

April 24, 2023

The Honorable Bruce Westerman
Chairman
Natural Resources Committee
U.S. House of Representatives
Washington, DC, 20515

The Honorable Raul Grijalva
Ranking Member
Natural Resources Committee
U.S. House of Representatives
Washington, DC, 20515

Re: Opposition to H.J. Res. 29 (Lesser Prairie-Chicken), H.J. Res. 46 (Trump Critical Habitat Regulation), H.J. Res. 49 (Northern Long-eared Bat), H.R. 215 (California Salmon and Delta Smelt), H.R. 764 (Gray Wolf Delisting), H.R. 1245 (Wyoming Grizzly Bears) and H.R. 1419 (Montana Grizzly Bears)

Dear Chairman Westerman, Ranking Member Grijalva,

On behalf of our organizations and our millions of members and supporters, we write to express our strong opposition to the seven pieces of legislation being marked up on April 27th in the House Natural Resources Committee. Collectively these bills weaken the Endangered Species Act by eliminating vital protections for specific species of wildlife, undermine the law's mandate to follow the best available science and put the short-term economic interests of powerful special interests above the preservation of this nation's irreplaceable natural heritage.

Oppose H.J. Res. 29 (Rep. Mann, R-KS): The Congressional Review Act ("CRA") is a blunt instrument with far reaching impacts, particularly for endangered species. Upon enactment of a CRA resolution, the underlying regulation becomes void and an agency is prevented from future issuance of a rule that is "substantially the same" without an act of Congress. The lesser prairie-chicken is a highly imperiled ground-nesting bird that has declined from millions of individuals to just 27,000 birds in 2022—a decline of 20% just since 2021. In protecting its final determination, the Service specifically found that existing voluntary conservation actions by States and the oil and gas industry "will not be enough to offset...habitat losses," and that "the expected conservation efforts are inadequate to prevent continued declines in total habitat availability, much less restore some of what has been lost, and overall viability for this species will continue to decline."¹ Without protections of the Endangered Species Act — and the risk that the CRA could preclude "substantially the same" rule in the future—a vote to approve this resolution is nothing more than a vote to condemn the lesser prairie-chicken to extinction.

Oppose H.J. Res 46 (Rep. Bentz, R-OR): This resolution would nullify the Biden administration's final rule rescinding the regulatory definition of "habitat" and restore the pro-polluter Trump-era regulation that severely curtailed when lands or waters could be designated as "critical habitat" for imperiled species. This unnecessary and short-sighted Trump rule limited protections to only those areas that could *currently* support the species, while it excluded areas that were previously occupied and could be restored, or that would have provided additional habitat for future recovery as climate change shifts where species can live. In rescinding the rule, the Services explained that the Trump-era

¹ 87 Fed. Reg. 72674, 72708, Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment, *available at*: <https://www.federalregister.gov/documents/2022/11/25/2022-25214/endangered-and-threatened-wildlife-and-plants-lesser-prairie-chicken-threatened-status-with-section>.

regulation was “unclear and confusing and inconsistent with the conservation purposes of the Act...”² and that it is more appropriate and more consistent with the Endangered Species Act to “determine what areas qualify as habitat for a given species on a case-by-case basis using the best scientific data available for the particular species.”³

Oppose H.J. Res. 49 (Rep. Stauber, R-MN): Northern long-eared bats have declined 99% across much of their range in a span of just two decades. White-nose syndrome, caused by an exotic fungus originating in Europe, has devastated bat populations across their entire range. However, human activities have also played a major role in the bats’ catastrophic decline. Northern long-eared bats live in large blocks of mature forests and forage along wooded hillsides and ridgelines, so forest fragmentation, logging, and clearing forests for agriculture and development are major threats to the species. The Fish and Wildlife Service listed the bat as endangered in November 2022 after finding that its previous “threatened” status was not sufficiently protective to keep the bat from slipping further toward extinction. Just like the lesser prairie-chicken, without protections of the Endangered Species Act — and given the risk that the CRA could preclude “substantially the same” rule in the future— a vote for this resolution is the same as a vote to condemn the northern long-eared bat to extinction.

Oppose H.R. 215 (Rep. Valadao, R-CA): This legislation would harm numerous species of California salmon and steelhead, as well as the critically endangered Delta smelt. This bill overrides state law to enlarge Shasta Dam, harming Native American Tribes, salmon fishermen, and the environment. Second, H.R. 215 overrides the Endangered Species Act and reinstates the Trump Administration’s blatantly unlawful biological opinions, which threatens West Coast salmon fisheries. Federal Courts have determined that these opinions were legally deficient as the result of political interference, and violated the Endangered Species Act best science requirements. In addition, this legislation threatens wildlife refuges, migratory birds, and salmon by threatening restoration funding required by the 1992 Central Valley Project Improvement Act (CVPIA). The salmon fishery in California and most of Oregon has been completely closed this year, resulting in thousands of lost jobs, and this legislation would only exacerbate this crisis by further eroding protections for these iconic and culturally irreplaceable species.

Oppose H.R. 764 (Rep. Boebert, R-CO): This legislation would remove federal protections for all gray wolves in the lower-48 states, except for a small population of Mexican gray wolves in Arizona and New Mexico. This misguided legislation would reinstate an October 2020 decision by the U.S. Fish and Wildlife Service to delist the wolf, despite a federal court invalidating the decision and the concerns of independent scientists that wolves remain functionally extinct in the vast majority of their former range across the United States. By reinstating the Trump administration’s scientifically indefensible delisting rule and by precluding judicial review of this rule, the bill undermines the scientific integrity of the Endangered Species Act and undermines the rule of law that holds government officials accountable in the courts.

Oppose H.R. 1245 (Rep. Hageman R-WY): This legislation would prematurely remove protections for grizzly bears in the Greater Yellowstone Ecosystem population, paving the way for trophy hunting and subject bears to ever-increasing levels of persecution by extreme state legislatures that have shown no restraint with respect to the management of wolves within Wyoming. After federal protections were

² 87 Fed. Reg. 37757, 37757, Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, *available at*: <https://www.govinfo.gov/content/pkg/FR-2022-06-24/pdf/2022-13368.pdf>.

³ *Id.* at 37758.

briefly removed in 2017, Wyoming immediately announced grizzly bear hunts that would have allowed for up to 23 bears to be killed outside of Yellowstone National Park. A federal court determined that the previous effort to remove protections for grizzly bears in the Greater Yellowstone Ecosystem failed to address how removing protections for grizzlies in Yellowstone would affect the recovery of grizzly bears in neighboring ecosystems, such as in northern Idaho where just a few dozen grizzlies struggle to survive and in the Selway-Bitterroot area of central Idaho where just a few grizzly bears might live.⁴

Oppose H.R. 1419 (Rep. Rosendale, R-MT): This legislation would prematurely remove protections for grizzly bears in the Northern Continental Divide Ecosystem, paving the way for grizzly bears to be subject to extreme levels of persecution in Montana. The State of Montana does not have an approved plan (let alone any plan) to manage grizzly bears should federal protections be removed in the future by the U.S. Fish and Wildlife Service after a science-based finding that the population has recovered. Grizzly bears could be hunted or trapped in Montana with no oversight by the Service because this legislation simply short-circuits every procedural requirement for delisting species as required by the Endangered Species Act. Similarly, this legislation fails to address the important conservation connectivity between this population and the highly-endangered populations in the Cabinet-Yaak and Selkirk mountains of far-northwest Montana.

Scientists have warned that one million species are facing extinction. The Endangered Species Act is our most effective tool to prevent extinction. Please oppose these bills that would undermine sound science and our nation's most effective wildlife conservation law.

Sincerely,

Center for Biological Diversity
GROUPS

⁴ *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999 (D. Montana 2018).