

December 13, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232 Capitol Building
Washington, DC 20515

The Honorable Charles E. Schumer
Democratic Leader
U.S. Senate
S-221 Capitol Building
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
H-204 Capitol Building
Washington, DC 20515

The Honorable Mitch McConnell
Republican Leader
U.S. Senate
S-230 Capitol Building
Washington, DC 20510

Dear Speaker Pelosi and Leaders Schumer, McConnell, and McCarthy:

On behalf of our millions of members and supporters across the country, we urge you to block any attempt to include S.2561, known as the *Cottonwood* bill, in any end-of-year legislative package. The bill would undermine the Endangered Species Act (ESA) and drive threatened and endangered species that depend on our national forests and Bureau of Land Management (BLM) lands closer to extinction.

Currently, the U.S. Forest Service and BLM must re-initiate programmatic consultation with the U.S. Fish and Wildlife Service (USFWS) and the U.S. National Marine Fisheries Service (NMFS) on management plans when newly listed species or critical habitat would be affected by activities and projects permitted under a plan or when new information, such as climate change effects, reveals impacts to threatened and endangered species. For example, when the USFWS listed three amphibians¹ and designated critical habitat for them long after management plans of nine California national forests were already in place, the Forest Service re-initiated consultation on the relevant forests. Consultation was completed in just 10 days and resulted in new management provisions in these plans that now protect these species from roadbuilding and water pollution.

S. 2561 would eliminate the essential requirement that agencies re-initiate programmatic consultations on any aspects of the Forest Service's land management plans (LMPs) or BLM's resource management plans (RMPs) for newly listed species and new critical habitat designations or when new information shows land management activities could harm listed

¹ The endangered Sierra Nevada Yellow-legged Frog, Endangered, endangered Mountain Yellow-legged Frog, and threatened Yosemite Toad. See the biological opinion at: https://www.biologicaldiversity.org/campaigns/amphibian_conservation/pdfs/Sierra_Nevada_Forests_Endangered_Frogs_Biological_Opinion.pdf.

species. As such, the bill would jettison crucial safeguards protecting species from the cumulative impacts of threats such as logging, oil and gas extraction, and other land uses. This extinction by a thousand cuts tragedy is exactly what the ESA—our nation’s premier law to halt species’ extinctions—was intended to prevent.

Re-initiation of consultations at the plan level is rare, but when it does occur, it is important. The Forest Service, for example, completes on average only five to six landscape-level consultations per year, the majority of which are finished in a matter of weeks. Such consultations provide the only mechanism to mandate management changes at the landscape scale to ensure conservation and recovery of listed species. These consultations can avert the thousand-cuts problem, which cannot be prevented if consultations occur solely at the project level.

Exempting the Forest Service and BLM from re-initiating plan-level consultation would effectively codify climate denial. Even as national forests and grasslands and BLM lands suffer more and more catastrophic impacts from the worsening climate crisis, S.2561 would permanently exempt the Forest Service and BLM from ever modifying LMPs and RMPs to protect listed species from changing climate conditions. This result is in direct conflict with the Biden administration’s Executive Order on Tackling the Climate Crisis at Home and Abroad.

There are no comparable requirements in the National Forest Management Act, the Federal Land Policy and Management Act, or Forest Service or BLM implementing regulations (e.g., the 2012 Planning Rule) that require the agencies to take action to protect endangered species in a timely and responsive manner. Current ESA requirements regarding re-initiation of consultation are crucial to ensure that landscape-scale protections for species are tailored to current circumstances. LMPs and RMPs are often in place for decades before they are revised. Under S. 2561, decades could elapse before the agencies evaluate harms to newly listed species or critical habitat wrongfully allowable under outdated LMPs and RMPs. If this bill is enacted, a species that may have waited more than a decade to be listed could wait an additional decade or more before the relevant LMP or RMP provides necessary protections against extinction.²

Under S.2561, even where the Forest Service and BLM address new scientific information or the needs of a newly listed species at a site-specific level, the agencies would not be required to undertake a similar analysis at the landscape level, creating uncertainty and inefficiencies. Without a landscape-level analysis, the agencies would be unaware of potential violations of the ESA’s Section 9 take prohibition. Completing a single programmatic consultation at the landscape scale would be far more efficient and would provide certainty.

² The western yellow-billed cuckoo was first identified in 1982 as a species that may need ESA protection, but was not listed until 2014. The species occurs on several national forests and BLM resource areas in the western U.S., including the Wasatch-Cache National Forest in Utah, which updated its management plan in 2003 and will not do so again for many years.

The bill would set a dangerous precedent. Many agencies, including the Environmental Protection Agency, the Army Corps of Engineers, Department of Transportation, Federal Emergency Management Agency, and sub-agencies within the Department of the Interior, must also complete programmatic consultations to ensure their actions protect listed species. The enactment of S.2561 could encourage other agencies to seek similar exemptions from the ESA's requirements. This would exacerbate the extinction crisis and further erode efforts to ensure that federal agencies address the climate crisis.

While proponents claim the bill addresses capacity constraints, agency data does not show that compliance with existing law is actually a burden. If workload and capacity constraints exist, then the administration can work with Congress to secure the necessary resources for the Forest Service and BLM to carry out their mission-critical work—including their duties to prevent harm to and advance the recovery of species protected under the ESA. Weakening longstanding, necessary, and effective safeguards for wildlife would serve only to remedy a nonexistent problem in an irresponsible way.

The ESA is this nation's flagship law to protect imperiled wildlife and has a proven track record of success. To avoid the extinction of species that depend on public lands and to pursue efficient, effective land management, we urgently request that S.2561 is excluded from any end-of-year legislative package. We greatly appreciate your consideration.

Sincerely,

Alaska Wilderness League
Ancient Forest International
Animal Welfare Institute
Apex Protection Project
Azul
Bat Conservation International
Blue Oak Group Sierra Club/Lassen Forest Preservation Group
Bold Alliance
California Native Plant Society
Californians for Western Wilderness
CalWild
Cascade Forest Conservancy
Cascadia Wildlands
Center for Biological Diversity
Cetacean Society International
Climate Crisis Policy
Conservation Lands Foundation

Conservation Northwest
Cottonwood Environmental Law Center
Defenders of Wildlife
Earthjustice
Endangered Habitats League
Endangered Species Coalition
Environment America
Environmental Center of San Diego
Environmental Law & Policy Center
Environmental Protection Information Center (EPIC)
Forest Keeper
Friends of Big Ivy
Friends of Nevada Wilderness
Friends of the Bitterroot
Friends of the Clearwater
Friends of the Earth U.S.
Friends of the Inyo
Friends of the River
Friends of the Sonoran Desert
Gallatin Wildlife Association
Great Old Broads for Wilderness
Great Old Broads for Wilderness Pacific Northwest Wildlife Team
Great Old Broads for Wilderness, Bozeman Broadband
Great Old Broads for Wilderness, Northern California Chapter
Green Cove Defense Committee
GreenLatinos
Harris Center for Conservation Education
Healthy Gulf
Heartwood
Hispanic Federation
Hoosier Environmental Council
Howling For Wolves
Humane Action Pittsburgh
I Heart Pisgah
Indiana Forest Alliance
Inland Ocean Coalition
International Bird Rescue
International Marine Mammal Project of Earth Island Institute
John Muir Project
Kentucky Heartwood

Klamath-Siskiyou Wildlands Center
Last Chance Audubon
League of Conservation Voters
Los Angeles Audubon Society
Los Padres ForestWatch
Mojave Desert Land Trust
Natural Resources Defense Council
Natural Resources Law
Naturalist For You
NH Audubon
North Central Washington Audubon Society
Northern California Council, Fly Fishers International
NYC Plover Project
Ocean Alliance
Oceanic Preservation Society
Old-Growth Forest Network
Oregon Natural Desert Association
Oregon Wild
Partnership for Policy Integrity
Patagonia
Predator Defense
Primate Conservation, Inc.
Project Eleven Hundred
#RelistWolves Campaign
Resource Renewal Institute
Rocky Mountain Wild
Save Lake Superior Association
Save Our Sky Blue Waters
Save Our Wild Salmon Coalition
Save the Manatee Club
Sierra Club
Sierra Forest Legacy
Soda Mountain Wilderness Council
Southeast Alaska Conservation Council
Southern Environmental Law Center
Southern Utah Wilderness Alliance
Standing Trees
The Earth Bill Network
The Urban Wildlands Group
The Wilderness Society

Trap Free Montana
Trap Free Montana Public Lands
Trevor Zoo
Turtle Island Restoration Network
Unite the Parks
Washington Wildlife First
Waterkeeper Alliance
Waterway Advocates
Western Environmental Law Center
Western Nebraska Resources Council
Western Watersheds Project
Wild Arizona
Wild Fish Conservancy
WildEarth Guardians
Wilderness Workshop
Wolf Conservation Center
Wyoming Wildlife Advocates
Zoo New England

Cc: Chairman Thomas R. Carper, U.S. Senate Environment and Public Works Committee
Chairman Raúl M. Grijalva, U.S. House Natural Resources Committee
Chairman Joe Manchin III, U.S. Senate Energy and Natural Resources Committee
Chairwoman Debbie Stabenow, U.S. Senate Agriculture, Nutrition, and Forestry Committee
Chairman David Scott, U.S. House Agriculture Committee
Ranking Member Shelly Moore Capito, U.S. Senate Environment and Public Works Committee
Ranking Member Bruce Westerman, U.S. House Natural Resources Committee
Ranking Member John Barrasso, M.D., U.S. Senate Energy and Natural Resources Committee
Ranking Member John Boozman, U.S. Senate Agriculture, Nutrition, and Forestry Committee
Ranking Member Glenn “GT” Thompson, U.S. House Agriculture Committee