

American Rivers * Animal Welfare Institute * Association of Northwest Steelheaders
Audubon Society of Portland * Center for Biological Diversity * Clean Water Action * Columbia Riverkeeper
Conservatives for Responsible Stewardship * Defenders of Wildlife
Delaware Ecumenical Council on Children and Families * Earthjustice
Endangered Species Coalition * Environmental Protection Information Center
Humane Society Legislative Fund * International Marine Mammal Project of Earth Island Institute
Klamath Forest Alliance * League of Conservation Voters * National Audubon 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 * Union of Concerned Scientists
Western Environmental Law Center * Western Watersheds Project * WildEarth Guardians * Wolf Conservation Center

April 23, 2018

**Re: Attacks on the Endangered Species Act in the Federal Aviation Administration
Reauthorization Act of 2018 (H.R. 4)**

Dear Representative:

On behalf of our millions of members and supporters, we are writing to express our opposition to two harmful provisions that undermine vital protections for wildlife under the Endangered Species Act (ESA) in the Federal Aviation Administration (FAA) Reauthorization Act of 2018 (H.R. 4). These provisions would cause significant harm to endangered species and communities throughout the United States and undermine the protections of one of our most successful and popular conservation laws. We urge you to remove these controversial riders from H.R. 4.

Section 628 – “Authorities”

Section 628 of H.R. 4 would exempt FEMA from its responsibilities under the ESA with respect to its implementation of the National Flood Insurance Program (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.

The 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. 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 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.

FEMA claims that it lacks the legal authority to implement particular measures that NMFS recommended it take to comply with a biological opinion in Oregon. The Oregon biological opinion found that the NFIP program would jeopardize the continued existence of 17 imperiled species, including salmon, steelhead and orca populations. If FEMA is, as it claims, unable to implement the measures recommended by NMFS, the agency can offer feasible alternatives that would bring the Oregon NFIP into compliance with the biological opinion. Furthermore, local communities that participate in the Oregon NFIP are already starting to implement measures to comply with the biological opinion. There is no need for this legislation, which overturns established case law and lets FEMA off the hook for failing to comply with an essential conservation law.

Section 161 – “Critical Habitat on or near Airport Property”

Section 161 of H.R. 4 would require that the Secretary of Transportation become involved in critical habitat designations for threatened and endangered species by FWS and NMFS to ensure that certain land is not designated. This provision is unnecessary and would set a bad precedent of Congress allowing government agencies to interfere with science-based decision-making under the ESA. The ESA already directs FWS and NMFS to take relevant impacts into consideration before designating critical habitat. The agencies may exclude any area from critical habitat if the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless the failure to do so will result in the extinction of the species concerned. There is nothing wrong with other agencies offering information on the harmful impacts of designating certain areas as critical habitat, especially when those impacts concern human safety, as is the case here. However, legislation requiring that the Secretary of Transportation be involved in actual decision-making “to the maximum extent practicable” is unnecessary and harmful.

The ESA is a popular and effective conservation law that provides flexibility to industries that seek to carry out activities that may affect listed species. It is supported by 90% of American voters from across the political spectrum. Nevertheless, it continues to come under attack by Congress. Sections 628 and 161 are just two examples of over 75 individual provisions introduced this Congress that would weaken protections for endangered species like the key deer, the Southern Resident killer whale and the loggerhead sea turtle. With harmful riders like these appearing on almost every major legislative vehicle — including H.R. 4 — the ESA itself is in danger of death by a thousand cuts. We urge you to remove these two unnecessary and harmful provisions from H.R. 4 and oppose all legislation that would undermine protections for threatened and endangered species under the ESA.

Thank you for your consideration.

Sincerely,

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