



July 21, 2026

BY FEDERAL EXPRESS

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Re: Notice of Violations of the Endangered Species Act: Blanket 4(d) Repeal Rule

Greetings:

On behalf of Sierra Club, WildEarth Guardians, National Parks Conservation Association, Conservation Council of Hawai'i, and Humane World for Animals,¹ we ask that you take immediate action to remedy ongoing violations of the Endangered Species Act ("ESA" or "the Act") by the Department of the Interior and U.S. Fish and Wildlife Service ("FWS") in issuing on July 21, 2026 a final rule repealing the ESA Blanket § 4(d) Rule. 91 Fed. Reg. 45723 (July 21, 2026) ("Blanket 4(d) Repeal Rule").

FWS is violating Section 7(a)(2) of the ESA by engaging in action that "may affect" ESA-listed species without having first engaged in consultation under the ESA. 50 C.F.R. § 402.14(a); *see also* 16 U.S.C. § 1536(a)(2) (requiring consultation). Moreover, implementation of the revised regulation during consultation or prior to initiation of consultation constitutes a violation of Section 7(d) of the Act, which prohibits the "irretrievable commitment of resources" pending completion of consultation. *Id.* § 1536(d). For the Agency's failure to consult, this letter constitutes notice in accordance with Section 11(g) of the ESA, 16 U.S.C. § 1540(g).

FWS is also violating ESA Section 4 by adopting a regulation that is manifestly contrary to the text and purpose of the Act. While a challenge to the Agency's adoption of this regulation arises under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, out of an abundance of caution, we are also noticing those violations in this 60-day notice letter prior to bringing legal claims.

¹ A list of these organizations' business addresses is appended.

I. BACKGROUND

On July 21, 2026, the FWS issued a final regulation changing how the agency implements Section 4(d) of the ESA (16 U.S.C. § 1533). *See* 91 Fed. Reg. 45723.

Section 4(d) of the ESA directs the FWS to promulgate regulations necessary to provide for the conservation of species listed as threatened under the Act in order to prevent those species from sliding into more serious endangered status or extinction. 16 U.S.C. § 1533(d). With the exception of a short-lived rule during the first Trump Administration, the FWS has—for the past 50 years—effectuated the 4(d) mandate through the “Blanket 4(d) Rule.” The Blanket 4(d) Rule provides that species listed as threatened are subject to the same protections as species listed as endangered. Under the Blanket 4(d) Rule, the FWS retains the ability to develop tailored species-specific rules, but the blanket rule provides a protective default that effectuates Congress’s intent that threatened and endangered species be conserved. In the absence of that default, threatened species would not receive the protection needed to conserve their populations during the often-multi-year period it takes FWS to develop species-specific rules.

The FWS’s new rule abandons this commonsense approach and repeals the Blanket 4(d) Rule, depriving newly listed threatened species of protection unless and until the agency develops species-specific rules. This change threatens to harm currently listed and future threatened and endangered species and undermines the fundamental purpose of the ESA to conserve threatened species and “to provide a means whereby the ecosystems upon which . . . threatened species depend may be conserved....” 16 U.S.C. § 1531(b).

II. FWS VIOLATED THE ESA BY FAILING TO CONSULT ON THE 2026 REPEAL OF THE BLANKET 4(D) RULE.

A. Legal Framework

Under ESA Section 7(a)(2), “[e]ach federal agency shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” 16 U.S.C. § 1536(a)(2). This obligation to “insure” against a likelihood of jeopardy or adverse modification requires the agencies to give the benefit of the doubt to endangered species and to place the burden of risk and uncertainty on the proposed action. *See Sierra Club v. Marsh*, 816 F.2d 1376, 1386 (9th Cir. 1987). The substantive duty imposed by Section 7(a)(2) is constant, relieved only by an exemption from the Endangered Species Committee. 16 U.S.C. § 1536(h); *Conner v. Burford*, 848 F.2d 1441, 1452 n.26 (9th Cir. 1988).

Section 7 establishes an interagency consultation process to assist federal agencies in complying with their duty to ensure against jeopardy to listed species or destruction or adverse

modification of critical habitat. An agency must initiate consultation with NMFS or FWS under Section 7 whenever it takes an action that “may affect” a listed species. *See* 50 C.F.R. § 402.14(a). Agency actions subject to consultation include actions taken by the Services themselves. *See* FWS and NMFS, Endangered Species Act Consultation Handbook 1-5 to 1-6, App. E (1998) (describing Intra-Service Section 7 Consultation requirements), *available at* <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>. Different offices within the Services have consulted with the Endangered Species office of FWS or the NMFS Office of Protected Resources when the Services’ own actions “may affect” a listed species or critical habitat.

Regulations implementing Section 7 broadly define the scope of agency actions subject to consultation. *See* 50 C.F.R. § 402.02 (definition of action). “Examples include, but are not limited to: . . . (b) promulgation of regulations.” *Id.* The Ninth Circuit Court of Appeals has construed the term “action” broadly. *See Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1054-55 (9th Cir. 1994); *Conner*, 848 F.2d at 1453; *see also Nat’l Wildlife Fed’n v. FEMA*, 345 F. Supp. 2d 1151, 1169 (W.D. Wash. 2004).

As a result of consultation, the federal agency will obtain either a written concurrence letter from NMFS or FWS that the proposed action is “not likely to adversely affect” listed species or their habitat, 50 C.F.R. §§ 402.13, 402.14(b)(1), or a biological opinion evaluating the effects of the federal action on listed species and their critical habitat. 50 C.F.R. § 402.14; *see generally Thomas v. Peterson*, 753 F.2d 754, 763 (9th Cir. 1985). If NMFS or FWS concludes that a proposed action is likely to jeopardize a listed species or result in adverse modification of its critical habitat, NMFS or FWS must propose a reasonable and prudent alternative, if available, that will mitigate the proposed action so as to avoid jeopardy and/or adverse modification of critical habitat. 16 U.S.C. § 1536(b)(3)(A).

Section 7(a)(2) also requires agencies to use the best available science in discharging their Section 7 duties: “In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2).

Separately, ESA Section 7(d) prohibits federal agencies, after the initiation of consultation under ESA Section 7(a)(2), from making any irreversible or irretrievable commitment of resources if doing so would foreclose the implementation of reasonable and prudent alternatives. 16 U.S.C. § 1536(d); *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1128 & n.6 (9th Cir. 1998) (Section 7(d) violated where Bureau of Reclamation executed water service contracts prior to completion of formal consultation); *Marsh*, 816 F.2d at 1389 (construction of highway outside species habitat barred by Section 7(d) pending completion of consultation). This prohibition is not an exception to the requirements of Section 7(a)(2); it is in addition to the requirements of Section 7(a)(2), and it ensures that Section 7(a)(2)’s substantive mandate is met. *See, e.g., Pac. Rivers Council*, 30 F.3d at 1056-57; *Defs. of Wildlife v. Jackson*, 791 F. Supp. 2d 96, 113 (D.D.C. 2011).

B. FWS's Failure to Consult on the Blanket 4(d) Repeal Rule, Which "May Affect" Threatened and Endangered Species and Adversely Modify Their Designated Critical Habitat, Violates Section 7(a)(2).

The threshold for a "may affect" determination and required ESA Section 7 consultation is low. *See* 51 Fed. Reg. 19926, 19949 (June 3, 1986) ("Any possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."). Promulgation and implementation of the Blanket 4(d) Repeal Rule unquestionably "may affect" threatened and endangered species and their designated critical habitat. *See Nat'l Wildlife Fed'n*, 345 F. Supp. 2d at 1176 (responding to FEMA argument that the flood insurance program itself did not affect salmon by noting "[t]he regulations implementing Section 7(a)(2) of the ESA require an action agency to consider 'the effects of the action as a whole'" (quoting 50 C.F.R. § 402.14(c))).

The Blanket 4(d) Repeal Rule removes the default protections for newly listed threatened species, including the presumption that those species will receive protection from take, which will adversely affect those species. Yet the Service concedes that it did not consult under ESA § 7(a)(2) on the issuance or implementation of the Blanket 4(d) Repeal Rule. *See* 91 Fed. Reg. at 45736 (asserting FWS is not required to consult with itself in its "role as administrator of the ESA").

C. FWS's Violation of ESA Section 7(d)

Acting in reliance on the Blanket 4(d) Repeal Rule prior to the completion of consultation also violates ESA Section 7(d)'s prohibition on the irreversible or irretrievable commitment of resources pending completion of Section 7 consultation. *Id.* § 1536(d). FWS may not use the revised regulation until the agency completes consultation, using the best available science, and ensures the revised regulation will not jeopardize species or harm critical habitat.

III. FWS VIOLATED THE APA BY ISSUING THE BLANKET 4(D) REPEAL RULE CONTRARY TO THE SPIRIT, PURPOSE, AND TEXT OF THE ESA.

A. Legal Framework

Congress enacted the ESA "to provide a program for the conservation of . . . endangered species and threatened species" and "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). The ESA's goal is recovery of listed species to the point where they no longer need ESA protection. *See Id.* §§ 1531(b)–(c), 1532(3). An "examination of the language, history, and structure [of the ESA] indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978).

As the first step in the protection of these species, Section 4 of the ESA requires the Secretary to list species as endangered or threatened when they meet the statutory listing criteria.

16 U.S.C. § 1533. A species is “endangered” when it “is in danger of extinction throughout all or a significant portion of its range,” and it is “threatened” when it is likely to become endangered within the foreseeable future. *Id.* § 1532(6), (20). The Secretaries of the Interior (for most terrestrial and freshwater species) and Commerce (for most marine species) are charged with listing a species as threatened or endangered whenever listing is warranted based on any one of five enumerated statutory factors, *Id.* § 1533(a)(1)(A)-(E), using the “best scientific and commercial data available.” *Id.* § 1533(b). At the same time as a species is listed as threatened or endangered, the Services must designate and protect critical habitat for the species, subject to certain exceptions. *Id.* § 1533(a)(3), (b)(2).

The listing of a species as endangered under the ESA triggers prohibitions under section 9 of the Act, 16 U.S.C. § 1538, including the prohibition on the “take,” of species, which is defined to include “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19); *see also* 50 C.F.R. § 17.3 (harm means “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”).

When a species is listed as threatened, the ESA directs FWS and the National Marine Fisheries Service (“NMFS”) to issue “such regulations as [the agencies] deem[] necessary and advisable to provide for the conservation of such species.” 16 U.S.C. § 1533(d). The agency regulations for threatened species may prohibit any act prohibited by the ESA with regard to endangered species. *Id.*

B. FWS Repeal of the Blanket 4(d) Rule

In 1975, only two years after Congress enacted the ESA, FWS exercised its authority and responsibility under section 4(d) to extend the prohibition on “take” in section 9 of the ESA to all threatened species. 50 C.F.R. § 17.31(a) (2018); 40 Fed. Reg. 44412, 44425 (Sept. 26, 1975). Thus, by default, all threatened species would receive all of the “anti-take” protections provided to endangered species, unless FWS promulgated a species-specific rule that changed those protections.

Colloquially referred to as the “Blanket 4(d) Rule,” this approach was upheld by the D.C. Circuit against claims that it was ultra vires and contrary to the plain language of the ESA. *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 5-8 (D.C. Cir. 1993), *rev’d on other grounds*, 515 U.S. 687 (1995).

In promulgating this Blanket 4(d) Rule, FWS found that presumptively providing threatened species with “take” protection, rather than reserving it solely for endangered species facing imminent extinction, allowed the agency to work towards halting the slide of threatened species to endangered status. In addition, this approach allowed the agency to protect threatened species while working on a species-specific rulemaking. FWS noted that the presumption of

complete protection, along with the ability to tailor protections if need be with a species-specific 4(d) rule, constituted “the cornerstone of the system for regulating threatened wildlife.” 40 Fed. Reg. at 44414.

Since 1975, FWS has listed over 300 species as threatened and applied the Blanket 4(d) Rule to them. Of that number, less than a quarter later received species-specific 4(d) rules.

In 2019, FWS amended 50 C.F.R. §§ 17.31 and 17.71 to eliminate the Blanket 4(d) Rule, meaning any species listed or reclassified as threatened in the future “would have protective regulations only if the Service promulgates a species-specific rule.” 84 Fed. Reg. 44753 (Aug. 27, 2019). A coalition of seven conservation organizations, a group of states and cities, and an animal rights organization each filed suit in the Northern District of California challenging the 2019 repeal of the Blanket 4(d) Rule as well as a host of other changes to the ESA regulations. After the FWS announced its intention to revise the challenged rule, the court remanded it without vacatur. *Ctr. for Biological Diversity v. Haaland*, 641 F. Supp. 3d. 835, 842 (N.D. Cal. 2022). In 2024, the FWS reinstated the Blanket 4(d) Rule. 89 Fed. Reg. 23919 (April 5, 2024).

The FWS has again revised its regulations to repeal the Blanket 4(d) Rule. 91 Fed. Reg. 45723 (July 21, 2026). The agency asserts that repealing the blanket rule and requiring that any protections for threatened species be established through species-specific rules is the “superior choice” because it: (1) “ensures that the Service will thoughtfully consider the protections that are necessary and advisable for the conservation of each threatened species”; (2) makes better use of FWS’s limited personal and fiscal resources; (3) aligns FWS with the approach to this issue adopted by the National Marine Fisheries Service (“NMFS”) for marine species. *Id.* at 45724-25. In addition to removing the blanket rule, the FWS modified the standards applicable to species-specific 4(d) rules, requiring a determination that the terms of each such rule are “necessary and advisable” based on consideration of economic as well as conservation impacts. *Id.* at 45725 (codified at § 17.31(d), § 17.71(d)).

C. FWS’s Repeal of the Blanket 4(d) Rule Is Contrary to the ESA

The FWS’s repeal of the Blanket 4(d) Rule and imposition of a “necessary and advisable” determination in each species-specific rule is contrary to the text and intent of the ESA. and does not represent the best reading of Section 4(d) under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

Here, the “traditional tools” of statutory interpretation—the text, context, legislative intent, and agency interpretations proffered close in time to enactment of the statute—all demonstrate that the Blanket 4(d) Repeal Rule is not the best interpretation of the Section 4(d) of the ESA. *Loper Bright Enters. v. Raimondo*, 603 U.S. at 401; *see also id.* at 388 (noting “the informed judgment of the Executive Branch—especially in the form of an interpretation issued contemporaneously with the enactment of the statute—could be entitled to ‘great weight’”

(quoting *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 549 (1940))); *id.* (noting the weight afforded an agency interpretation depends, in part, on “its consistency with earlier and later pronouncements”).

Congress was clear when it enacted the ESA that it intended the Service to take proactive measures to protect and conserve threatened species *before* they become endangered. *See, e.g.*, 16 U.S.C. § 1531(b) (The purpose of the ESA includes “to provide a program for the conservation of . . . threatened species.”); *id.* at § 1531(c)(1) (“[A]ll Federal departments and agencies shall seek to *conserve* endangered species and *threatened* species and shall utilize their authorities in furtherance of the purposes of [the ESA].” (emphasis added)). Repealing the Blanket 4(d) Rule is contrary to that language and policy: it affirmatively removes protections for threatened species, making it more likely that newly listed or reclassified threatened species will trend towards endangered status while a species-specific rule is developed.

The requirement that FWS make a determination that each species-specific 4(d) rule is “necessary and advisable” based on factors other than conservation is also inconsistent with the text and purpose of the ESA. First, the ESA does not constrain FWS’s authority to issue protective regulations only to regulations that provide the minimum protection necessary for a species’ conservation. To the contrary, the ESA *requires* FWS to immediately institute the necessary protections *and* allows it to go further in applying any or all of the prohibitions of Section 9, regardless of whether they are “necessary” for conservation. 16 U.S.C. § 1533(d). As the D.C. Circuit explained when it upheld the Blanket 4(d) Rule 30 years ago: “[T]he two sentences of § 1533(d) represent separate grants of authority. The second sentence gives the FWS discretion to apply any or all of the § 1538(a)(1) prohibitions to threatened species without obligating it to support such actions with findings of necessity.” *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 7–8 (D.C. Cir. 1993), *opinion modified on reh’g*, 17 F.3d 1463 (D.C. Cir. 1994), *rev’d on other grounds*, 515 U.S. 687 (1995). Second, FWS assertion that it must consider economic factors when determining whether protective regulations are “advisable” is wholly inconsistent with the ESA’s plain language, which requires the agency to enact protective regulations that are “necessary and advisable *to provide for the conservation of such species*.” 16 U.S.C. § 1533(d) (emphasis added). The Act defines “conservation” as the “use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measure provided pursuant to this chapter are no longer necessary”—in other words, to recovery. *Id.* § 1532(3). Not only does this definition make no mention of considering economic factors it indicates that conservation encompasses whatever is necessary to recover a species, regardless of cost.

The legislative history also supports the Blanket 4(d) Rule, illustrating that the purpose of creating a separate designation for species that are “threatened,” in addition to species that are “endangered,” was to try to “regulate these animals before the danger becomes imminent while long-range action is begun.” S. Rep. No. 93-307, at 3 (1973), *reprinted in* Legislative History of the Endangered Species Act of 1973, as Amended in 1976, 1977, 1978, 1979, and 1980, at 302 (“Leg. Hist.”). Congress gave FWS the authority to protect species which are “likely to become

an endangered species within the foreseeable future,” 16 U.S.C. § 1532(20), so the agency could “regulate trade, prevent taking, and provide for habitat acquisition for those species before they actually become extinct.” 119 Cong. Rec. 30164 (1973). In doing so, Congress provided “[g]reater flexibility” through the ability to issue species-specific 4(d) rules, “while at the same time additional means of protection, conservation, and management is permitted and required.” *Id.* As one court explained, “the legislative history of the ESA contains ample expressions of Congressional intent that preventive action to protect species be taken sooner rather than later.” *Defs. of Wildlife v. Babbitt*, 958 F. Supp. 670, 680 (D.D.C. 1997) (citing Leg. Hist. at 144, 204, 205 (H.R. Rep. No. 93-412, at 5 (1973))).

The Blanket 4(d) Rule is also consistent with FWS’s long-standing interpretation of Section 4(d) and thus entitled to “great weight.” *Loper Bright*, 603 U.S. at 388. Indeed, aside from the short-lived 2019 Rule, the FWS has always understood the best reading of 4(d) to be that applying the protections available to endangered species by default upon the listing of threatened species provides essential protection from threats that led to the species’ threatened status and helps prevent further declines while the agency determines if a species specific rule is needed. Most species face multiple threats, many of which are not entirely understood at the time of listing. The Blanket 4(d) Rule gives the agency the ability to quickly address threats as they arise and new science emerges, without having to develop a new set of regulations in response to every new threat or scientific finding. Moreover, immediate protection under the blanket rule is essential for species threatened by collection, trade, or malicious take.

In sum, FWS’s Blanket 4(d) Rule—in place for the past 50 years—represents the best reading of the statute, and FWS’s repeal is contrary to the ESA.

D. FWS’s Repeal of the Blanket 4(d) Rule Is Arbitrary and Capricious

The touchstone of arbitrary-and-capricious review is whether an agency “engage[d] in reasoned decisionmaking.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020). Agency action is arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider”; “entirely failed to consider an important aspect of the problem”; “offered an explanation for its decision that runs counter to the evidence before [it]”; or “is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). When an agency changes position on a matter, it must also “display awareness that it is changing position” and offer “good reasons” for doing so. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Agencies must provide “a more detailed justification” if the new position “rests upon factual findings that contradict those which underlay its prior policy” or undermines “serious reliance interest.” *Id.* Failing to do so renders a decision arbitrary and capricious. *Id.*

FWS claims the Blanket 4(d) Repeal Rule is a “superior choice from a policy perspective” as it “mak[es] better use of our limited personnel and fiscal resources” and is “intended to allow the Service to better protect threatened species.” 91 Fed. Reg. at 45725. This

explanation is contrary to the record and represents an unexplained change in position. FWS currently faces a backlog of more than 500 species awaiting decisions about their protection. Repealing the Blanket 4(d) Rule will only increase that administrative backlog. According to FWS's 2018 Draft Effect Data for the Revision of the Regulations for Listing Species and Designating Critical Habitat, FWS has historically listed approximately 8 species as threatened every year, and of those it has developed species-specific 4(d) rules for an average of 1.8 species per year and invoked the Blanket 4(d) Rule protections for an average of 6.8 species per year. Thus rather than reducing the agency's workload, repealing the Blanket 4(d) Rule adds to it an average 6.8 additional time and resource intensive species-specific 4(d) rules per year. Indeed, in reinstating the Blanket 4(d) Rule only two years ago the FWS explained that the blanket rule would be more efficient. 89 Fed. Reg. at 23921. The FWS provides no reasoned explanation for its sudden contrary conclusion.

Nor does repeal better protect species than the Blanket 4(d) Rule. In the absence of the Blanket 4(d) Rule as backstop, newly listed threatened species will be left to languish without any defined protections unless and until the Agency completes species-specific 4(d) rules for them. Even if a species-specific 4(d) rule might be better for a given species once it is developed, FWS provides no rational explanation of why the Blanket 4(d) Rule should not be used as a default to conserve threatened species until a tailored species-specific 4(d) rule can be developed. Indeed, only two years ago, FWS adopted precisely this approach, explaining that the blanket rule "ensures there is never a lapse in threatened species protections. If we do not promulgate a species-specific 4(d) rule at the time of listing, the "blanket rule" protections will be in place to provide for the conservation of that threatened species." *Id.* The FWS fails to provide a reasoned explanation for its departure from this common-sense conclusion.

FWS also claims that repeal of the Blanket 4(d) Rule is supported by the need to adopt an approach "in line" with the NMFS's practice of developing species specific 4(d) rules. 91 Fed. Reg. at 45725. But conforming to NMFS's approach is inconsistent with FWS's professed goals of increasing efficiency and increasing protection of threatened species. For example, with regard to efficiency, even though NMFS has a substantially smaller caseload of threatened and candidate threatened species than FWS, NMFS still has failed to promulgate necessary species-specific 4(d) regulations for more than 40 percent of the threatened species under its purview. Nor is NMFS's approach providing protection of threatened species consistent with the ESA. For example, NMFS listed the oceanic whitetip shark as a threatened species in 2018, but did not issue a 4(d) rule, suggesting it might do so at a later date. 83 Fed. Reg. 4153, 4163 (Jan. 30, 2018). NMFS finally proposed that rule in 2024, recognizing that ESA protective regulations were necessary for the species' conservation, but never finalized it. 89 Fed. Reg. 41917 (May 14, 2024). NMFS similarly has failed to promulgate species-specific 4(d) rules for the 20 species of coral that it listed as threatened in 2014. *See* 79 Fed. Reg. 53852 (Sept. 10, 2014). FWS's asserted need to align its rules with NMFS's approach to threatened species is irrational on its face.

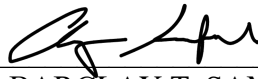
In short, FWS's Blanket 4(d) Repeal Rule is arbitrary and capricious because it is contrary to the evidence before the agency, an unexplained change in position, and contrary to reasoned decision-making.

IV. CONCLUSION

In promulgating the Blanket 4(d) Repeal Rule, FWS has violated and remains in ongoing violation of the ESA and its implementing regulations. If FWS fails to cure these violations within 60 days of receiving this letter, the named organizations intend to seek to remedy these violations by filing legal claims against FWS for declaratory and injunctive relief. *See* 16 U.S.C. § 1540(g).

If you believe any of the foregoing is in error, have any questions, or would like to discuss this matter, please do not hesitate to contact me.

Sincerely,



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