

**American Bird Conservancy * American Rivers * Animal Welfare Institute
Association of Northwest Steelheaders * Audubon Society of Portland * Born Free USA
Center for Biological Diversity * Center for Justice * Columbia Riverkeeper
Defenders of Wildlife * Delaware Ecumenical Council on Children and Families
Earthjustice * Endangered Species Coalition
Environmental Action Committee of West Marin
Environmental Protection Information Center * Friends of Blackwater, Inc.
International Fund for Animal Welfare * Klamath Forest Alliance
League of Conservation Voters * Native Fish Society
Native Plant Conservation Campaign * Natural Resources Defense Council
Northcoast Environmental Center * Northwest Environmental Advocates
Northwest Environmental Defense Center * Save the Manatee Club * Sierra Club
Spokane Riverkeeper * Turtle Island Restoration Network
WE ACT for Environmental Justice * Western Environmental Law Center
Wild Fish Conservancy * WildEarth Guardians**

March 6, 2018

**Re: Please Support Senator Carper's Amendment to H.R. 2825 to Encourage Smarter
Floodplain Management**

Dear Senator:

On behalf of our millions of members and supporters, we write to urge you to support Senator Carper's amendment to the Department of Homeland Security Authorization Act (H.R. 2825). The Carper amendment would strike damaging language in current section 1505 and replace it with language ordering the Government Accountability Office (GAO) to submit to Congress a report on the effects of the National Flood Insurance Program (NFIP) on floodplain development and redevelopment. The report would also examine the issue at hand in Section 1505 – the relationship between the Federal Emergency Management Agency's (FEMA's) implementation of the NFIP and its responsibilities under the Endangered Species Act (ESA). Please vote for the Carper amendment to support a research-based process to examine floodplain management under the NFIP and ensure that FEMA meets its responsibilities under the ESA and other federal laws.

The taxpayer subsidized NFIP is a voluntary program administered by FEMA that provides access to affordable flood insurance policies within flood hazard zones. As a condition of enrolling in the NFIP and receiving Federal financial assistance, communities must adopt adequate floodplain ordinances consistent with Federal standards to reduce or avoid future flood losses as stated in FEMA's enabling legislation.¹ FEMA plays three key roles in implementing the NFIP: (1) mapping of flood hazard zones, (2) setting the minimum floodplain management criteria that communities must meet to maintain participation in the NFIP, and (3) designing and operating the Community Rating System to provide discounted federally-backed flood insurance in communities that go beyond minimum floodplain management criteria. These three actions create a clear federal nexus under Section 7 of the ESA, which requires all federal agencies to consult with the federal wildlife

¹42 USC 4002 – "The purpose of this Act, therefore, is to... [require] States or local communities, as a condition of future Federal financial assistance... to adopt adequate flood plain ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses..."

agencies – U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) – to ensure that the actions they take, authorize, or fund do not jeopardize ESA-listed species. FEMA’s implementation of the NFIP has been repeatedly linked to adverse effects on threatened and endangered species because it encourages development on floodplains. Three federal courts have held that FEMA is required to consult with FWS or NMFS under the ESA on the impacts of the NFIP on threatened and endangered species, including the critically endangered Key Deer, numerous species of salmon and steelhead and endangered Southern resident orcas.²

Section 1505 of H.R. 2825 would exempt FEMA from its responsibilities under the ESA with respect to its implementation of the NFIP. This far-reaching provision, which exempts an entire class of federal actions from compliance with one of our most important conservation statutes, is unnecessary, reverses established case law on this issue, and directly harms endangered and threatened species affected by government-insured floodplain development. Moreover, the Senate has not yet held any hearings on this complex issue, which belongs under the jurisdiction of the Environment and Public Works committee.

Senator Carper’s amendment rejects this hasty and harmful approach and instead asks the GAO to closely examine this issue and submit a report to Congress. Such a report would help inform members of Congress on this situation and determine the best course of action. This amendment provides a reasonable alternative to quickly enacting legislation that would permanently exempt a single federal agency from its existing responsibility to adhere to the requirements of federal law.

We urge you to support this important amendment and keep controversial language undermining the ESA off the DHS Authorization Act.

Sincerely,

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² See *Florida Key Deer v. Stickney*, 864 F. Supp. 1222 (S. D. Fla. 1994); *Nat’l Wildlife Fed’n v. FEMA*, 345 F. Supp. 2d 1151 (W.D. Wash. 2004); *Audubon Soc’y of Portland v. FEMA* (D. Or. 2010).

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