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September 27, 2018

Dear Senator:

We write in opposition to Section 1246 of H.R. 302, the FAA Reauthorization Act of 2018, which unnecessarily harms the integrity of the Endangered Species Act and will set back the recovery of the endangered Southern Resident Killer Whales, as well as threatened and endangered species of salmon and steelhead in Oregon. Section 1246 requires that the Federal Emergency Management Agency (FEMA) delay its implementation of a 2016 biological opinion completed by the National Marine Fisheries Service. The opinion determined that FEMA's implementation of the National Flood Insurance Program was putting Southern Resident killer whales and 16 species of salmon and steelhead in jeopardy of extinction, and it recommended a series of conservation measures that would allow the agency to fulfil its mandate to implement the flood insurance program while protecting endangered species from substantial harm. Section 1246 gives FEMA three extra years to comply with this biological opinion, putting these species at even greater risk of extinction due to this unnecessary delay. **We strongly urge you to remove this provision from the bill.**

Like every federal agency, FEMA has an obligation under Section 7 of the Endangered Species Act and its implementing regulations to ensure that the harms caused by the National Flood Insurance Program do not put endangered wildlife on a path to extinction or destroy their critical habitat. This critical statutory mandate to avoid causing extinction is realized through the consultation process with either the U.S. Fish and Wildlife Service or National Marine Fisheries Service. In this case, the Fisheries Service — using the best available science — determined FEMA's implementation of the National Flood Insurance Program was putting salmon, steelhead and killer whales at risk, and set forth a series of Reasonable and Prudent Alternatives (RPAs) that would avoid jeopardy for these species.

A primary purpose of the National Flood Insurance program is to encourage state and local governments to make appropriate land use adjustments to constrict development of land which is vulnerable to flooding, minimize flood damage and guide future development away from areas

threatened by flood hazards. Endangered Species Act consultations have — in Florida and Washington state — helped steer development away from areas that are vitally important to endangered species. In many cases, sensitive wildlife habitat overlaps with areas that are most risky to develop due to flooding and storm risks. Indeed, given the hugely determinative nature of the availability of federal flood insurance, FEMA's implementation of the National Flood Insurance Program is often critically important in decisions whether to build in an area that is habitat for endangered species.

In the past, ESA consultation on FEMA's implementation of the National Flood Insurance Program in the Florida Keys and in Washington state have highlighted significant flood risks associated with erosion and channel migration – providing strong incentives for communities to strengthen their efforts to implement cost-saving and risk-reducing floodplain management actions. And if given the chance, FEMA could improve and reform its practices in Oregon to achieve similar success – both for endangered wildlife and for reasonable development.

Delays will not increase the likelihood that FEMA will take its obligations to protect endangered species more seriously. Instead the more likely result is that FEMA will delay implementation hoping that Congress will continue to allow the agency to kick the can down the road. We are encouraged that Section 1246 at least requires some reporting to Congress, but that does not compensate for the loss of momentum on the ground in Oregon to reform and improve development planning in areas that are at high risk of flooding.

Time is of the essence for wildlife like the highly endangered Southern Resident Killer Whales. Recent science shows that these whales travel extensively along the West Coast during the winter and early spring, congregating near coastal rivers to rest and feed on migrating salmon. The Southern Resident population is now down to just 74 individuals and has had no breeding success in the last few years. Without healthy salmon populations in Oregon, these whales do not have a future. Saving these whales requires urgent and immediate action, not three more years of agency intransigence.

The National Flood Insurance Program has an unfortunate track record of enabling development of hazardous, flood prone and environmentally-sensitive areas, with adverse social and economic consequences. Structures damaged due to flooding have been repeatedly rebuilt in the same location. Continued development in floodplains, wetlands and vulnerable coastal areas degrades the landscape's ability to act as a natural buffer to the impacts of storms and sea level rise, both of which are being exacerbated by climate change. Congress should consider ways to strengthen the program nationwide — in accordance with our bedrock environmental laws — rather than allowing FEMA to ignore its responsibility to ensure that wildlife in Oregon wildlife or anywhere in our nation are protected.

This process has already stretched over nearly a decade. FEMA agreed to enter into consultation over the NFIP's impacts to listed species in 2010. The BiOp was not released until 2016 in large part due to delays and extra process and review made at the behest of FEMA. The BiOp provided an extremely generous timeline for implementation. It is time to move expeditiously forward.

We strongly urge you to reject section 1246 of H.R. 302 and instead hold FEMA accountable to meeting its responsibilities under the Endangered Species Act.

Thank you for your consideration.

Sincerely,

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Blue Sphere Foundation
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Columbia Riverkeeper
Defenders of Wildlife
Delaware Ecumenical Council on Children and Families
Earthjustice
Endangered Habitats League
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Friends of the Earth
Friends of the WI Wolf & Wildlife
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Gulf Restoration Network
Howling For Wolves
Inland Ocean Coalition
International Marine Mammal Project of Earth Island Institute
League of Conservation Voters
National Audubon Society
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Save Wolves Now Network
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Turtle Island Restoration Network
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