve and protect listed and imperiled species.
- Facilitate increased funding for cooperative state conservation programs that have proven to be effective at achieving recovery objectives.

Following are the proposed revisions to 50 C.F.R. § 17.6:

A. Consistent with sections 2, 6, and 7 of the Endangered Species Act, the Secretaries shall work with States and state agencies to develop cooperative plans to achieve the recovery goals and implement the management actions identified in the recovery plan.

B. The Secretaries shall assign to specified field office employees concrete conservation duties include facilitating coordination and collaboration with the States to achieve the recovery goals and implement the management actions identified in the applicable recovery plan(s).

C. The Secretaries shall create and implement a monitoring program to evaluate the effectiveness of such federal-state programs at achieving the recovery objectives identified in the recovery plan.

D. Prior to the completion of annual budget requests for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the Secretaries of Interior and Commerce shall publish a list of cooperative state conservation programs planned for the upcoming fiscal year, including an assessment of the success of each program at attaining recovery objectives, and including an estimate of the federal funding (and relevant state and other funding) required for each program in the upcoming fiscal year. The Secretaries shall submit a request for funds for planning and implementation of cooperative state conservation programs, prioritizing those programs that have proven to be effective at attaining recovery objectives.

7. Increase cooperation and collaboration with private landowners in recovery efforts.

The participation of private landowners is critical to protecting endangered species habitat and successfully recovering endangered species and restoring and enhancing habitat. The cooperation of private landowners can be increased using the authorities already present in the Endangered Species Act. Regulations should be revised to:

- Increase the availability of technical assistance to landowners and water users affected by the need to conserve and recover endangered species.
- Expand the use of positive incentive programs for private landowners interested in participating in proactive conservation actions to recover endangered species and enhance habitat.
- Facilitate increased funding for landowner conservation programs that have proven to be effective at achieving recovery objectives.

Following are the proposed revisions to 50 CFR § 17.6:

A. The agencies shall work directly with private landowners, and through conservation programs administered by the States or state agencies, to develop cooperative plans to achieve the recovery goals and implement the management actions identified in the recovery plan(s).

B. The Secretaries shall assign to each relevant field office those employees whose duties include-- (i) providing assistance by obtaining permits under this section and otherwise complying with the statutory requirements and regulations of the Endangered Species Act; (ii) serving as a focal point for questions, requests, and input from property owners and local governments concerning the policies and activities of federal agencies in the implementation of the Endangered Species Act; and (iii) facilitating coordination and collaboration with private landowners to achieve the recovery goals and implement the management actions identified in the recovery plan.

C. The Secretaries shall create and implement a monitoring program within the agencies to evaluate the effectiveness of landowner conservation programs at achieving the recovery objectives identified in the recovery plan.

D. Prior to the completion of annual budget requests for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the Secretaries of Interior and Commerce will publish a list of cooperative federal-private conservation programs planned for the upcoming fiscal year, including an assessment of the success of each program at attaining recovery objectives, and including an estimate of the federal funding required for each program in the upcoming fiscal year. The Secretaries shall submit a request for funds for planning and implementation of cooperative private conservation programs, prioritizing those programs that have proven to be effective at attaining recovery objectives.

8. Simplify and strengthen the designation and protection of critical habitat areas to achieve recovery and account for economic benefits of conservation.

Loss of habitat is the primary threat to the vast majority of imperiled species. Protection and conservation of habitat is one of the most important factors in the recovery of endangered species. Critical habitat, as mandated in Section 4(a)(3) of the Endangered Species Act, is the area essential to the conservation of threatened and endangered species, and is the one provision of the Endangered Species Act that specifically protects habitat and explicitly establishes recovery as an objective. Designating adequate critical, or recovery, habitat is vital to efforts to conserve and recover listed species. Regulations should be revised to:

- Include in critical habitat all areas essential to the recovery of the species.
- Ensure that economic analyses inform the achievement of recovery objectives, not arbitrarily exclude habitat necessary for recovery of a species.
- Designate critical habitat for all listed species, unless the agency has determined that critical habitat is clearly not prudent or determinable, based upon the best available science. This would eliminate the liability of the federal government to lawsuits based on failure of the federal government to adhere to the statutory timelines for critical habitat designation.

Following are the proposed revisions to 50 CFR § 424:

A. Revise 50 CFR § 424.12 as follows: Critical habitat shall include all areas, within the geographic area occupied by the species at the time of listing and outside the geographic area occupied by the species at the time of listing, essential to recovery of the species. Where a recovery plan has been adopted, the

agencies shall consider all habitats and areas identified as essential to recovery in the plan.

B. Revise 50 CFR § 424.12 (e) as follows: The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by the species if such areas are essential to the recovery of the species. The Secretary shall specifically consider the impact of climate change in making these designations.

C. Revise 50 CFR § 424.19 as follows: Any economic analysis performed pursuant to ESA §4(b)(2) shall (i) include an analysis of all biological, economic, and other benefits of recovery of the species including the savings that will occur if the species recovered; (ii) provide alternatives, all of which ensure recovery of the species, and a comparison of alternatives; (iii) include only those costs that are solely attributable to designation of critical habitat for the species; and (iv) ensure that the economic analysis provide useful information to guide decision making and do not result in undue costs and delay. Lengthy and extremely detailed analyses of impacts and benefits shall be undertaken only for those critical habitat designations that are expected to result in a large net adverse economic impact, solely attributable to designation of critical habitat for the species. Exclusions of areas from critical habitat must be consistent with the conservation mandate of the statute.

D. Revise 50 CFR § 424.17 as follows: For each species that is listed as threatened or endangered at the time these regulations are issued and for which no critical habitat has yet been designated, the Secretary shall, within one year of the date these regulations are issued, develop and publish a schedule to provide critical habitat designation. The schedule shall be completed and published in the Federal Register within one year of the date that these regulations are issued, shall be based degree of threat to the species, and shall ensure that critical habitat for at least half of all such species will be designated within 5 years and that critical habitat for all such species shall by designated within 10 years.

9. Ensure all imperiled species are considered for Endangered Species Act protection in a timely manner in order to efficiently effectuate recovery.

There are currently 286 species that have been identified by the agencies as needing endangered species protections under Section 4(a)(1) of the Endangered Species Act but have instead been placed on the candidate list, an administrative waiting purgatory that confers no protections. On average, these species have been waiting 17 years for protection, despite the requirement of expeditious progress mandated in Section 4(b)(3). Many have been waiting for over two decades. Meanwhile, the current administration has reduced the annual listing rate to the lowest level in the history of the Endangered Species Act. The regulatory and statutory protections and recovery efforts of the Endangered Species Act are predicated on the listing of a species as threatened or endangered. Regulations should be revised to:

- Develop a schedule to list all species that are determined by the Secretaries to warrant protections under the Endangered Species Act. All warranted species should be listed, providing for the subsequent development of recovery plans and eventual recovery of the species. It is possible that the agencies would require multiple years to address the current backlog of listings.
- Issue final listing rules for multiple species when possible. Multiple-species listing rules are appropriate for similar species or imperiled species in similar or shared habitat, and are often significantly more efficient than individual listing rules.
- Issue a final listing rule for a species within five years from the time it is determined to be warranted for listing.
- Develop a priority system and schedule to perform status reviews. Section 4(c) of the Endangered Species Act requires that a review of all listed species to determine whether any such species should be delisted, downlisted, or uplisted. These status reviews should address species in order of priority and should include an assessment of the progress that had been made toward recovery since the species was listed as threatened or endangered.

Following are the proposed revisions to 50 CFR § 424.17:

A. The Secretary shall, within one year of the date these regulations are issued, develop and publish a schedule to publish a proposed listing rule for all species on the candidate list. The schedule shall be completed and published in the Federal Register within one year of the date that these regulations are issued, shall be based on defined prioritization criteria developed in cooperation with the National Academy of Sciences and defined within the schedule, and shall ensure that final listing rules for at least half of all such species will be completed within 5 years and that final listing rules for all such species shall be completed within 10 years.

B. The Secretary shall issue proposed and final listing rules for multiple species when possible and based upon the best available science.

C. The Secretary shall, along with the determination that listing a species as threatened or endangered is warranted but precluded, publish a schedule to develop and publish a proposed listing rule for that species within five years.

10. Improve public access to information concerning recovery efforts, and increase public funding of endangered species recovery programs.

The Secretaries should make publicly available all recovery plans, five year reviews for listed species, consultations, conservation plans and other documents regarding the recovery of threatened and endangered species. Making such documents available on the

internet free of charge will facilitate public input and participation in efforts to recover endangered species.

Following are the proposed revisions to 50 CFR § 424:

A. The Secretary shall publish and make publicly available free of charge on the internet: (i) all recovery plans; (ii) any determinations that a species will not benefit from a recovery plan; (iii) standardized summaries of recovery plan goals, objectives and timelines (as discussed in recommendation 3c); (iv) any recovery implementation plans developed by any federal, state, or local agencies or tribes; (v) all draft biological opinions and incidental take permits; and (vi) all final biological opinions and incidental take permits; and (vii) all five year reviews pursuant to Section 4(c)(2).

B. The Secretaries of Interior and Commerce shall make publicly available free of charge on the internet an annual estimate of work and costs prior to the issuance of annual budget requests by U.S. Fish and Wildlife Service and National Marine Fisheries Service.

Further, many of the challenges facing threatened and endangered species are greatly exacerbated by the severe under-funding of federal endangered species programs. For example, the Fish and Wildlife Service has estimated that \$153 million is required to address the backlog of listings and critical habitat designations. To provide this, \$31 million per year should be appropriated for the next five years specifically for the listing of species that are currently classified as warranted but precluded, and designation of critical habitat for those candidate species as well as for currently listed species without critical habitat. Furthermore, an additional \$25 million per year should be appropriated for the annual budget of the Fish and Wildlife Service listing program to ensure that the Service has adequate funding to list future threatened and endangered species and designate critical habitat for those species. While these additional sums are not insignificant, they pale in comparison to other (often wasteful) federal expenditures necessary to protect America's invaluable "green infrastructure" for present and future generations.

Full funding of the Endangered Species Act is critical to the protection and ultimate recovery of threatened and endangered species. Adequate funding for the annual recovery budget is necessary to ensure that recovery plans are developed, adopted, and implemented in a timely manner to ensure the recovery of threatened and endangered species. The development and implementation of Fish and Wildlife Service recovery plans are funded through the agency's Recovery Program. Ensuring adequate funding to promote recovery of endangered species is critical to the success of all recovery programs. Section 18 of the Endangered Species Act requires the agencies to submit an annual accounting of the expenditures made for the recovery of endangered species. The regulations should be revised and clarified to:

- Provide to Congress a list of all species for which the agencies are preparing recovery plans, or reviewing or revising existing recovery plans in the upcoming fiscal year, including an estimate of the cost of preparation for the recovery plans and reviews and revisions of recovery plan in the upcoming fiscal year. This would allow the Secretary to request adequate funds to prepare, review, and revise recovery plans in each annual budget request.
- Provide to Congress a list of all species for which the agencies are preparing recovery implementation plans in the upcoming fiscal year, including an estimate of the cost of preparation for the recovery implementation plans in the upcoming fiscal year. This would allow the Secretary to request adequate funds to prepare, review, and revise recovery implementation plans in each annual budget request sent to the Office of Management and Budget.

Following are the proposed revisions to 50 CFR § 17:

Prior to the completion of annual budget requests for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the Secretaries of Interior and Commerce shall publish a list of all species for which they are preparing recovery plans or recovery implementation plans, or reviewing or revising existing recovery plans or recovery implementation plans in the upcoming fiscal year, including an estimate of the cost of preparation for the recovery plans and recovery implementation plans in the upcoming fiscal year. The Secretary shall include a request for funds to prepare, review, and revise recovery plans and recovery implementation plans in each annual budget request.

We would appreciate, and request, a response within ninety days of receipt of this petition.

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