

September 24, 2018

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Proposed Rescission of the Blanket 4(d) Rule for Protection of Threatened Species

Dear Secretary Zinke,

On behalf of our organizations and millions of members, we write to urge you to withdraw the proposed rescission of the regulation automatically extending protections to threatened species under Section 4(d) of the Endangered Species Act (“blanket 4(d) rule” or “rule”).¹ For nearly 40 years, the blanket 4(d) rule has provided protections afforded to endangered species to threatened species as a default, helping to ensure that no harm happens while the U.S. Fish and Wildlife Service considers a species-specific regulation. By prohibiting take of threatened species, including harm, harassment, and killing by any person, the blanket 4(d) rule has prevented harm to hundreds of species from piping plovers to sea otters. Rescinding the rule would undercut recovery and increase extinction risk for threatened species across the country, as well as increase inefficiency at the Service.

If the proposal is adopted, the Service will not give newly listed threatened species any take protections unless and until the Service issues a separate, individual rule specifying prohibited activities. The Service maintains that it has issued such individual rules for species listed as threatened in recent years, but the record shows otherwise. Of the 238 species FWS has listed as threatened, fewer than half have special rules.² The Service’s listing program already lacks the necessary funding and resources to complete its duties under the Act, facing a backlog of more than 300 species awaiting consideration for protection. Adding an additional duty to develop individual rules for threatened species will only further burden this already over-whelmed program, resulting in even greater delays in listing of the many species awaiting protection, including both threatened and endangered species, ultimately placing hundreds of species at greater risk of extinction.

The Service justifies rescinding the blanket 4(d) rule as necessary to align its practices with those of the National Marine Fisheries Service (NMFS), which has no similar rule. Yet the Service is responsible for far more imperiled species. NMFS manages only 61 threatened species and does not have a backlog of species awaiting consideration, whereas the Service manages 343 threatened species and as noted above, has a backlog of hundreds of species awaiting basic protection. And even with its substantially smaller workload, NMFS has previously neglected to publish rules for threatened species or only done so years after species were listed. For example,

¹ *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Prohibitions to Threatened Wildlife and Plants*, 83 Fed. Reg. 35,174 (July 25, 2018).

² Defenders of Wildlife White Paper Series, *Section 4(d) Rules: The Peril and the Promise* (2017), at 5-6, <https://defenders.org/sites/default/files/publications/section-4d-rules-the-peril-and-the-promise-white-paper.pdf>.

although NMFS designated 20 species of coral as threatened in 2014, it still has not issued a 4(d) rule to protect any of them from harm.

Rescinding the blanket 4(d) rule may also have serious, unintended consequences. Without a prohibition on take of threatened species, private parties will have little to no incentive to undertake voluntary conservation efforts, such as safe harbor agreements and habitat conservation plans, hampering species recovery. Rescission of the rule will also expose the listing program to increased political pressure from special interests. Already a persistent problem, these groups advocate for threatened rather than endangered listings and seek exemptions from the take prohibition for their particular industries, undermining the scientific integrity of the listing process and ultimately resulting in species receiving less protection than needed.

For all these reasons, we strongly recommend this proposal be withdrawn. If the goal is truly to harmonize the approach of the two agencies, we recommend that instead of slashing protections for threatened species, NMFS adopt a similar default or blanket 4(d) rule, so that all species are afforded the same protective and precautionary approach to their conservation.

Sincerely,

Center for Biological Diversity
Defenders of Wildlife
Natural Resources Defense Council
Earthjustice