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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

SIERRA CLUB; WILDEARTH
GUARDIANS; NATIONAL PARKS
CONSERVATION ASSOCIATION;
HUMANE WORLD FOR ANIMALS;
CONSERVATION COUNCIL FOR
HAWAII; and SAVE THE MANATEE
CLUB,

Plaintiffs,

vs.

DOUGLAS BURGUM, U.S. Secretary of
the Interior; and U.S. FISH AND
WILDLIFE SERVICE,

Defendants.

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) Case No. CV-26-112-BU-JTJ
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)

) **COMPLAINT FOR**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF**
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INTRODUCTION

1. Plaintiffs Sierra Club, WildEarth Guardians, National Parks Conservation Association, Humane World for Animals, Conservation Council for Hawai‘i, and Save the Manatee Club (collectively, “Plaintiffs”) challenge the U.S. Fish and Wildlife Service’s promulgation of a new rule implementing section 4(d) of the Endangered Species Act, 16 U.S.C. § 1533(d), which unlawfully strips vital protections from species listed as threatened under the Act. Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 91 Fed. Reg. 45723 (July 21, 2026) (“Blanket 4(d) Repeal Rule”). Defendants Douglas Burgum, United States Secretary of the Interior, and U.S. Fish and Wildlife Service promulgated the Blanket 4(d) Repeal Rule in violation of governing statutory language, without rationally explaining their departure from longstanding administrative precedent, and in disregard of environmental analysis requirements imposed by governing law. Accordingly, this Court should invalidate and set aside the challenged rule.

2. Congress enacted the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 *et seq.*, in 1973 to declare our nation’s commitment to the conservation of threatened and endangered species and their habitat—the forests, grasslands, prairies, rivers, and seas these species need to survive. Congress specifically gave “conservation” a sweeping definition—the use of all methods and procedures

necessary to recover threatened and endangered species so that they no longer need the Act's protections. *Id.* § 1532(3). The ESA works, in significant part, by placing the survival and recovery of imperiled animals and plants at the forefront of every federal action and decision. Since its enactment, the ESA has prevented the extinction of 99% of the species under its protection.

3. Aside from a short-lived and quickly abandoned rule during the first Trump administration, the Department of the Interior, acting through the U.S. Fish and Wildlife Service ("FWS"), has utilized a "blanket" approach to protect species listed as "threatened" under the ESA for more than 50 years. Under this approach, when FWS first determines a species is threatened—meaning it is likely to become endangered within the foreseeable future—the protections the ESA provides to more highly imperiled endangered species are automatically extended to the threatened species. This approach, described as the "Blanket 4(d) Rule," establishes a default set of core legal protections to arrest a threatened species' slide toward endangered status. FWS can then, as needed, tailor such protections through species-specific rules.

4. FWS's new ESA section 4(d) rule turns this process on its head, repealing the Blanket 4(d) Rule so that threatened species receive no protection at all unless and until FWS adopts individual species-specific rules.

5. Because FWS faces a long backlog of ESA species reviews and has

recently seen its staff and budget for completing those reviews drastically cut, species-specific protective rules are likely to be considerably delayed under this approach—if they are issued at all. Moreover, the new Rule makes it less likely that any species-specific rules that FWS actually issues will be adequately protective of species by impermissibly injecting consideration of economic costs into the rulemaking process.

6. The Blanket 4(d) Repeal Rule is contrary to the plain language and intent of the ESA, and, in promulgating it, FWS failed to provide any rational explanation for abandoning its long-standing policy, rendering the Rule arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2).

7. In addition, in promulgating the Blanket 4(d) Repeal Rule, FWS failed to consider and disclose the regulation’s significant environmental impacts, in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.* The Blanket 4(d) Repeal Rule is a major federal action that will significantly impact the human environment by removing important protections that are essential to the conservation of threatened species. Therefore, it does not qualify for any categorical exclusion from full NEPA analysis, yet FWS purported to apply such an exclusion to avoid requisite analysis in promulgating the rule.

8. FWS also failed to undertake mandatory intra-agency consultation under ESA section 7(a)(2), 16 U.S.C. § 1536(a)(2), prior to promulgating the Blanket 4(d) Repeal Rule. Section 7 consultation provides a vital check on the biological impacts and risks that stem from federal regulatory actions that may affect ESA-listed species or their critical habitat—including actions by FWS itself, such as the Blanket 4(d) Repeal Rule.

9. Accordingly, Plaintiffs turn to this Court for relief. To remedy Defendants’ violations of law, Plaintiffs seek an order (1) declaring the Blanket 4(d) Repeal Rule invalid, (2) vacating the Blanket 4(d) Repeal Rule, (3) enjoining FWS from applying or otherwise relying on the Blanket 4(d) Repeal Rule, and (4) reinstating the prior regulation extending “blanket” legal protections to species listed as threatened under the ESA.

JURISDICTION AND VENUE

10. Plaintiffs bring this action under the APA, 5 U.S.C. §§ 701-706, and the ESA, 16 U.S.C. § 1540(g)(1), which waive the Defendants’ sovereign immunity. This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1331 (actions under the laws of the United States), 28 U.S.C. §§ 2201-2202 (power to issue declaratory judgments in cases of actual controversy), and 16 U.S.C. § 1540(g)(1) (citizen suits under the ESA).

11. Venue is properly vested in this judicial district under 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because this is a civil action in which officers or employees of the United States or an agency thereof are acting in their official capacities or under color of legal authority, the Plaintiffs have members and offices in this district, and many of the consequences of the Defendants' violations of the laws giving rise to the claims articulated in this Complaint occurred or will occur in this district. Further, related litigation challenging the same agency action is proceeding in this district. *See Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, No. 2:25-cv-00029-DWM (D. Mont. filed Mar. 10, 2025) (formerly *Rocky Mountain Elk Found. v. U.S. Dep't of the Interior*).

12. The challenged agency action is final and subject to this Court's review under the APA, 5 U.S.C. §§ 701-706, and the ESA, 16 U.S.C. § 1540(g). To the extent required by the ESA, 16 U.S.C. § 1540(g)(2), Plaintiffs Sierra Club, WildEarth Guardians, National Parks Conservation Association, Humane World for Animals, and Conservation Council for Hawai'i provided 60 days' notice of their intent to sue to defendants Secretary of the Interior Burgum and U.S. Fish and Wildlife Service on July 22, 2026. Defendant Save the Manatee Club provided 60 days' notice of its intent to sue to defendants Secretary of the Interior Burgum and U.S. Fish and Wildlife Service on August 22, 2026.

PARTIES

Plaintiffs

13. Plaintiff Sierra Club is one of the oldest environmental organizations in the United States. Sierra Club is incorporated in the State of California as a Nonprofit Public Benefit Corporation with headquarters in Oakland, California. The organization has almost 600,000 members nationwide, and local chapters across the country, including in Montana, where Sierra Club has 2,534 members. Sierra Club is dedicated to protecting and preserving the natural and human environment. Its purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. Its mission includes engaging its members and the public to protect public lands, wildlife, and wildlife habitat, and it has been a longtime, active public advocate for imperiled wildlife.

14. When FWS proposed to revise its ESA regulations, including repealing the Blanket 4(d) Rule, the Sierra Club submitted extensive comments opposing the proposed changes. In addition, over 17,000 Sierra Club members and constituents submitted individual comments.

15. Sierra Club has a long history of advocacy under the ESA on behalf of imperiled species and their habitat. For example, in 2019 Sierra Club joined with

other environmental groups to successfully challenge FWS and National Marine Fisheries Service's 2019 and 2024 revisions to their ESA regulations. *See Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 837 F. Supp. 3d 1080 (N.D. Cal. 2026), *appeal filed*. Sierra Club also joined with other environmental groups to successfully challenge FWS's 2024 decision not to list a distinct population segment of gray wolves in the Western United States as threatened or endangered. *See Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv.*, 801 F. Supp. 3d 1151 (D. Mont. 2025), *appeal filed*.

16. Sierra Club has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying imperiled species in their native ecosystems, including, among others, the Gray Wolf (*Canis lupus*), Florida Key deer (*Odocoileus virginianus clavium*), Canada lynx (*Lynx canadensis*), Black-footed ferret (*Mustela nigripes*), Whooping crane (*Grus americana*), and Gulf sturgeon (*Acipenser oxyrhynchus desotoi*). Sierra Club members have specific intentions to continue to interact with these and other threatened, endangered, or imperiled species and their habitat on an ongoing basis into the future.

17. Sierra Club also has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying the habitat of

many species for which FWS has found there to be substantial information that listing the species as threatened or endangered under the ESA may be warranted, but the Service has not yet made a final listing decision. These include, among others, the western bumble bee (*Bombus occidentalis*), monarch butterfly (*Danaus Plexippus*), pygmy rabbit (*Brachylagus idahoensis*), pinyon jay (*Gymnorhinus cyanocephalus*), and Florida manatee (*Trichechus manatus latirostris*). Sierra Club's members have specific intentions to continue to interact with such species and their habitat on an ongoing basis into the future. Sierra Club's members will suffer concrete harm if FWS lists these species as threatened without the protections of the Blanket 4(d) Rule, or with species-specific rules that rest on factors other than conservation of the species.

18. Sierra Club also has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying the habitat of many species that are currently listed as endangered or as threatened and protected by the Blanket 4(d) Rule. These include the Florida panther (*Puma concolor coryi*) and the crested caracara (*Caracara planus audubonii*). Sierra Club's members have specific intentions to continue to interact with these species and their habitat on an ongoing basis into the future. Sierra Club's members will suffer concrete harm if FWS downlists species from endangered to threatened or revises a

threatened listing without the protections of the Blanket 4(d) Rule or with species-specific rules that rest on factors other than conservation of the species.

19. For example, Sierra Club has a member who lives in Montana and grows a pollinator garden with native plants at her home to support species such as the western bumblebee and the monarch butterfly. She enjoys supporting these species and viewing them in her garden and will continue to do so as long as she is able. She also enjoys viewing these species when she visits public lands near her home, including Flathead Lake, the Clearwater Chain of Lakes, the Clark Fork River, the Frank Church River of No Return Wilderness, and the North Fork of the Salmon River in Idaho. This member plans to continue visiting these areas in the future to enjoy opportunities to view species, including pollinators like the western bumblebee and the monarch butterfly. Her interests will be concretely harmed if the Blanket 4(d) Repeal Rule results in FWS finalizing the listing of the monarch butterfly or the western bumble bee as threatened without species-specific protections or with species-specific protections that rest on factors other than conservation of the species.

20. Another Sierra Club member lives in South Florida and has a long-standing interest in the wildlife of that region, including the Florida panther, the Florida manatee, and the crested caracara. She canoes or kayaks several times each winter in spring runs and warmwater refuges, and visits Blue Spring State Park, to

view manatees. She often visits Corkscrew Swamp Sanctuary, Crew Wildlife and Environmental Area, Okaloacoochee Slough State Forest, Big Cypress National Preserve, and the Florida Panther National Wildlife Refuge to try to spot caracara and Florida Panthers. She finds emotional sanctuary and stress relief in visiting these natural places and viewing the Florida panther, manatee, and caracara. She is also an advocate for these species, helping monitor threats to their habitat and drafting comments and testifying before state and federal agencies and county commission boards on proposals that affect the species and their habitats. This member plans to continue visiting the habitats of the Florida panther, manatee, and caracara to view these species, and to engage in advocacy on behalf of these species as long as she is able. Her interests will be concretely harmed if the Blanket 4(d) Repeal Rule results in FWS finalizing the listing of the Florida manatee as threatened without species-specific protections or with species-specific protections that rest on factors other than conservation of the species. Her interests will also be concretely harmed if FWS downlists the Florida panther from endangered to threatened, or revises the protections of the caracara, which is currently listed as threatened and is protected under the Blanket 4(d) Rule, and adopts species-specific protections that rely on factors other than conservation of the species.

21. Plaintiff WildEarth Guardians (“Guardians”) is a non-profit environmental organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians is incorporated in New Mexico and headquartered in Santa Fe, New Mexico with additional offices in Denver, Colorado; Missoula, Montana; Portland, Oregon; and Tucson, Arizona. Guardians has approximately 176,000 members and supporters nationwide, including 352 in Montana. Guardians and its members are concerned about protecting threatened and endangered species from extinction and extensively rely upon the ESA to ensure imperiled species receive the protections they need to survive and recover.

22. When FWS proposed to revise its ESA regulations, including repealing the Blanket 4(d) Rule, Guardians submitted extensive comments opposing the proposed changes.

23. Guardians has worked to successfully secure listings for more than 60 species under the ESA in the United States, including the gray wolf (*Canis lupus*), Mexican gray wolf (*Canis lupus baileyi*), grizzly bear (*Ursus arctos horribilis*), wolverine (*Gulo gulo*), Canada lynx (*Lynx canadensis*), Mexican spotted owl (*Strix occidentalis lucida*), Gunnison sage grouse (*Centrocercus minimus*), Rio Grande silvery minnow (*Hybognathus amarus*), yellow-billed cuckoo (*Coccyzus americanus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and

New Mexico meadow jumping mouse (*Zapus hudsonius luteus*). In addition, Guardians has petitioned to list more than 800 additional species as threatened or endangered under the ESA. FWS has yet to issue final decisions on many of these species.

24. Guardians has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying these and other imperiled species in their native ecosystems. Guardians' members have specific intentions to continue to interact with these and other imperiled species and their habitat on an ongoing basis into the future.

25. Guardians' members also derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying the habitat of many species for which FWS has found there to be substantial information that listing the species as threatened or endangered under the ESA may be warranted, but the Service has not yet made a final listing decision. These include, among others, the pygmy rabbit (*Brachylagus idahoensis*), eastern and western Joshua Tree (*Yucca jaegariana brevifolia*), and the "Moab-3" *Astragalus*, or milkvetch, species (*A. vehiculus*, *A. iselyi*, and *A. sabulosus*).

26. For example, Guardians has a member and employee who regularly travels to and recreates in sagebrush steppe ecosystems that provide suitable habitat for the pygmy rabbit. She visits these areas to camp, rock climb, trail run, and observe healthy sagebrush ecosystems and the native wildlife that depend on them, including the pygmy rabbit. Specifically, she frequently travels to central Oregon, including the Redmond and Brothers areas, to the City of Rocks National Preserve in Idaho, and to the public lands surrounding Lander, Wyoming, and seeks opportunities to observe pygmy rabbits in each of these areas. She intends to continue visiting these areas to recreate and look for pygmy rabbits in the future.

27. Guardians also has a member in California with a lifelong personal, recreational, and aesthetic connection to the Mojave Desert and Joshua Tree National Park. He travels to the Mojave Desert and Joshua Tree National Park approximately three to four times every year to hike, run, photograph native wildlife, and camp at specific locations, including Jumbo Rocks, Cottonwood Spring, and Mid Hills. The presence of the iconic Joshua tree is central to his recreational enjoyment and aesthetic experience of these landscapes, and he has a concrete intent to continue his regular schedule of visiting these specific desert locales multiple times per year.

28. Another Guardians' member lives in Utah, is on the Board of Directors for the Utah Native Plant Society, and regularly organizes native plant

hikes, conducts citizen science surveys, and monitors rare flora throughout Grand County, Utah. She has a deep personal and professional interest in the “Moab-3,” a group of rare milkvetch species endemic to the area around Moab, Utah. She first observed the stage station milkvetch (*A. vehiculus*) near Courthouse Rock in 2015 and recently returned to the site to monitor the population and its native pollinators. Additionally, in November 2021, she surveyed populations of Isely’s milkvetch (*A. iselyi*) in the La Sal National Forest following the Pack Creek Fire. She intends to regularly lead plant walks, search for the Cisco milkvetch (*A. sabulosus*), and monitor these specific *Astragalus* populations in the future.

29. The interests of these and other Guardians members will be concretely harmed if the Blanket 4(d) Repeal Rule results in FWS finalizing the listing of the pygmy rabbit, the Joshua tree or Moab-3 milkvetch species as threatened without species-specific protections or with species-specific protections that rest on factors other than conservation of the species, or if FWS delays the listing decision in order to prepare species-specific rules in conjunction with the listing decision.

30. Plaintiff Humane World for Animals (“Humane World”), formerly the Humane Society of the United States and the Humane Society International, is the nation’s largest animal protection organization. Humane World is a non-profit organization headquartered in Washington D.C., with regional offices throughout the United States. On behalf of its millions of members and constituents in

Montana and nationwide, Humane World works to promote the humane treatment of all animals and the protection and recovery of threatened and endangered species and their habitats. Humane World regularly advocates for threatened and endangered species through the ESA regulatory process, including by petitioning federal agencies to list and designate critical habitat for imperiled species and commenting on proposed regulatory actions. Both on its own and as part of a coalition of animal protection and conservation organizations, Humane World submitted comments opposing the repeal of the Blanket 4(d) Rule.

31. Humane World has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying imperiled species in their native ecosystems, including gray wolves (*Canis lupus*), grizzly bears (*Ursus arctos horribilis*), and wolverines (*Gulo gulo*). These members have specific intentions to continue to interact with these and other imperiled species and their habitat on an ongoing basis into the future.

32. Humane World also has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying the habitat of many of the over 500 species for which petitions to list the species as threatened or

endangered under the ESA are pending before the Service, but for which the agency has made no final listing decision.

33. For example, Humane World has a member and employee who lives in Tampa, Florida who regularly plans travel and outdoor recreation around opportunities to view manatees. With her family, she has visited the TECO Manatee Viewing Center in Apollo Beach, Homosassa Springs Wildlife State Park, the Hillsborough River, and Little Manatee River State Park with the hope of viewing manatees while kayaking, hiking, or camping. She intends to continue visiting these areas with her family as long as she is able. Her aesthetic and recreational interests in Florida manatees and their habitat will be concretely harmed if the Blanket 4(d) Repeal Rule results in FWS finalizing the currently proposed listing of the Florida manatee as threatened without species-specific protections, with species-specific protections that rest on factors other than conservation of the species, or with species-specific protections that are less stringent than those that would otherwise be in place under the Blanket 4(d) Rule.

34. Humane World also has a member in southwestern New Mexico who is a long-time volunteer and advocate for New Mexico wildlife and public lands. She regularly hikes on public lands near her home in Socorro County, primarily in the San Mateo Mountains of the Cibola National Forest which shares a boundary with her property, with the purpose of viewing, photographing, hearing, and

appreciating pinyon jays and other native wildlife, and intends to continue doing so as long as she is able. She also enjoys hearing the sound of pinyon jays on her property, seeing them eat at the bird feeders on her property, and viewing and sharing photographs of pinyon jays taken by the automated trail camera she has set up at a water trough on her property. Her aesthetic and recreational interests in pinyon jays and their habitat, as well as her use and enjoyment of her property, will be concretely harmed if the Blanket 4(d) Repeal Rule results in FWS finalizing the currently proposed listing of the pinyon jay as threatened without species-specific protections, with species-specific protections that rest on factors other than conservation of the species, or with species-specific protections that are less stringent than those that would otherwise be in place under the Blanket 4(d) Rule.

35. Plaintiff National Parks Conservation Association (“NPCA”) is a national nonprofit membership group founded in 1919 as a leading voice for America’s national parks. NPCA is headquartered in Washington, D.C. and has more than two dozen programmatic locations in 11 regions, including the Northern Rockies Regional Office, which is headquartered in Bozeman, Montana. The Northern Rockies Regional Office focuses on protecting national parks and their resources in Idaho, Montana, North Dakota, and Wyoming. NPCA has more than 1.9 million members and supporters, including 16,143 in Montana. NPCA and its members and supporters work together to protect and preserve our nation’s most

iconic and inspirational places for future generations. Over 600 ESA-listed species are found in the national parks system, including in Glacier National Park and Yellowstone National Park, which are entirely or partly in Montana.

36. In 2019, NPCA formally established its first national program dedicated exclusively to the conservation of wildlife in national parks. The program engages NPCA's members and allies to obtain long-term protections for park wildlife, and to support the recovery of threatened and endangered species in national park landscapes. To reach these goals, NPCA drafts comments on and participates in litigation over proposed ESA listing decisions, proposed species-specific 4(d) rules, federal and state wildlife management projects, and wildlife regulations. For example, in 2019 NPCA joined with other environmental groups to successfully challenge FWS and National Marine Fisheries Service's 2019 and 2024 revisions to their ESA regulations. *See Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 837 F. Supp. 3d 1080 (N.D. Cal. 2026), *appeal filed*. NPCA also joined with other environmental groups to successfully challenge FWS's 2024 decision not to list a distinct population segment of gray wolves in the Western United States as threatened or endangered. *See Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv.*, 801 F. Supp. 3d 1151 (D. Mont. 2025), *appeal filed*.

37. NPCA's members also derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying,

observing, photographing, and enjoying the habitat of many species for which FWS has found there to be substantial information that listing the species as threatened or endangered under the ESA may be warranted, but for which the Service has not yet made a final listing decision, including the Florida manatee and the pinyon jay.

38. For example, NPCA has a member who has spent his career working on parks and other protected areas of public lands. He is an avid birder and enjoys looking for the pinyon jay, which is proposed for listing as threatened or endangered under the ESA. He is concerned that the repeal of the Blanket 4(d) Rule means that the pinyon jay will receive less protection if it is listed as threatened, or that the listing decision will be delayed by the need to prepare a species-specific rule, thereby harming his interest in viewing the bird. He also enjoys looking for the piping plover which is currently listed as threatened and protected by the Blanket 4(d) Rule. He is concerned that, if FWS revisits the listing under the Blanket 4(d) Repeal Rule, then the agency would adopt fewer protections, harming his interest in viewing the plover.

39. NPCA also has members who live in or regularly visit south Florida and visit the national parks there and who enjoy looking for and seeing Florida manatees. For instance, one member has plans to visit soon with his one-year-old daughter and hopes she too can see the Florida manatees. He is concerned that the

repeal of the Blanket 4(d) Rule will result in the Florida manatee being listed as threatened without the protection of the Blanket 4(d) Rule, or that the listing decision will be delayed by the need to prepare a species-specific rule, thereby harming his interest in viewing the species.

40. Plaintiff Conservation Council for Hawai‘i (“CCH”) is a non-profit citizens’ organization based in Hawai‘i with approximately 4,000 members in Hawai‘i and throughout the United States mainland and foreign countries. CCH is the Hawai‘i affiliate of the National Wildlife Federation, a non-profit membership organization with over 6 million members and supporters nationwide. CCH’s mission is to protect native Hawaiian species, including threatened and endangered species, and to restore native Hawaiian ecosystems.

41. For over 75 years, CCH’s work has been foundational to conservation efforts in Hawai‘i. The protection of Hawai‘i’s endangered and threatened plants and animals, and of the habitat upon which they depend, is of particular concern to CCH. In furtherance of these goals, CCH was the lead plaintiff in *Conservation Council for Hawai‘i v. Lujan*, No. 89-953-ACK (D. Haw. filed Dec. 8, 1989), resulting in a settlement pursuant to which the Service listed 187 taxa of Hawaiian plants; *Conservation Council for Hawai‘i et al. v. Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998), in which the court found arbitrary and capricious the Service’s refusal to designate critical habitat for 245 taxa of endangered and threatened plants; and

Conservation Council for Hawai‘i v. Babbitt, No. 1:99–cv–00283–HG–FIY (D. Haw. filed Apr. 20, 1999), which yielded a judgment securing listing and critical habitat designation for ten plant taxa from Maui Nui.

42. CCH has individual members who derive substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, and enjoying imperiled species in their native ecosystems. Members of CCH will be harmed by the repeal of the Blanket 4(d) Rule resulting in fewer protections for imperiled species.

43. Plaintiff Save the Manatee Club is a nonprofit 501(c)(3) membership organization dedicated to the conservation of manatees. The organization was founded in 1981 by singer and songwriter Jimmy Buffett and Governor of Florida Bob Graham. Save the Manatee Club is headquartered in Longwood, Florida. The organization currently has about 40,000 active members and supporters.

44. Save the Manatee Club is deeply involved in efforts to conserve the manatee. The Club submitted comments on FWS’s pending proposed rule to list the Florida manatee as threatened. Save the Manatee Club was also involved in litigation that led FWS in 2024 to propose designating approximately 1,904,191 acres of critical habitat for the Florida manatee and 78,121 acres for the Antillean manatee subspecies.

45. Save the Manatee Club and its members and supporters derive

substantial scientific, educational, recreational, commercial, cultural, spiritual, and aesthetic benefits from studying, observing, photographing, aiding and enjoying manatees, and have specific intentions to continue to do so on an ongoing basis into the future.

46. For example, one of Save the Manatee Club's members has loved manatees since childhood. For over 20 years, this member has organized and participated in fundraisers and volunteer opportunities to benefit manatees; she later built her career centered around wildlife conservation, including and especially manatee conservation. She frequently visits Blue Spring State Park and Merritt Island National Wildlife Refuge to view manatees, both of which are a reasonably short drive from her home. She additionally spent her birthday viewing manatees at Crystal River National Wildlife Refuge and plans to visit again for manatee viewing in the near future. Her interest in manatees will be harmed if the Florida manatee is listed as threatened without the protection of the Blanket 4(d) Rule, if the listing decision is delayed by the need to prepare a species-specific rule, or if a species-specific rule is developed that rests on factors other than conservation of the species.

47. As detailed above, the Plaintiff groups and their members derive recreational, scientific, professional, and aesthetic benefits from a range of imperiled species and their habitat; including species already listed as endangered

or threatened under the ESA and those that have pending listing petitions before FWS. Plaintiffs therefore have a concrete interest in FWS's lawful implementation of the ESA and its role in preventing harm to and promoting recovery of imperiled wildlife. The Blanket 4(d) Repeal Rule injures that interest. Under the Blanket 4(d) Repeal Rule, those species for which petitions to list the species as threatened or endangered are pending before FWS will lose blanket protections against a variety of harms if they are listed as threatened, allowing the continued decline of those species unless and until species-specific 4(d) rules are promulgated. This harm is illustrated by the Florida manatee. In January 2025, responding to a petition received almost three years earlier, FWS issued a proposed rule that would list the Florida manatee as a threatened species. Threatened Status for the Florida Manatee and Endangered Status for the Antillean Manatee, 90 Fed. Reg. 3131 (Jan. 14, 2025). Under the proposed listing, the Florida manatee would be protected by the Blanket 4(d) Rule. However, the Blanket 4(d) Repeal Rule strips those protections away, obligating FWS to finalize the listing without regulatory protections for the Florida manatee, or to develop species-specific protections for the manatee that rest on factors other than conservation of the species. Either option injures Plaintiffs' interests.

48. The past, present, and future recreational, scientific, professional, and aesthetic benefits enjoyed by Plaintiff groups and their members have been, are

being, and will continue to be harmed by Defendants' disregard of their statutory duties and by the unlawful injuries and risk of injuries imposed on imperiled species and their habitat by Defendants' challenged action.

49. Plaintiffs and their members' concrete interests are also injured by the Service's violation of its procedural duties to evaluate the environmental effects of the Blanket 4(d) Repeal Rule under NEPA and to engage in the ESA Section 7 consultation process before promulgating the rule. These disregarded procedures are designed to protect Plaintiffs' and their members' threatened concrete interests in imperiled species and their habitat, and there is a geographic nexus between Plaintiffs and their members and the locations of imperiled species that face a threat of harm from Defendants' challenged action. *See Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961 (9th Cir. 2003); *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2011).

50. In addition to harming and risking harm to the concrete interests of Plaintiffs' members, the Blanket 4(d) Repeal Rule harms the operations and core missions of the Plaintiff organizations themselves. Participating in FWS's decision-making process to list species threatened with extinction is a core function of the Plaintiff groups. The Blanket 4(d) Repeal Rule injures Plaintiffs' ability to perform that function, obligating the Plaintiffs not only to participate in the process of listing a species, but also in the process of developing effective and timely

species-specific 4(d) Rules to protect Plaintiffs’ interests. Further, when participating in the development of species-specific 4(d) rules, the Plaintiffs will be obligated to respond to the improper consideration of economic impacts in each species-specific 4(d) rule as required by the Blanket 4(d) Repeal Rule. For these reasons too, the Blanket 4(d) Repeal Rule injures Plaintiffs’ interests.

Defendants

51. Defendant Douglas Burgum is sued in his official capacity as Secretary of the United States Department of the Interior. Secretary Burgum has responsibility for implementing and fulfilling the duties of the United States Department of the Interior, including administering the ESA with regard to threatened and endangered terrestrial and freshwater plant and animal species.

52. Defendant U.S. Fish and Wildlife Service (“FWS”) is the agency within the United States Department of the Interior responsible for administering the ESA with regard to threatened and endangered terrestrial and freshwater plant and animal species. FWS promulgated the challenged Blanket 4(d) Repeal Rule.

BACKGROUND

I. The Endangered Species Act Makes Conservation, Protection, and Recovery of Imperiled Species and Their Habitat a National Priority.

53. 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). Congress defined “conservation” under the ESA 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 measures provided pursuant to this act are no longer necessary”—that is, when the species has recovered from its imperiled state such that it no longer needs the protection of the ESA. 16 U.S.C. § 1532(3).

54. As the first step in the protection of these species, section 4 of the ESA requires FWS (for most terrestrial and freshwater species) and National Marine Fisheries Service (“NMFS”) (for most marine species) (collectively, “the Services”) to list species as endangered or threatened when they meet specified statutory listing criteria. 16 U.S.C. § 1533(a)(1)(A)–(E).

55. 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). Congress created a separate designation for species that are threatened, in addition to species that are endangered, to give the Service the ability to intervene early to “regulate these animals before the danger becomes imminent while long-range action is begun” so that they never become endangered. S. Rep. No. 93-307, at 3 (1973), *reprinted in* U.S. Senate Committee on Environment and Public Works, A

Legislative History of the Endangered Species Act of 1973, as Amended in 1976, 1977, 1978, 1979, and 1980, at 302 (1982).

56. The ESA requires that the Services must use the “best scientific and commercial data available” in deciding to list species. 16 U.S.C. § 1533(b).

57. The listing of a species as endangered under the ESA triggers protections under section 9 of the Act, 16 U.S.C. § 1538, including a key 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.” 16 U.S.C. § 1532(19).

58. When a species is listed as threatened, its protections against “take” and other threats flow not from the ESA itself but from implementing regulations. Specifically, section 4(d) of the ESA directs FWS and NMFS to issue “such regulations as [the agencies] deem[] necessary and advisable to provide for the conservation of such [threatened] species.” 16 U.S.C. § 1533(d). Section 4(d) further provides that agency regulations for threatened species may prohibit any act prohibited by the ESA with regard to endangered species. *Id.*

59. Elsewhere, section 4 also requires that, at the same time as a species is listed as threatened or endangered, the Services must designate and protect critical habitat—i.e., habitat deemed critical for survival and recovery—for the species, subject to certain exceptions. 16 U.S.C. § 1533(a)(3), (b)(2).

60. Congress has labeled the listing of species and designation of critical habitat under section 4 as the “cornerstone of effective implementation” of the ESA. S. Rep. No. 97-418, at 10 (1982).

61. Section 7 of the ESA establishes another important protection for endangered and threatened species, prohibiting federal actions that would jeopardize the continued existence of such species or destroy or adversely modify their designated critical habitat. *See generally* 16 U.S.C. § 1536(a)(2). The ESA implements this critical safeguard by mandating an interagency consultation process that requires an agency proposing an action that may affect an endangered or threatened species to consult with an expert wildlife agency such as FWS. *See id.*; 50 C.F.R. §§ 402.13, 402.14. Briefly stated, once an agency enters formal consultation with FWS regarding a proposed course of action, FWS must prepare a biological opinion to evaluate the action’s effects. If FWS determines the action is likely to “jeopardize the continued existence of a listed species” or destroy or adversely modify its critical habitat, FWS must issue a “jeopardy biological opinion” that includes “reasonable and prudent alternatives” that can avoid the harm. 50 C.F.R. § 402.14(h)(1)(iv), (2).

62. If FWS cannot develop a reasonable and prudent alternative that is acceptable to the agency proposing the action and any third-party applicant

involved in the action, the jeopardy biological opinion generally prohibits the action from moving forward.

63. Agency actions subject to consultation encompass actions—including rulemakings—taken by the Services themselves. *See* FWS and NMFS, Endangered Species Consultation Handbook 1-5 to 1-6, App. E (1998) (describing Intra-Service Section 7 Consultation requirements), *available at* <http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm>; *see also* 50 C.F.R. § 402.02 (“action” includes “the promulgation of regulations”).

Accordingly, when the Services’ own actions “may affect” a listed species or critical habitat, the Services must consult with the Endangered Species office of FWS or the NMFS Office of Protected Resources to satisfy ESA section 7’s requirements.

II. Over Fifty Years Ago, FWS Promulgated the Blanket 4(d) Rule to Ensure Adequate Protection for All Threatened Species.

64. As noted above, section 4(d) of the ESA requires the Services to promulgate regulations necessary and advisable to conserve species listed as threatened, including regulations prohibiting the take of threatened species. 16 U.S.C. § 1533(d).

65. In 1975, only two years after Congress enacted the ESA, FWS exercised its authority and responsibility under section 4(d) and promulgated a rule extending the prohibition on “take” in section 9 of the ESA to all threatened

species. 50 C.F.R. § 17.31(a) (2018); Reclassification of the American Alligator and Other Amendments, 40 Fed. Reg. 44412, 44425 (Sept. 26, 1975). This rule created the default presumption that a threatened species would receive all of the “anti-take” protections provided to endangered species under the ESA, unless FWS promulgated a species-specific rule that changed those protections. In 1977, FWS extended the same protections to threatened plant species. Prohibitions on Certain Uses of Endangered or Threatened Plants, Permits for Exceptions to Such Prohibitions, and Related Items, 42 Fed. Reg. 32374, 32380 (June 24, 1977). These provisions are colloquially referred to as the “Blanket 4(d) Rule.”

66. In promulgating the Blanket 4(d) Rule, FWS found that presumptively providing threatened species with comprehensive protection, rather than reserving such protection 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 species-specific rulemakings, instead of leaving such species exposed to continued harm while potentially lengthy administrative processes played out. FWS concluded that the default presumption of blanket protection, along with the ability to tailor protections if necessary through a species-specific 4(d) rule, constituted “the cornerstone of the system for regulating threatened wildlife.” 40 Fed. Reg. at 44414.

67. On September 16, 1977, FWS clarified the Blanket 4(d) Rule to explicitly prohibit the possession of illegally taken threatened species, as well as their commercial transportation and sale in foreign or interstate commerce. Protection for Threatened Species of Wildlife, 42 Fed. Reg. 46561-62 (Sept. 16, 1977); *see also* 42 Fed. Reg. 46539 (Sept. 16, 1977) (exercising emergency rulemaking authority to make the prohibition on the possession, transportation, and sale of illegally taken threatened species immediately effective). This clarifying amendment to the Blanket 4(d) Rule continued to presumptively apply the protections applicable to endangered species to threatened species.

68. The Blanket 4(d) Rule was upheld by the D.C. Circuit Court of Appeals in 1993 against challenges that it was *ultra vires* and contrary to the plain language of the statute. *See Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 5-8 (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).

69. Since 1975, FWS has listed over 300 species as threatened under the ESA and applied the Blanket 4(d) Rule to them. Of that number, fewer than a quarter later received species-specific section 4(d) rules to replace the protections afforded by the Blanket 4(d) Rule.

70. In 2019, reversing decades of regulatory certainty, FWS amended 50 C.F.R. §§ 17.31 and 17.71 to eliminate the Blanket 4(d) Rule, declaring that 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).

71. A coalition of seven conservation organizations (including plaintiffs Sierra Club, National Parks Conservation Association, WildEarth Guardians, and Humane World for Animals), 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 revisions to the ESA regulations. After a change in presidential administrations, FWS announced its intention to revise the challenged rule and the California court remanded it without vacatur. *See Ctr. for Biological Diversity v. Haaland*, 641 F. Supp. 3d 835, 842 (N.D. Cal. 2022).

72. Upon completion of that remand, FWS in 2024 returned to its long-held interpretation of section 4(d) by reinstating the Blanket 4(d) Rule. Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 89 Fed. Reg. 23919 (April 5, 2024). FWS explained that the blanket approach to protections for threatened species was “superior” to crafting species-specific 4(d) rules for every threatened species for several reasons. First, in cases where the agency finds the “standard suite of protections and exceptions is appropriate,” it is more straightforward and transparent to include those protections in a single blanket rule

than to expend resources duplicating the same regulatory text in the Federal Register for each species. *Id.* at 23921. Second, the blanket rule approach “ensure[s] there is never a lapse in threatened species protections” if the agency is not ready to promulgate a species-specific rule at the time of listing, because the blanket rule provides an immediate protective backstop until a species-specific rule can be developed. *Id.* Finally, FWS emphasized that using a blanket approach as a default does not impede the agency’s ability to develop species-specific rules where needed. *Id.*

73. FWS further explained that the Blanket 4(d) Rule was “necessary and advisable” under section 4(d). 89 Fed. Reg. at 23923. The Service found that, as a biological matter, because threatened species are those likely to become in danger of extinction in the foreseeable future, and extending protections to those species provides an opportunity to prevent that from happening, the rule served the conservation purposes of the ESA. *Id.* Further, because at the time of listing a species as threatened FWS often lacks a complete understanding of the causes of the species’ decline, blanket application of the section 9 protections proactively addresses potentially unknown threats until they can be better understood and a species-specific rule developed. *Id.* FWS also concluded that the Blanket 4(d) Rule was advisable as a practical matter, because “for purposes of implementation and enforcement, it is easier to explain and comprehend protections for threatened

species if they are modeled after the section 9 prohibitions for endangered species—with which agency staff and the public are widely familiar.” *Id.*

74. In completing this rulemaking, FWS found that reinstatement of the Blanket 4(d) Rule triggered the Service’s obligations under ESA section 7 and concluded through the intra-agency consultation process that the reinstatement would have no effect on listed species.

75. The reinstated Blanket 4(d) Rule was challenged in the D.C. District Court and in this Court. *See Am. Farm Bureau Fed’n et al. v. U.S. Fish and Wildlife Serv. et al.*, No. 1:25–cv–00947–SLS (D.D.C. filed Mar. 31, 2025), and *Rocky Mountain Elk Found. v. U.S. Dep’t of the Interior*, No. 2:25–cv–00029–DWM (D. Mont. filed Mar. 10, 2025).

76. The litigation in the D.C. District Court was dismissed without prejudice by stipulation of the parties. *Stip. of Dismissal, Am. Farm Bureau Fed’n v. U.S. Fish and Wildlife Serv.*, No. 1:25–cv–00947–SLS (D.D.C. Nov. 26, 2025). The litigation in this Court, *Rocky Mountain Elk Foundation*, was stayed after the current administration announced its intention to revisit the Blanket 4(d) Rule. However, after FWS issued the Blanket 4(d) Repeal Rule, this Court granted a motion by the Center for Biological Diversity—which had intervened to support the Blanket 4(d) Rule—to lift the stay and file supplemental pleadings challenging the Blanket 4(d) Repeal Rule. Order, *Ctr. for Biological Diversity v. U.S. Dep’t of*

the Interior, No. 2:25–cv–00029–DWM (D. Mont. Aug. 21, 2026) (formerly *Rocky Mountain Elk Found. U.S. Dep’t of the Interior*), Dkt. No. 54. This Court also realigned the parties to reflect their current interests in the litigation, with the Center for Biological Diversity and Defenders of Wildlife designated as plaintiffs challenging the repeal rule, and Rocky Mountain Elk Foundation as an intervenor defending the repeal rule. *Id.*

III. FWS Again Abandons Longstanding Protections for Threatened Species with the Blanket 4(d) Repeal Rule.

77. In November 2025, after a further change in presidential administrations, FWS proposed—in conjunction with a suite of other proposed ESA rule revisions—to again abandon the Blanket 4(d) Rule. Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 90 Fed. Reg. 52587 (Nov. 21, 2025). FWS made clear that this was a deregulatory action motivated, not by the conservation purpose of the ESA, but by an Executive Order titled “Unleashing American Energy” that sought to eliminate rules that “impose an undue burden on the identification, development, or use of domestic energy resources.” *Id.* at 52588.

78. Public reaction to the proposed rule was strong, and overwhelmingly negative, with FWS receiving almost 350,000 comments, most of which opposed the proposed repeal.

79. Nevertheless, on July 21, 2026, FWS issued the final Blanket 4(d) Repeal Rule, amending 50 C.F.R. §§ 17.31 and 17.71 to eliminate the blanket protection of threatened animals and plants so that, unless and until the Service develops species-specific 4(d) rules, species newly listed as threatened under the ESA receive no protection against “taking” at all. *See* 91 Fed. Reg. at 45723. The Blanket 4(d) Repeal Rule also makes it less likely that any species-specific 4(d) rules that are adopted will be fully protective of threatened species by requiring that FWS determine that each such rule is “necessary and advisable” based on considerations that include the “economic impacts” of each rule. *Id.* at 45725.

80. FWS failed to provide a reasoned explanation for abandoning its long-held approach to protection of threatened species. In its draft proposal, the Service asserted it was compelled to revisit the Blanket 4(d) Rule by the Executive Order directing agencies to review actions placing an undue burden on development of domestic energy resources. 90 Fed. Reg. at 52588. The Service also claimed that repeal of the Blanket 4(d) Rule represented the “single, best meaning” of the ESA because “Congress intended for the Service to determine what protections are needed for threatened species on a species-by-species basis.” *Id.* at 52589. The Service further asserted that repeal of the Blanket 4(d) Rule is the “superior choice from a policy perspective” because it “remov[es] redundant permitting requirements, facilitat[es] implementation of beneficial conservation actions, and

mak[es] better use of our limited personnel and fiscal resources.” *Id.* However, in the final rule, FWS appeared to abandon its claims that repealing the Blanket 4(d) Rule was necessitated by executive orders or required by the text of the ESA and focused solely on the claim that the repeal is a “superior choice from a policy perspective.” 91 Fed. Reg. at 45724.

81. As FWS’s inconsistent attempts to articulate a basis for the rule suggest, the Blanket 4(d) Repeal Rule is arbitrary and capricious. It is contrary to the intent of Congress, inconsistent with the agency’s own long-held interpretation of the ESA, and an unreasoned change in position.

82. The Blanket 4(d) Rule’s default extension of all section 9 protections to threatened species is consistent with the best reading of the ESA. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (noting a statute’s “best reading” may be that it “delegates discretionary authority to an agency” and, in that event, the role of the court is to ensure the agency’s interpretation “effectuate[s] the will of Congress”). Section 4(d) requires FWS to “issue such regulations as [it] deems necessary and advisable to provide for the conservation of” threatened species, and in those regulations the agency “may” prohibit any act prohibited by section 9. 16 U.S.C. § 1533(d). Congress was clear in enacting 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)).

83. The ESA’s legislative history affirms 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). Congress gave FWS the authority to protect species that 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 these species before they actually become extinct.” 119 Cong. Rec. 30,164 (1973) (statement of Rep. Dingell).

84. Thus the “best reading” of section 4(d) is that it affords FWS discretion to act consistent with Congress’s mandate that threatened species be conserved so that they do not become endangered. Repealing the Blanket 4(d) Rule is contrary to that statutory intent: it affirmatively removes protections for threatened species, making it more likely that newly listed or reclassified threatened species will trend downward towards endangered status.

85. The Blanket 4(d) Repeal Rule is also inconsistent with FWS’s long-standing, and contemporaneously adopted, interpretation of ESA section 4(d) as allowing the agency to use blanket application of the section 9 “take” protections as the default and to adopt species-specific rules as warranted.

86. FWS’s addition of a “necessary and advisable” determination that includes consideration of economic impacts flowing from the adoption of species-specific 4(d) rules is also contrary to the text of the ESA and FWS’s own long-standing interpretation of the statute.

87. First, FWS errs in asserting that the ESA requires a “necessary and advisable” finding before promulgating species-specific rules that extend any section 9 protections to a threatened species. To the contrary, as the D.C. Circuit Court of Appeals concluded 30 years ago, “the 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*, 1 F.3d at 7–8.

88. Second, FWS’s assertion that a “necessary and advisable” finding must include consideration of economics is also 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 measures provided pursuant to this chapter are no longer necessary”—in other words, to recover such species from their imperiled status. *Id.* § 1532(3). Not only does this definition make no mention of considering economic factors, it directs that conservation encompasses whatever is required to recover a species, regardless of cost. FWS’s requirement that each species-specific 4(d) rule include a “necessary and advisable” finding that includes economic impacts is thus contrary to the statute.

89. FWS’s assertion that the Blanket 4(d) Repeal Rule is better from a policy perspective is also unjustified and irrational. FWS claims repeal of the Blanket 4(d) Rule will allow the Service to better protect threatened species and make better use of its limited resources “by focusing prohibitions on the stressors contributing to the threatened status of the species.” 91 Fed. Reg. at 45724-25. But the Service failed to show how using the Blanket 4(d) Rule as a default creates any drain on agency resources, and the Service’s claim it will develop species-specific rules concurrently with each listing cannot be squared with the facts. FWS already faces a backlog of more than 400 species awaiting consideration for ESA listing, and the Blanket 4(d) Repeal Rule will add to the administrative burden of processing this backlog. At the same time, between 2024 and 2026, FWS lost 36%

of its staff, including at least 1,900 scientists.¹ These reduced staffing levels will further diminish FWS's capacity to develop a species-specific conservation rule for each threatened species listing. And, contrary to evidencing any commitment to develop a species-specific conservation rule for each species listed as threatened, the current administration's proposed 2026 budget would *reduce* FWS's ESA listing budget by 36%, a reduction to 2004 funding levels.²

90. The only reasonable conclusion that can be drawn from this record is that FWS will not consistently issue species-specific 4(d) rules concurrently with listing of threatened species, leaving many or most of those species unprotected for indefinite periods unless and until species-specific rules are someday developed. Even if such rules are prepared, the additional administrative burden of preparing them will further delay ESA listings for imperiled species that are already languishing without much-needed federal protections in FWS's extensive listing

¹ Mike Koshmrl, *U.S. Fish and Wildlife Staff Tumbles by a Quarter in Director Brian Nesvik's Home State of Wyoming*, WyoFile (Sept. 3, 2026), <https://wyofile.com/u-s-fish-and-wildlife-staff-tumbles-by-a-quarter-in-director-brian-nesviks-home-state-of-wyoming/>

² Press Release, Ctr. for Biological Diversity, Congress Passes Bill to Slash EPA, Interior Budgets (Jan. 8, 2026), <https://biologicaldiversity.org/w/news/press-releases/congress-passes-bill-to-slash-epa-interior-budgets-2026-01-08/#:~:text=The%20bill%20also%20cuts%20the,the%20sale%20of%20national%20parks>

backlog. Further, any species-specific rules prepared under FWS's new rubric will be impermissibly constrained by economic considerations.

91. Even if FWS had the resources to develop species-specific 4(d) rules contemporaneously with listings (which it does not), the agency provided no explanation for reversing its finding—which it affirmed as recently as 2024—that at the time of listing a species as threatened, the Service often lacks a complete understanding of the causes of the species' decline, and so blanket application of the ESA section 9 protections provides a proactive shield against potentially unknown threats until they can be better understood and a species-specific rule developed. 89 Fed. Reg. at 23923.

92. FWS also asserted that the Blanket 4(d) Repeal Rule is supported by the need to harmonize the Service's approach to threatened species with that followed by NMFS for marine species. But, to the contrary, NMFS's experience underscores the shortcomings of repealing the Blanket 4(d) Rule approach and providing only for species-specific protections. Despite overseeing 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. For example, NMFS listed the oceanic whitetip shark as a threatened species in 2018 but still has not finalized a 4(d) rule for the species as of this filing. NMFS similarly has failed to

promulgate species-specific 4(d) rules for the 20 species of coral that it listed as threatened in 2014. NMFS's conduct thus offers no useful model for FWS to follow in improving its administration of the ESA for threatened species.

93. In addition to offering unjustified and irrational reasoning for the Blanket 4(d) Repeal Rule, FWS did not undertake intra-agency consultation on the issuance or implementation of the Blanket 4(d) Repeal Rule under ESA section 7(a)(2) or use the best scientific information available in developing and promulgating the Rule. Instead, FWS wrongly asserted that it is not required to consult with itself in its role as administrator of the ESA in interpreting the Act's provisions. *See* 91 Fed. Reg. at 45736. This assertion defies the ESA, which establishes no such exception from Section 7's requirements.

94. Nor did the Service analyze the impact of the Blanket 4(d) Repeal Rule under NEPA. Rather than prepare an Environmental Assessment or Environmental Impact Statement to analyze the Rule's impacts, FWS invoked a NEPA categorical exclusion under 43 C.F.R. § 46.210(i). *See* 91 Fed. Reg. at 45736. Specifically, FWS claimed that the Blanket 4(d) Repeal Rule is legal, technical, or procedural in nature and that any potential impacts were too broad, speculative, and conjectural for meaningful analysis. *Id.* The Service also found an absence of extraordinary circumstances that would disqualify its action from coverage under the specified NEPA categorical exclusions it invoked. These

findings too were flawed, as the Blanket 4(d) Repeal Rule represented a rescission of substantive protections for threatened species, not a procedural action, and its impacts were readily subject to meaningful analysis that could have informed FWS's decision. FWS's determination that no extraordinary circumstances applied to its promulgation of the Blanket 4(d) Repeal Rule failed to consider these factors. In addition, and in any event, the Blanket 4(d) Repeal Rule's impact on threatened species, in addition to other extraordinary circumstances, disqualified the rule from the NEPA exclusion that FWS purported to apply.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Endangered Species Act and Administrative Procedure Act: Contrary to Law and Failure of Rational Decisionmaking)

95. Plaintiffs reallege and incorporate by reference each and every allegation set forth in this Complaint.

96. FWS cannot adopt regulations that are manifestly contrary to the text and purpose of the ESA. Under the APA, a “reviewing court shall ... hold unlawful and set aside” federal agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” *Id.* § 706(2)(C), or “without observance of procedure required by law,” *Id.* § 706(2)(D).

97. When promulgating regulations, FWS must articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. A regulation is arbitrary and capricious under the APA where “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 the agency, 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 of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

98. 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 interests.” *Id.* Failing to do so renders a decision arbitrary and capricious. *Id.* See also *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 966-69 (9th Cir. 2015) (noting “[a]n agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past” (quoting *FCC v. Fox*, 556 U.S. at 537) (Kennedy, J., concurring))).

99. In promulgating the Blanket 4(d) Repeal Rule, FWS departed from the best interpretation of the ESA and failed to provide any rational explanation for its decisions. Among other flaws, the Blanket 4(d) Repeal Rule will impermissibly reduce protections for threatened species, increase burdens on agency resources, and introduce impermissible economic considerations into species-specific 4(d) rules. FWS failed to justify these regulatory changes, which defy the ESA and contradict FWS's own prior conclusions.

100. FWS's failure to articulate a rational connection between the facts found and the choice made, and to provide an adequate and detailed justification for eliminating the long-standing Blanket 4(d) Rule, renders the Blanket 4(d) Repeal Rule arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law in violation of the ESA and the APA, 5 U.S.C. § 706(2).

SECOND CLAIM FOR RELIEF

(Violation of the Endangered Species Act: Failure to Consult Under ESA Section 7)

101. Plaintiffs reallege and incorporate by reference each and every allegation set forth in this Complaint.

102. Section 7(a)(2) of the ESA requires that each federal agency, in consultation with FWS and/or NMFS, ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any

threatened or endangered species or result in the destruction or adverse modification of critical habitat of such species. 16 U.S.C. § 1536(a)(2).

103. Regulations implementing ESA section 7 define the scope of agency actions subject to consultation broadly. “Examples include, but are not limited to:

(a) actions intended to conserve listed species or their habitat; (b) *the promulgation of regulations*; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.

50 C.F.R. § 402.02 (emphasis added).

104. If a federal agency, including FWS itself, determines that its proposed action “may affect” listed species or their designated critical habitat, the agency must engage in “formal consultation” with FWS and/or NMFS, depending on the species involved. *Id.* § 402.14. The “may affect” hurdle is extremely low, encompassing any possible effect, whether beneficial, benign, adverse, or of an undetermined character.

105. Formal consultation concludes with the preparation of a biological opinion by FWS and/or NMFS addressing whether the proposed action is likely to jeopardize threatened or endangered species or result in the destruction or adverse modification of their designated critical habitat, and setting forth any necessary measures for avoiding, minimizing, and mitigating any adverse impacts. 16 U.S.C. § 1536(b). An action agency may avoid formal consultation and engage instead in

more truncated “informal consultation” with FWS and/or NMFS only if the action agency obtains a written concurrence from the expert agency that its project is not likely to adversely affect threatened or endangered species or their designated critical habitat. 50 C.F.R. §§ 402.13(a), 402.14(b)(1).

106. Promulgation and implementation of the Blanket 4(d) Repeal Rule “may affect” threatened species by reducing the protections necessary to promote those species’ survival and recovery. Despite the obvious potential for the promulgation and implementation of the Blanket 4(d) Repeal Rule to harm imperiled species and the habitat that is essential for their conservation, FWS failed to engage in consultation about the Rule in violation of section 7(a)(2), 16 U.S.C. § 1536(a)(2), and its implementing regulations, 50 C.F.R. pt. 402.

107. FWS’s failure to engage in ESA section 7(a)(2) consultation before promulgating the Blanket 4(d) Repeal Rule was therefore arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law in violation of the ESA.

THIRD CLAIM FOR RELIEF

(Violation of the National Environmental Policy Act and Administrative Procedure Act: Unlawful Use of a NEPA Categorical Exclusion)

108. Plaintiffs reallege and incorporate by reference each and every allegation set forth in this Complaint.

109. The National Environmental Policy Act establishes “a broad national commitment to protecting and promoting environmental quality.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). NEPA “ensures that the agency and the public are aware of the environmental consequences of proposed projects” and “helps agencies to make better decisions.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 177 (2025). To meet those goals, NEPA requires that agencies “consider every significant aspect of the environmental impact of a proposed action” and inform the public of the environmental impacts of agency proposals. *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983) (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 553 (1978)).

110. Prior to undertaking any “major Federal action[] significantly affecting the quality of the human environment,” NEPA requires federal agencies to develop an environmental impact statement (EIS), which is a “detailed statement” that includes analysis of the “reasonably foreseeable environmental effects of,” and “a reasonable range of alternatives to,” the proposed action. 42 U.S.C. § 4332(C)(i), (iii). In conducting a NEPA analysis, an agency must ensure the “scientific integrity” of its analysis and make use of “reliable data and resources.” *Id.* § 4332(D), (E).

111. Where the proposed federal action “has a reasonably foreseeable significant effect on the quality of the human environment,” the agency must prepare an EIS. *Id.* § 4336(b)(1). Where the proposed action does not have a reasonably foreseeable significant effect, or its significance is unknown, the agency may prepare a shorter environmental assessment (“EA”) to determine whether the effect of the action is significant and thus requires an EIS, or is not significant, in which case the agency documents that determination in a finding of no significant impact (“FONSI”). *Id.* § 4336(b)(2).

112. An agency need not prepare an EIS or EA if the proposed action falls within a “categorical exclusion,” which is a category of actions that the agency has determined “normally does not significantly affect the quality of the human environment.” *Id.* at §§ 4336e(1), 4336(b)(2).

113. FWS has adopted a categorical exclusion for “[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case,” except in situations where any of certain specified extraordinary circumstances listed in 43 C.F.R. § 46.215 apply. 43 C.F.R. § 46.210(i). Section 46.215, in turn, lists such extraordinary circumstances to include, in part, where FWS actions “may”:

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(d) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

* * *

(g) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

114. Here, FWS concluded that the Blanket 4(d) Repeal Rule was categorically excluded from NEPA under the administrative or procedural categorical exclusion at 43 C.F.R. § 46.210(i). But the Blanket 4(d) Repeal Rule is neither administrative nor procedural: the Rule removes vital substantive protections from threatened species and is thus likely to have significant adverse environmental effects requiring NEPA analysis. Nor is the Blanket 4(d) Repeal Rule one where the “environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process.” 43 C.F.R. § 46.210(i) (emphasis added). At a bare minimum,

by requiring the agency to produce species-specific 4(d) rules, the Blanket 4(d) Repeal Rule adds to FWS's administrative backlog, slowing decisionmaking with regard to species awaiting listing decisions, and prolonging harm to those species. Further, species-specific rules are not likely to "later be subject to the NEPA process"—a predicate for invoking the CE—because FWS takes the position that species-specific 4(d) rules do not require NEPA analysis. Thus, the impact on species of abandoning the default blanket protections for a promise of future species-specific rules will never be subject to NEPA analysis unless it is done now in conjunction with the challenged rule.

115. Even if the Blanket 4(d) Repeal Rule could be covered by one of FWS's categorical exclusions, which it is not, extraordinary circumstances would still preclude FWS's application of such an exclusion in this case. The Blanket 4(d) Repeal Rule has highly uncertain and potentially significant environmental effects; involves unique or unknown environmental risks; establishes a precedent for future action and represents a decision in principle about future actions with potentially significant environmental effects; and has significant impacts on ESA-listed species, species proposed to be listed, and designated critical habitat under the ESA. *See* 43 C.F.R. § 46.215(b), (c), (d), (g). Therefore, multiple extraordinary circumstances apply.

116. FWS's invocation of a categorical exclusion to avoid its duty to prepare a legally adequate NEPA analysis for the Blanket 4(d) Repeal Rule therefore is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of NEPA, FWS regulations implementing NEPA, and the APA, 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request that the Court:

1. Declare that FWS acted arbitrarily, capriciously, and contrary to law, including the ESA, in violation of the APA, in promulgating the Blanket 4(d) Repeal Rule;
2. Declare that FWS violated ESA section 7(a)(2) by failing to consult on the Blanket 4(d) Repeal Rule's effects on listed species and their critical habitat;
3. Declare that FWS acted arbitrarily, capriciously, and contrary to law, including NEPA, in violation of the APA, by invoking a categorical exclusion and failing to prepare an EIS or EA for the Blanket 4(d) Repeal Rule;
4. Hold unlawful and vacate the Blanket 4(d) Repeal Rule;
5. Enjoin FWS from applying or otherwise relying upon the Blanket 4(d) Repeal Rule;

6. Reinstatement of the Blanket 4(d) Rule that FWS unlawfully replaced with the Blanket 4(d) Repeal Rule;

7. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees; and

8. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 21st day of October, 2026,

/s/Timothy J. Preso

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