

THE LAST DECADE TO SAVE THE PLANET

FIFTY CRITICAL ENVIRONMENTAL REFORMS TO TRANSFORM THE EXECUTIVE BRANCH

Center for Biological Diversity • November 2020





Hydraulic fracturing pads along the White River in Utah / Taylor McKinnon, EcoFlight

The coronavirus pandemic and resulting global economic downturn have ripped away the view of our society's perceived invulnerability. They have demonstrated beyond doubt that our unsustainable economic system, callous destruction of the natural world and reliance on fossil fuels have made us deeply vulnerable to catastrophe. The pandemic has also made the connection between pollution, institutional racism and poverty inexorably clear, as Black, Indigenous and other people of color have suffered disproportionately — including far higher mortality rates — across the United States from COVID-19.

But the pandemic has also shown that our government is willing to take extraordinary action and spend trillions of dollars to intervene in the economy — just as it did in the 2008 financial crisis — to maintain the status quo of our economy and return to normalcy. Thus it is equally true that our society could invest trillions to take equally bold and transformative action to a green and sustainable economy that solves the climate crisis, ends habitat loss and stems the tide of extinction. If we choose not to act, the institutional problems that plague our country will worsen and multiply, and our planet will become unrecognizable and unlivable within decades.

Over the past 30 years, complacency and neglect by Democratic administrations — and outright hostility to the environment by Republican administrations — have withered away our fundamental environmental safeguards. That our environment is cleaner now is *only* a testament to the wisdom of Congress from 50 years ago to enact bold, unprecedented environmental legislation that has stood the test of time; it is not due to recent policies or action by either political party. There has been tremendous stagnation in overall environmental progress — especially in fighting climate change and stopping the extinction crisis — with virtually all areas of progress due to the tenacious efforts of advocates outside the government forcing Democratic and Republican administrations alike to implement the laws they're supposed to uphold.

Scientists from around the world have warned that we have only one decade left to act — to slash greenhouse gas emissions by at least 50% in the next 10 years — to have any hope of keeping global warming to 1.5 degrees Celsius by 2050. Warming is accelerating faster than predicted, and planetary temperatures may exceed the 1.5 degree mark within *five years*.¹ If we

¹ Global Annual to Decadal Climate Update, World Meteorological Organization at 1 (2019), https://hadleyserver.metoffice.gov.uk/wmolc/WMO_GADCU_2019.pdf.

do not act boldly, *right now*, the impacts of climate change will be severe and make our planet nearly uninhabitable. Sea levels will rise, flooding many of the great cities of the world, hundreds of millions of people will become climate refugees, and every ecosystem on Earth will unravel. Equally tragically, scientists estimate, *one million* species will go extinct around the world in the coming decades if we do not fundamentally change our relationship with the natural world. Indeed the COVID-19 pandemic is a direct result of our reckless and unsustainable exploitation of wildlife, and the rate of novel pandemic diseases will likely rise as the extinction crisis worsens.



Illicit endangered wildlife trade / Dan Bennett

President Trump has caused unprecedented damage to the federal government and social fabric of this nation. However, simply undoing the Trump administration's actions and returning to the status quo will not be enough to avert the coming environmental catastrophes we now face. Our environmental protections must be far stronger, and President Biden must be far bolder than any president in the past 40 years if we are to avoid a planetary collapse that destroys our grandchildren's future and extinguishes the great diversity of life on this planet.

Nor can we ignore the damaging acts that have harmed our environmental safeguards in previous Democratic and Republican administrations that continue to do harm. It will take years and concerted effort from day one of the Biden administration to not only repair what has been harmed but rebuild the executive branch agencies and regulatory policies to restore the full power and effectiveness of laws including the Clean Water Act, Endangered Species Act, Clean Air Act and National Environmental Policy Act.

What is needed now more than ever is bold change that sweeps away decades of failed policies by Democrats and Republicans alike. We need the strongest regulations, policies and executive orders ever enacted by any president. First and foremost, President Biden must implement government-wide reforms to root out corruption and the influence of industry in the executive branch. Beyond that, bold action is needed to save our climate from catastrophic change, prevent the mass extinction of species and restore abundant wildlife and plant populations, preserve 30% of all of our lands and waters for future generations, and ensure that all people live in a just world, free of pollution.

The planet itself can no longer afford policies that merely tinker around the edges. Instead we must lock in progress no future president can roll back. The recommendations below are a roadmap for doing so.



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Inglewood oil field, California / Gary Kavanagh

PUTTING PEOPLE FIRST: RESTORING ACCOUNTABILITY AND ENDING CORRUPTION IN THE EXECUTIVE BRANCH

Thanks to virtually limitless spending by special interests, more and more the federal agencies put the concerns of fossil fuel companies, polluters and large corporations over the well-being of ordinary people and our environment. Agencies that are supposed to watch over the actions of industry now far too often think of industry as the “customer” whose needs must be met.²

The cozy relationship and regulatory capture of the executive branch by industry is exemplified by the Federal Aviation Administration’s (FAA) disastrous approval of the Boeing 737-MAX aircraft, which resulted in the crashes of two aircraft and the loss of 346 lives. The FAA’s failure to independently review and evaluate the information provided by industry — instead acting more like a rubberstamp than a regulatory review body — exposed the deep extent that industry has knowingly taken advantage of the federal government for its own benefit.³

Industry capture is just one obstacle plaguing the executive branch. Another growing problem is the extent to which federal agencies now act to enshrine their own power to act arbitrarily even at the expense of the public good. As Congress warned decades ago, “the ability of most citizens to contest any unreasonable exercise of authority has decreased...the government with its greater resources and expertise can in effect coerce compliance with its position...”⁴

In Democratic and Republican administrations alike, the federal agencies have relentlessly pushed to expand the exemptions from the Freedom of Information Act to shield their activities from the public. The agencies push ever harder to limit their own compliance with the National Environmental Policy Act so that they can approve projects for industry faster, rather than approving better projects that benefit society. And they view environmental justice as a box to be checked, rather than a guide for action. In short, too many federal agencies now value winning and furthering their own interests over doing what’s right for the people of this nation.

² See, e.g. EPA Office of Pesticide Programs May 2nd, 2018 Pesticide Public Dialogue Committee transcript (touting “But I think we are looking to improve the customer experience around the portal in general” in reference to a new interface for industry to use in its pesticide approval applications.).

³ Natalie Kitroeff, Boeing Employees Mocked F.A.A. and ‘Clowns’ Who Designed 737 Max, N.Y. Times (Jan. 29, 2020), <https://www.nytimes.com/2020/01/09/business/boeing-737-messages.html>

⁴ H.R. Rep. No. 96-1418, 96th Cong. 2nd Sess. 9-10; 1980 U.S. Code Cong. & Ad. News 5, p. 4988

The disgraceful tactics of the Trump administration — separating refugee children from their parents, using tear gas and rubber bullets on peaceful protestors, enriching cronies and special interests — illustrate the fundamental lawlessness and lack of accountability within the executive branch. But the rot goes deeper than even the depravities of the Trump administration. Without fundamental reform to the behavior of all federal agencies, to ensure greater transparency, accountability and commitment to justice, the executive branch itself will remain one of the greatest obstacles to genuine progress in this nation for years to come. The first 10 reforms in this document outline the key steps needed to not only repair the damage caused by the Trump administration but also address the core rot found deep within each federal agency.

1) Revoke Every Executive Order and Unilateral Policy Issued by President Trump and Refuse to Defend His Agenda in Court.

President Trump issued more destructive, anti-environmental Executive Orders than any other president in history. On just his fourth day in office, Trump's order *Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects* rubber-stamped the Keystone XL and Dakota Access pipelines for approval and set the tone within his administration to dismantle every critical environmental safeguard they could.

From his unprecedented Executive Order dismantling two national monuments to his authoritarian actions diverting funds to construct his racist border wall, his absurd “2 for 1” deregulatory mandate, and his many orders gutting protections for clean air and clean water, no other president has used the power of Executive Orders more recklessly. Trump's Executive Orders have harmed countless Americans, badly damaged our reputation around the world, fostered racism, and made America crueler. **We recommend President Biden revoke all of President Trump's approximately 200 Executive Orders without exception on Day One.** Beyond Executive Orders, the Trump administration enacted numerous unilateral policies — most without any public comment or process — that have caused massive harm to people and the environment. Many of these policies were implemented by political appointees who were never confirmed by the U.S. Senate, as Trump deliberately left more positions throughout the federal government unoccupied in order to increase the power of industry. To list just a few examples, Dan Jorjani — a political appointee to the Department of the Interior's Solicitor's office that had previously worked for the Koch-funded Americans for Prosperity — issued a sweeping legal opinion gutting protections for billions of migratory birds in the United States. Greg Sheehan — another unconfirmed political appointee — directed the U.S. Fish and Wildlife Service to stop virtually all law-enforcement actions relating to the protection of endangered species.

Political appointees also issued numerous destructive policies. Two examples: Secretary of the Interior David Bernhardt — a former oil and gas lobbyist — issued Secretarial Order 3360, which rescinded virtually all of the Department's climate and mitigation policies and simultaneously required the Department to accelerate oil and gas leasing and development in the National Petroleum Reserve in Alaska. Environmental Protection Agency Administrator Pruitt issued guidance prohibiting most independent scientists from participating on EPA advisory committees.

Because it would take too much time to uncover and understand the full extent of the damage

caused by Trump’s political operatives, **we recommend that President Biden order every federal agency to inventory every policy, guidance and memorandum issued during the Trump administration within the first 100 days of his administration and repeal all of them without exception.**

Most importantly, because defeating each of these Executive Orders, policies and other unilateral actions by the Trump administration may take years in the courts, we recommend that President Biden direct the Department of Justice *not to* defend the previous administration’s actions to the maximum extent allowed by the courts.

2) Repeal Environmentally Destructive Executive Orders and Holdover Policies Issued by Previous Presidents.

Wiping away the damage caused by the Trump administration will not be sufficient to save our planet from the ravages of climate change, stop the extinction crisis, or create a just society for all Americans. A large number of Executive Orders and unilateral policies issued over the past 40 years have collectively inflicted harm on the environment and put the interests of powerful corporations ahead of people.

For example, Executive Order 12630, issued by President Reagan, requires every federal agency to complete a pointless “takings analysis” every time any agency proposes new regulatory safeguards to ensure that the regulation advances “a legitimate government interest” and would not “present a barrier” to the use of private property.⁵ This Executive Order serves to perpetuate an anti-government, right-wing ideology — that environmental and social safeguards are really thinly veiled attempts to “take” private property as part of a big-government conspiracy. Notably, this cumbersome Executive Order does not prevent industry from invoking eminent domain — and taking private property — to build an oil and gas pipeline through private property. It simply undermines every *federal agency’s* efforts to fully protect the public and our environment from harm.

Similarly, Executive Order 13132, issued by President Clinton, requires every federal agency to complete an equally pointless analysis every time an agency proposes a new regulatory safeguard to ensure that the regulation “would have significant Federalism effects.”⁶ This Executive Order was nothing more than a symbolic gesture to address right-wing paranoia and grievances about “states’ rights.” Complying with this mindless paperwork exercise stands as an obstacle to all federal agencies to follow the law and protect the rights of people.

Beyond Executive Orders, other holdover guidance documents and unilateral policies from previous administrations — all of which can be revoked with a stroke of the pen by the Biden administration — also continue to do substantial harm. For example, the Obama administration created an informal litigation memo to defend a George W. Bush administration decision — written by David Bernhardt — limiting protections for polar bears and other species imperiled by the looming catastrophe of climate change by claiming that endangered species must be

⁵ Exec. Order No. 12630, 53 Fed. Reg. 8859 (1988).

⁶ Exec. Order No. 13132, 64 Fed. Reg. 43255 (1999).

“currently on the brink of extinction.”⁷ This myopic view of the extinction crisis, in which conservation actions must be pointlessly delayed until a species is nearly beyond saving, only serves to benefit powerful special interests.

We recommend that President Biden rescind damaging holdover Executive Orders and unilateral guidance documents that continue to benefit industry and special interests. We have included a complete list of Executive Orders, policies and other guidance that put the interests of the powerful above ordinary citizens; those are attached as an appendix.

3) Reestablish Global Leadership by Rejoining the Paris Agreement, the World Heritage Convention and Other Multilateral Agreements.

Addressing the climate emergency and extinction crisis requires worldwide, coordinated action and renewed leadership from the United States. The United States was once a global conservation leader — many of the world’s conservation agreements were modeled on our own conservation laws, and the United States was integral to their ratification and function, historically providing significant funding. The United States also helped spearhead the Paris Agreement, and our abdication from those efforts has caused significant retrenchment in commitments from many nations.

The United States must regain its former position by rejoining and reviving critical climate and wildlife agreements, expanding funding and making aggressive conservation commitments. Leadership on climate is essential because we are the largest cumulative, historical emitter of greenhouse gases. Our leadership will pressure other large historical emitting nations to contribute their fair share and will help ensure that nations in the Global South, who have been harmed by our emissions, do not bear a disproportionate burden in fighting climate change.

In just four years, President Trump singlehandedly turned the United States into a global pariah. His withdrawal from the Paris Agreement undermined global efforts to combat climate change. Trump also withdrew the United States from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Heritage Convention, losing voting rights that ensure the world’s most precious sites and habitats are protected in perpetuity.

President Biden must not only rejoin the Paris Agreement, but aggressively increase U.S. commitments for emissions reductions consistent with science, equity and climate justice.

Specifically President Biden must: (1) commit to slash domestic greenhouse gas emissions by at least 71% by 2030 and reduce them to near-zero by no later than 2040 to meet our fair share of reductions,⁸ (2) work with Congress to double the U.S.’s current financial commitments to the Green Climate Fund to over \$8 billion,⁹ and (3) direct the State Department and other relevant agencies to prohibit any federal financing from funding fossil fuel projects overseas.

⁷ Supplemental Explanation for the Legal Basis of the Department's May 15, 2008, Determination of Threatened Status for Polar Bears available at: https://www.fws.gov/endangered/esa-library/pdf/20101222_Polar%20bear%20listing%20clarification%20memo.pdf

⁸ Climate Equity Reference Project, <https://calculator.climateequityreference.org>.

⁹ World Resources Institute, Green Climate Fund Contributions Calculator 2.0 (2019), available at: <https://www.wri.org/resources/data-visualizations/green-climate-fund-contributions-calculator-20>.

For wildlife and conservation treaties, President Biden must also take immediate steps to rejoin:

- The World Heritage Convention
- The Convention on Biological Diversity
- The Convention on Migratory Species
- The Agreement on Albatrosses and Petrels
- The Basel Convention
- The Rotterdam Convention on Pesticides in International Trade
- The Stockholm Convention on Persistent Organic Pollutants
- The Convention on the Law of the Sea
- The Vienna Convention on the Law of Treaties

4) Require All Agencies to Redress Past Environmental Harms and Ensure Environmental Justice.

Black, Indigenous and other communities of color bear the disproportionate impacts of pollution and the climate emergency. People of color are more likely to live near polluting facilities, breathe polluted air, and drink polluted water, resulting in significantly higher rates of cancer, asthma and other diseases.¹⁰ They also disproportionately suffer from climate change-fueled events like intense heat waves, droughts and hurricanes, due to compounding social vulnerabilities including lack of access to health care, inadequate housing and poverty.¹¹

President Trump has greatly exacerbated this environmental racism by dismantling fundamental environmental regulations for polluting industries over the past four years. But these racial injustices are a legacy deeply rooted in systemic, institutional and structural racism. We recommend President Biden make environmental justice central to his administration by requiring all federal agencies to redress historical harms to Black, Indigenous and other communities of color and low-wealth households that have been disproportionately impacted by environmental racism.

First, President Biden should strengthen Executive Order 12898 and require all federal agencies to enact binding regulations to ensure environmental justice. Every federal agency should be required to (1) undertake meaningful consultations in all decision-making with affected communities, including Indigenous and Alaska Native Americans, and fully respond to the concerns raised in those consultations (2) pro-actively mitigate — instead of merely “identifying and addressing” — the disproportionate health and environmental impacts of their programs on communities of color and low-wealth households, and (3) bring enforcement actions against private parties under Title VI of the Civil Rights Act of 1964 to address disparate environmental impacts that harm environmental justice communities.¹²

Second, too many federal agencies only provide short-term band-aid assistance to address immediate environmental injustices, without addressing the legacy and cause of the problems or implementing long-term plans to provide a meaningful and sustainable recovery for

¹⁰ U.S. EPA, American Public Health Association, Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status (2018), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304297>.

¹¹ Meg Anderson & Sean McMinn, As rising heat bakes U.S., the poor often feel it most, NPR (Sep. 3, 2019).

¹² See State of New York, Senate Bill 6599, available at: <https://legislation.nysenate.gov/pdf/bills/2019/S6599>.

communities. We recommend that **President Biden establish a Cabinet-level task force to (1) address the root causes of environmental injustices, (2) develop a plan for redressing the impacts of systemic racism and environmental injustice caused by the federal government, and (3) develop long-term, equitable plans to address future impacts from pollution and climate change.**

5) Prosecute Corporations That Deceived the Public on Climate Change and Seek Damages for Climate Impacts They Caused.

Fossil fuel polluters are the single greatest cause of the climate emergency and the single greatest barrier to addressing it. For decades, fossil fuel companies have understood the dangers associated with their fossil fuels. Yet instead of acting responsibly, they manufactured elaborate disinformation campaigns to lie about the science and mislead the public about the harms caused by their industry.¹³ Like asbestos, tobacco and opioid manufacturers, the fossil fuel industry had longstanding knowledge of the dangers of climate change, but rather than taking steps to prevent harm, it took action to discredit climate science and placed its profits above the public good and our planet. As the climate emergency becomes ever more dire, their efforts to undermine the fight to stop climate change remain as active as ever.

Legal efforts are underway to hold fossil fuel polluters accountable, but much more needs to be done at the federal level. **We recommend that President Biden direct the Attorney General to prioritize and investigate all legal violations, including fraudulent behavior, by fossil fuel polluters and prosecute them to the maximum extent of the law.** The Attorney General should establish a high-level task force to thoroughly review and investigate the actions of fossil fuel companies. The Department of Justice should support other ongoing efforts, such as the more than a dozen “nuisance” cases brought by states and local governments against fossil fuel producers to make them pay for the damage they have caused. These include the Minnesota Attorney General’s lawsuit against fossil fuel companies and the Massachusetts Attorney General’s case against Exxon for fraud in its communications to both investors and consumers, as well as class action lawsuits by shareholders against the fossil fuel companies for misrepresenting climate change risks.¹⁴ Furthermore, the Department of Justice should be instructed to support — instead of opposing — efforts to ensure that the right to a livable climate is a cognizable right under the Constitution, and that any industry that infringes on the rights of children and unborn generations to experience a world with a livable climate should be held liable for the damages it is causing.

In 2020 President Trump’s EPA issued an extraordinary waiver that allowed virtually any polluter to avoid mandatory requirements of our nation’s most important environmental laws under the guise of the pandemic. This egregious and unprecedented action was just the culmination of various schemes over the years to allow polluters to avoid full accountability for their actions and avoid the full penalties that Congress envisioned in passing our environmental laws. No federal agency should turn a blind eye to violations of environmental laws that harm

¹³ Supran, Geoffrey & Naomi Oreskes, Assessing ExxonMobil’s Climate Change Communications (1977-2014), 12 Environ. Res. Lett. 084019 (2017).

¹⁴ Savage, K., *Federal Judge: Employees Can Pursue Climate Fraud Suit Against Exxon*, CLIMATE LIABILITY NEWS, Aug. 15, 2018.

our environment. **To that end we recommend that President Biden issue an Executive Order requiring federal agencies to establish binding regulations that always impose the maximum penalty under the law when an entity pollutes our air, water, public lands or harms wildlife.**

6) Revitalize the National Environmental Policy Act by Requiring Agencies to Minimize Climate and Environmental Impacts and Redress Environmental Injustices.

Congress' stated intent in passing the National Environmental Policy Act of 1969 ("NEPA") was to "encourage productive and enjoyable harmony between man and his environment" and to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man."¹⁵ Despite this clear purpose, and despite the vaunted position that NEPA holds as the "magna carta" of the modern environmental era, NEPA has been continuously undermined over the past 20 years. Agencies and politicians alike keep pushing to weaken the environmental review process even as the impacts of the federal agencies' actions continue to cause immense environmental harm. Since 2017 more than 314 pieces of legislation — including 53 introduced by Democratic members of Congress and 261 introduced by Republican members — have sought to weaken NEPA. Encouraged by these political attacks, the Trump administration enacted an unprecedented rollback of NEPA's implementing regulations, effectively neutering the environmental review process required by the Act.

The very first change in Trump's NEPA rollback codifies language in the 1989 Supreme Court case *Robertson v. Methow Valley Citizens Council*,¹⁶ by stating that NEPA "is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions," and that "NEPA does not mandate particular results or substantive outcomes."¹⁷ The Trump regulatory rollback also seeks to diminish NEPA, to transform it into a paperwork exercise, and to truncate the analysis conducted by the federal agencies in order to shorten the timetable for approving a project with as few measures to mitigate environmental impacts as possible. The result of Trump's rollbacks will mean a dirtier environment and more impacts to people's health and well-being, especially in communities of color already hurt by pollution, and a greatly reduced ability of the public to democratically participate in federal agency decision-making. **We therefore recommend that the Biden administration immediately begin a rulemaking process on day one that repeals the Trump changes to the NEPA regulations.**

Moreover, NEPA is not *just* a "procedural statute" that is indifferent or neutral to the impacts of climate change, the impacts to the environment or the poisoning of people. NEPA was originally passed to improve our environment and put us on a more sustainable path. It can be strengthened by requiring agencies to not only consider courses of action that are more beneficial to the environment, but also by requiring that they adopt the most environmentally beneficial course of action. **We recommend that the Biden administration implement the most powerful NEPA regulations in history by requiring every federal agency to adopt the most environmentally beneficial alternative when considering a course of action. If an agency action cannot avoid**

¹⁵ 42 U.S.C. § 4321

¹⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989)

¹⁷ *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 1684, 1693 (Jan 10, 2020)

significant impacts or its actions will result in environmental injustice, then the agency should simply take no action.

7) End Corporate Influence in Federal Rulemakings by Rejecting Use of Industry-funded Junk Science.

Corporations have long understood that one of the most effective strategies to delay critical environmental safeguards from being implemented is to foster a perception of uncertainty. From climate deniers to big tobacco to the pesticide and chemical industries, seeding doubt has been one of the main tactics they have waged in their war against common-sense regulations that save lives and protect the environment. And to achieve their desired results, these companies have spent millions generating pseudo-science to perpetuate uncertainty and protect their profits.

Congress has turned a blind eye to this problem for many years and even encouraged the use of industry-funded data and scientific research in certain decisions relating to the protection of the environment. Fortunately, even in those laws where Congress has instructed the EPA and other agencies to consider industry-generated information, the agencies can still implement critical firewalls to ensure that this information is objective, free of bias, and not designed to support industry's interests.

For example, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the pesticide industry is required to generate certain types of data to support the approval and renewal of the use of its pesticides. While the EPA has developed regulations that set forth some basic requirements regarding good laboratory practices, it makes no effort to ensure that the pesticide industry reveal data and studies that do not support the use of those pesticides.¹⁸ **We recommend that the EPA require all industry-generated data be generated by certified independent third parties in a double-blind manner,** so that if results do not support industry's product, that those data are also sent to the regulatory agencies.

Well-funded industries are able to flood the agencies during the notice-and-comment period because of their vast resources, distorting and delaying the regulatory process. By distorting the comment process, industry can foster uncertainty, which can even influence judicial review of agency decisions. While it's the right of any entity or person to provide input to the government during an agency rulemaking process, industry-funded research can be flagged for additional scrutiny to identify biases and motivations of those that submit comments. **We also recommend that every federal agency implement new requirements that require any entity that's submitting its own science or data regarding an agency proposal to disclose all funding sources for that research or data.** This requirement would apply to all entities, including nonprofits, to ensure that the best information is properly assessed by the federal agencies.

Finally, to ensure that corporations do not become repeat offenders, **we recommend that federal agencies implement regulations similar to the debarment process that ban the use of industry-funded research by a particular company if that particular corporation fails to**

¹⁸ Mie, A., Rudén, C. & Grandjean, P. 2018. *Safety of Safety Evaluation of Pesticides: developmental neurotoxicity of chlorpyrifos and chlorpyrifos-methyl*. Environ Health 17:77.

comply with transparency requirements. If an industry repeatedly attempts to improperly influence the notice and comment process, it must be penalized for its bad behavior.

8) Resuscitate the Freedom of Information Act by Ending the Use of the “Deliberative Process” Exemption and Restoring Transparency.

The Freedom of Information Act’s (“FOIA”) basic purpose “is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”¹⁹ Despite FOIA’s clear purpose, federal agencies often flout FOIA and abuse the deliberative process privilege exemption so much so that in 2016 — even before Trump — Congress described deliberative process as the “withhold it because you want to” privilege. The Trump administration has egregiously abused this privilege during its efforts to roll back critical environmental safeguards, making FOIA virtually meaningless, providing countless pages of records that are blacked out to the margins. But because previous administrations have also abused this privilege, **we recommend that the Biden administration immediately prohibit all federal agencies from invoking the deliberative process privilege on matters relating to human health and environmental protection.** The use of deliberative process in FOIA does not lead to stronger, more environmentally protective results in agency decisions. If federal agencies are following the law, and are using the best available science, then they should not have anything to hide in how they arrived at their decisions.

Federal agencies also consistently ignore FOIA’s statutory deadlines, waiting months or even years after records are requested. To ensure that records are useful and not stale, **we recommend that the Biden administration rigorously enforce FOIA’s timeframes for an agency’s production of public records and require that after six months, all privileges are automatically waived and all records must be released to the public.**

Federal agencies may destroy or fail to maintain records critical to public oversight.²⁰ For example, in 2018 the U.S. Fish and Wildlife Service proposed destroying key information and data on recovery plans despite the fact that scientists and advocates commonly use recovery plans to analyze the status of endangered species. **We recommend that the Biden administration prevent the destruction of records containing information and data pertaining to human health and the environment.**

Finally, the disastrous Supreme Court decision in *Argus Leader* expanded FOIA Exemption 4, allowing agencies to withhold virtually all purported industry trade secrets and confidential commercial information despite the environmental or human health harm that is occurring.²¹ This was an unprecedented coup for special-interest polluters that can now withhold almost any information they submit to the federal agencies without scrutiny. **We recommend that the Biden administration immediately prevent agencies from withholding “confidential” information unless its disclosure is likely to cause substantial competitive harm.**

¹⁹ *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 242 (1978).

²⁰ See, e.g., [DOI Records Request Openness-Accountability Community Comments 26 Nov 2018](#); [Comments on Proposed Dept. of the Interior Natural Resources Planning and Development Document Records Schedule](#),

²¹ 5 U.S.C. § 552(b)(4); *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

9) Eliminate Undue Influence in Rulemaking by Dismantling the Office of Information and Regulatory Affairs and Repealing Executive Order 12866.

No other agencies wield as much unaccountable power to benefit large corporations and polluters than the White House Office of Information and Regulatory Affairs (OIRA). In both Democratic and Republican administrations, OIRA has killed critical environmental safeguards, delayed regulatory safeguards for years, and weakened regulations all in the name of “cost-benefit” analyses that are not required or mandated by any law passed by Congress. During the Trump era, OIRA has been the tip of the spear in dismantling key environmental safeguards throughout the federal government.

Cumulatively OIRA’s despotic wielding of power has gutted protections for clean air and clean water, contributing to the premature deaths of thousands of Americans over the past three decades. Simply put, OIRA has never strengthened a single rulemaking to protect the environment, but rather injects spurious economic conjecture into the rulemaking process, all to benefit the largest corporate interests in the United States.

We recommend that President Biden dismantle the Office of Information and Regulatory Affairs and revoke Clinton Executive Order 12866, Obama Executive Order 13563 and Trump Executive Order 13771. The only task that a diminished and neutered OIRA should continue to perform is its statutory oversight of the Paperwork Reduction Act.²²

Executive Order 12866 has given a small number of unaccountable bureaucrats within OIRA the power to indefinitely delay or even stop critical environmental regulations despite no statutory authority to do so. Even in situations where Congress expressly forbids the consideration of economic costs, OIRA has killed vital safeguards in the name of economic growth. For example, in 2011, OIRA killed the EPA’s effort to set the national ambient air quality standards for ozone at 60 parts per billion despite the Clean Air Act’s unambiguous mandate to set such standards *solely* on what is scientifically required to protect human health. Had the EPA been allowed to do its job, tens of thousands of premature deaths would have been avoided every year.²³ During both the Bush and Obama administrations, OIRA delayed critical safeguards to protect the North Atlantic right whale, pushing it to the brink of extinction, and counterproductively making the recovery of this species longer and far more costly.²⁴

Executive Order 12866 allows political appointees across the federal agencies to weaken regulations by altering regulations in a completely nontransparent manner during “interagency review.” Nothing in the Administrative Procedure Act contemplates this distorted view of rulemakings. If an agency wishes to provide comments on a regulatory proposal by another agency, it should only be permitted to do so in a public manner and provide its comments to the docket for that rulemaking. Doing so will bring transparency throughout the federal government and ensure that our environment is not sacrificed for corporate profits.

²² 44 U.S.C. § 3501.

²³ J.D. Berman et al., *Health Benefits from Large-Scale Ozone Reduction in the United States*, 120(10) Environ. Health Perspec. 1404-10 (October 2012).

²⁴ See Sam Kim, *White House Delays Whale Protection Rule*, Center for Effective Government (July 24, 2007), available at: <https://www.foreffectivegov.org/node/3366>.

10) Utilize Existing Trade Laws to Further the Goals of Ensuring a Stable Climate and Ending the Extinction Crisis.

American trade laws provide a powerful lever to influence the behavior of other nations and could be deployed to further environmental goals across the board. For example, under the Trade Expansion Act of 1962, as amended, the secretary of Commerce can initiate investigations on imports of products that have national security implications, and the president can take actions to restrict imports that affect national security.²⁵

Because both the extinction crisis and the climate crisis represent existential threats to the future of life on this planet, each crisis also represents a clear threat to national security. **We recommend that President Biden direct the secretary of Commerce to investigate whether every foreign nations' imports are exacerbating climate change or the extinction crisis.** These investigations would ensure that the United States accounts for the detrimental impacts of climate change and biodiversity loss on its national security, pursues strong measures to ensure that its trade partners are meeting their international commitments, and conditions trade upon commitments to meet science-based environmental goals.

Section 232 tariffs²⁶ — either in the form of an *ad valorem* tax or a specific tariff at a fixed rate per unit — could be implemented to address foreign nations that are not meeting commitments under the Paris Accords. For example, a greenhouse gas tariff could be pegged at the overall percentage of GHG pollution that a foreign nation has exceeded its obligations under Paris, and then allocated toward goods with known carbon footprints that are imported into the United States. Similarly a tariff could be placed on any product whose manufacture or extraction has caused damage to tropical rainforests. Examples include palm oil produced through destruction of tropical rainforests in southeast Asia, gold from mining in Latin America that is destroying the Amazon, or rare-earth minerals mined in the tropical forests of Africa.

Finally, as the world's single largest consumer, spending hundreds of billions of dollars annually, the federal government has leverage to influence trade policy through its procurement process of goods produced overseas.²⁷ President Biden should implement a comprehensive “green” procurement policy that requires all procurement practices work to slash fossil fuel use in supply chains and preserve biodiversity. **Therefore we recommend that President Biden order all federal agencies to enact binding regulations requiring a comprehensive environmentally friendly procurement process.**

²⁵ 19 U.S.C. § 1862(b)(1)(A).

²⁶ See *Industrial Tariffs*, USTR, <https://ustr.gov/issue-areas/industry-manufacturing/industrial-tariffs> (last visited Apr. 25, 2020)

²⁷ Shawna D. Ganley, 2013. *Federal “Green” Product Procurement Policy in the United States*, COLUMBIA LAW SCHOOL; Daniel Gitterman, 2013. *The American Presidency and the Power of the Purchaser*, PRESIDENTIAL STUDIES QUARTERLY.



Roller coaster in Seaside Heights, New Jersey after superstorm Sandy / Anthony Quintano, CC-BY

SAVING THE CLIMATE

The United States and the planet face an indisputable climate emergency. The solution to the crisis is also inarguable: We must transform our extractive economy to a regenerative and inclusive one, which includes rapidly converting our energy generation and transportation sectors to 100% clean and renewable energy and eliminating the production and consumption of fossil fuels. The only real question is how to accomplish this transition with the scale and speed necessary to limit warming to below 1.5 degrees Celsius and in a manner that is fair, just and equitable to all.

Fossil fuel producers currently plan to extract far more fossil fuels than the world can afford to burn and stay within the global carbon budget needed to avert disastrous climate impacts.²⁸ The United States now holds the dubious title of the world's largest oil and gas producer and is also the third largest coal producer. The unprecedented expansion of oil and gas extraction in the United States is one of the greatest threats undermining the world's ability to limit global warming to less than 1.5 degrees.

Unfortunately the United States' current production and reliance on fossil fuels disproportionately harms Black, Indigenous and other communities of color as well as low-income communities, all of which suffer higher rates of respiratory illnesses, cancer and other illnesses due to exposure to chronic pollution. These impacts have become even more stark during the COVID-19 pandemic, as these same groups have overwhelmingly borne the brunt of this disease, with far higher mortality than the white population.

Past Congresses and administrations, Democratic and Republican alike, have failed this nation and the world in addressing the United States' share of responsibility in tackling the climate crisis. The most recent proposals from the Democratic-led House of Representatives in the 116th Congress all fail the test of doing what is needed to solve the climate crisis — fundamental restructuring of our energy

²⁸ SEI, IISD, ODI, Climate Analytics, CICERO, & UNEP (2019). *The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C*.

systems, democratization in the governance of those systems, and a moon-shot vision of rapidly transitioning to 100% clean, renewable and zero-emission energy within the next decade.

President Biden cannot wait for the unlikely event that Congress passes effective climate legislation. Instead he must demonstrate national and global leadership and take immediate and decisive action to launch a rapid and just transition off fossil fuels economy-wide. Fortunately existing environmental laws like the Clean Air Act, plus existing emergency authorities, give the president all the tools he needs to solve the climate crisis.

President Biden must not also ignore the inconvenient truths of fighting climate change, including the need to address the ever-increasing share of emissions from industrial agriculture and livestock. Decades of political pandering by both parties have pushed false solutions, including corn-based ethanol, carbon sequestration, “biomass” energy production and hydrogen fuel-cell vehicles. If we are to actually set this nation on a path to success by 2050, President Biden cannot delay in taking any of the actions below.

11) Using the National Emergencies Act, Declare That the Climate Crisis Is a National Emergency and Use the Defense Production Act to Deploy Clean, Renewable Energy Nationwide.

The first step to solving a problem is to meaningfully acknowledge it. The climate crisis is an existential emergency for public health and safety, economic and racial justice, and the largest threat to global stability and security. **Accordingly President Biden must treat it as one and declare a national climate emergency under the National Emergencies Act on Day One in office.**²⁹ Declaring a national emergency is not merely symbolic: It unlocks specific emergency powers enumerated in more than 130 statutes that can hasten the just transition off fossil fuels.³⁰

In 2015 Congress lifted the 40-year-old export ban on crude oil. Predictably crude oil exports skyrocketed to 3 million barrels per day — a quarter of daily U.S. production. President Biden could immediately and unilaterally end these climate-killing exports by reinstating the ban, but *only* if he does so through a declaration of a national emergency.³¹ To demonstrate his commitment to real action, President Biden should reinstate the crude-oil export ban immediately as part of his declaration of a national climate emergency.

As the United States learned during the COVID-19 pandemic, the Defense Production Act provides the president with significant power to enlist industry to put the national interest above their profits. **We recommend that President Biden invoke the Defense Production Act to mobilize domestic production of clean and renewable energy to combat the climate emergency.**³² By ordering the manufacture of solar photovoltaic panels, installation hardware, batteries, microgrid and energy efficiency hardware, the president could help to create millions

²⁹ 50 U.S.C. §§ 1601-1651.

³⁰ See, e.g., Farber, D. 2019. *Declaring a Climate Change Emergency: A Citizen's Guide*, Legal Planet (Mar. 14, 2019), available at: <https://legal-planet.org/2019/03/14/declaring-a-climate-change-emergency-a-citizens-guide>.

³¹ 42 U.S.C. § 6212a(d)(1)(A).

³² 50 U.S.C. § 4567 *et seq.*

of jobs and stimulate the economy while advancing an urgently needed clean energy transition nationwide.

Finally we recommend that President Biden use his emergency authority to redistribute military funds toward construction of clean and renewable energy, battery storage and smart-grid infrastructure projects on military and government-owned properties.³³ This construction should prioritize distributed solar and storage projects, in addition to well-sited and well-managed wind and photovoltaic solar installations built on already-degraded land to maximize environmental and social benefits.

12) Immediately End Oil, Gas and Coal Leasing on Public Lands and Offshore Waters and Begin Phasing Out Existing Fossil Fuel Production.

The United States is the world's largest oil and gas producer and third-largest coal producer in large part because of fossil fuel production on public lands and offshore waters, which accounts for almost a quarter of all carbon dioxide emissions.³⁴ To keep warming well below 1.5 degrees Celsius, we must keep fossil fuels in the ground.³⁵

First President Biden must immediately stop all new federal fossil fuel leases. For offshore leasing, the president should immediately and permanently withdraw all remaining unleased waters on the outer Continental Shelf under the authority of the Outer Continental Shelf Lands Act.³⁶ For onshore leasing the president should issue an Executive Order directing the secretary of the Interior to halt the issuance of all new fossil fuel leases for oil, gas and coal.

Second we recommend that President Biden issue an Executive Order imposing a moratorium on issuance of all new permits for fossil fuel exploration and production. During the moratorium period, the Department of the Interior and Council on Environmental Quality should conduct a comprehensive programmatic review — undertaken pursuant to NEPA — that analyzes the direct, indirect and cumulative impacts of federal fossil fuel leasing and production, including environmental, climate, and environmental justice impacts. If the review determines that further permitting and exploration is not consistent with keeping warming below 1.5 degrees Celsius or is not in the national interest, then the Department of the Interior should issue rulemakings, leasing plan amendments and land withdrawals under the Federal Land Policy and Management Act to permanently halt additional fossil fuel production.³⁷

Finally the Biden administration should establish a rational drawdown schedule to phase-out existing fossil fuel production on public lands. Current law already allows the Department of the Interior to set the “rate of development and production” of fossil fuels on public lands and

³³ 10 U.S.C. § 2808.

³⁴ Merrill, M.D, et al. 2018, *Federal lands greenhouse emissions and sequestration in the United States—Estimates for 2005*; U.S.G.S Scientific Investigations Report 2018–5131, 31 p., <https://doi.org/10.3133/sir20185131>.

³⁵ Trout, Kelly & Lorne Stockman, *Drilling Towards Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits*, Oil Change International (2019).

³⁶ 42 U.S.C. § 1341(a).

³⁷ 43 U.S.C. § 1714(b).

waters.³⁸ To avoid catastrophic harm from status-quo production of fossil fuels, the president should order the Department of the Interior to phase down federal fossil fuel production to close to zero by 2040 and keep overall emissions within the global carbon budget. A deliberate and orderly schedule for the phaseout of federal fossil fuel production would both contribute directly to necessary emissions reductions and avoid wasteful continued investment in fossil fuel infrastructure and the disruptive consequences of an unplanned decline.

13) Deny Permits for New Fossil Fuel Pipelines, Import and Export Terminals, Petrochemical Plants and Other Infrastructure.

As oil and gas production has soared in the United States, driven by the fracking boom and the reversal of the crude-oil export ban, fossil fuel companies have pushed harder than ever to receive approval of fossil fuel infrastructure projects — including the Keystone XL Pipeline, the Dakota Access Pipeline and countless other projects — threatening to create a “carbon lock-in” maintaining the use of fossil fuels for decades to come.³⁹ Fossil fuel infrastructure hamstringing the transition to a renewable energy economy and creates perverse financial incentives to keep using fossil fuels.

Refineries, export terminals, petrochemical facilities, pipelines and other fossil fuel infrastructure cause substantial air and water pollution in surrounding communities. Low-income and communities of color shoulder a disproportionate share of the impacts from this pollution, suffering from higher rates of asthma, cancer and other illnesses. In the next 10 years alone, the petrochemical industry plans to increase plastics production by 35%, with more than 300 new projects slated for the United States. The localized pollution and environmental justice impacts of this will wreak havoc on the environment and surrounding communities.

We recommend that President Biden issue an Executive Order placing a moratorium on approving all new permits for new fossil fuel infrastructure projects. During the moratorium the Council on Environmental Quality, Environmental Protection Agency and Centers for Disease Control and Prevention should conduct a programmatic review — undertaken pursuant to NEPA — of the environmental and human health impacts from fossil fuel infrastructure. At the end of the review, the agencies should issue recommendations to all federal agencies on mandatory regulatory measures to eliminate environmental justice impacts and climate impacts from any fossil fuel infrastructure project. Only after a federal agency fully implements new standards and regulations to ensure that fossil fuel infrastructure projects do not cause climate or environmental justice impacts should President Biden lift the moratorium on approval of infrastructure projected recommendations.

Second we recommend that President Biden issue an Executive Order to the Environmental Protection Agency to object to all new fossil fuel infrastructure being considered by state agencies unless the project meets the federal stringent climate and environmental justice standards. Across much of the nation, state agencies play a key role in the approval of fossil fuel infrastructure — especially as part of their delegated authorities under

³⁸ See 30 U.S.C. § 188 and 43 U.S.C. § 1334(g)(1). *Boeschle v. Udall*, 373 U.S. 472 (1963). (“Lessor reserves right to specify rates of development and production in the public interest”).

³⁹ Erickson, P. *et al.*, *Assessing carbon lock-in*, 10 Environmental Research Letters 084023 (2015).

the Clean Air Act and Clean Water Act — but the EPA retains key oversight of those approvals. For example, state agencies must issue the water-pollution and air-pollution permits required prior to the construction of most fossil fuel infrastructure projects, but the EPA retains the authority to object — and veto — those permits. In order to avoid a race to the bottom, the EPA should veto any fossil fuel infrastructure project that does not meet the minimum standards from the Biden administration’s environmental justice and climate recommendations.

14) Establish Strict Limits on Methane and Volatile Organic Compounds to Phase Down Fracking on Public and Private Lands.

Hydraulic fracturing (“fracking”) is an ultra-hazardous extraction technique that causes significant air and water pollution, habitat destruction, and harms human health. It’s also unsustainable from a climate perspective, since 90% of new U.S. oil and gas drilling through 2050 depends on fracking, and nearly 60% of the carbon emissions will come from the epicenters of fracking — the Permian Basin and the Appalachian Basin across Pennsylvania, West Virginia and Ohio.⁴⁰

The president has clear legal authority to restrict fracking to protect the climate, since federal agencies have the authority to determine what types of oil and gas drilling are permitted on public lands and waters. **Consistent with the larger moratorium on new leasing, we recommend that President Biden issue an Executive Order instructing the Department of the Interior to institute an immediate moratorium on public land and offshore fracking, and order the agencies to develop regulations that permanently ban fracking on public lands and offshore waters.**

On private lands the EPA possesses significant authority to restrict fracking under the Clean Air Act, but unfortunately EPA has never fully embraced the power of the Clean Air Act to do so in a way that meaningfully restricted fracking. For example, the Obama administration issued regulations in 2016 under the Clean Air Act’s new source performance standards program that required a small reduction of methane emissions from oil and gas production, processing, storage and transmission, but the rule had little effect on the overall use of fracking by the fossil fuel industry.⁴¹

We recommend that President Biden *not* reinstate the weak Obama methane reduction rule. **Instead he should direct the EPA to fully protect the air by instituting strict limits on both methane and volatile organic compound emissions from fracking operations.** This air-pollution control rule for oil and gas production would require that methane and volatile organic compounds emissions be reduced to near zero, which would effectively prevent fracking nationwide until, and unless, industry could reduce emissions from fracking operations sufficiently to meet the standard.

⁴⁰ Trout, Kelly & Lorne Stockman, *Drilling Towards Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits*, Oil Change International, at 19 (2019).

⁴¹ *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016).

Finally we recommend that President Biden direct the Centers for Disease Control and Prevention (CDC) to conduct a 12-month scientific review of all human health impacts of fracking and its related activities. Should the CDC determine that significant human health impacts are not being adequately addressed by the EPA or other federal or state agencies, it should use its emergency powers to immediately cease or restrict fracking activities.

15) Cap Climate Pollution Under the National Ambient Air Quality Standards (NAAQS) Program for Greenhouse Gas Emissions at 350 ppm.

The National Ambient Air Quality Standards (NAAQS) program is the heart of the Clean Air Act, providing an overarching, comprehensive system for the reduction of criteria air pollutants that endanger public health and welfare.⁴² Once a pollutant has been added to the NAAQS program through designation as a “criteria” air pollutant, the EPA must set pollution limits that protect the public health and welfare. Each state must then adopt plans to meet those limits over time.⁴³ The *science-based* NAAQS program has been the most successful air-pollution reduction strategies in history anywhere in the world, and provides the single, most-powerful tool that the EPA could use to reduce greenhouse gas emissions under the Clean Air Act.

Since the landmark Supreme Court case *Massachusetts v. EPA*, which held that greenhouse gases qualify as pollutants that can be regulated under the Clean Air Act, the need for a nationwide health-based standard has only grown. **We recommend that President Biden issue an Executive Order on Day One directing the EPA to expeditiously complete a rulemaking process to establish a greenhouse gas NAAQS as quickly as the law allows.** The national pollution cap for greenhouse gas emissions should be set at 350ppm of carbon dioxide equivalent or less — as necessary to protect the public health and welfare — and the EPA should be directed to complete the entire process within four years or less. Once NAAQS are set for greenhouse gases, the EPA should push each state to develop a State Implementation Plan to reduce greenhouse gases as quickly as the Clean Air Act allows, and set Federal Implementation Plans to reduce greenhouse gases for recalcitrant states that refuse to comply.

Furthermore we recommend that President Biden direct the EPA to invoke Section 115 of Clean Air Act to further reduce greenhouse pollution in tandem with the NAAQS program.⁴⁴ Section 115 gives the EPA the power to require states to address and reduce emissions that are contributing to air pollution and that are endangering public health or welfare in other countries. All that it takes for the EPA to invoke this authority is for the administrator to receive “reports, surveys or studies from any duly constituted international agency” about the impacts of air pollution.⁴⁵ The Intergovernmental Panel on Climate Change and other international agencies have issued numerous reports about the grave threat of climate, and what is needed to keep global temperature increases below 1.5 degrees Celsius.⁴⁶ There’s simply no

⁴² See 42 U.S.C. §§ 7408-7410.

⁴³ See Crystal, H. *et al.*, 2019. *Returning to Clean Air Act Fundamentals: A Renewed Call to Regulation Greenhouse Gases Under the National Ambient Air Quality Standards Program*, 31 *Georgetown Env'tl L. Rev.* 233 (2019).

⁴⁴ Michael Berger *et al.*, 2016. *Legal Pathways to Reducing Greenhouse Gas Emissions Under Section 115 of the Clean Air Act*, 28 *Georgetown Env'tl. L. Rev.* 359.

⁴⁵ See 42 U.S.C. § 7415(a).

⁴⁶ See Paris Agreement to the United Nations Framework Convention on Climate Change art. 13.1, Dec. 12, 2015, T.I.A.S. No. 16-1104 (“Paris Agreement”).

excuse for the EPA to continue sitting on its hands with respect to Section 115, when the agency should be using its authority to push states to finally address greenhouse gases.

16) Prohibit Greenhouse Gas Emissions From All New Cars and Light Trucks by 2030 and Set Ambitious Emission Standards for Aircraft, Ships and Trains.

Transportation accounts for about one-third of the nation's greenhouse gas emissions, and its share of emissions continues to rise.⁴⁷ The Clean Air Act requires the EPA to set pollution-reduction rules for all major transport and shipping modes, including cars and pickups, heavy-duty trucks, buses, airplanes, ships and locomotive engines.⁴⁸ Unfortunately the EPA has failed in setting strict emission standards for vehicles, instead naively hoping that markets would drive emissions reductions and that automakers would abide by political arrangements. The EPA's failures are notable when compared to the actions from other nations — including Norway, Denmark, Sweden, the Netherlands, Iceland and Germany — which have already pledged to ban the sale of new fossil fuel cars by 2030.

We recommend that President Biden issue an Executive Order directing the EPA to require 100% electric vehicles for cars and light trucks by 2030. The EPA should also require increasingly stringent greenhouse gas emissions from heavy trucks, buses and other larger vehicles, moving to 100% electric as quickly as technologically possible.

Aircraft are the third-largest source of greenhouse gas pollution from the transportation sector, accounting for approximately 10% of U.S. transport emissions.⁴⁹ The dramatic reduction in travel from the COVID-19 pandemic has helped retire some of the most inefficient aircraft in use today, and the European Union is restricting short-haul flights that compete with high-speed rail. The next few years provides a unique opportunity to restructure air travel to a more sustainable model. **We recommend that President Biden direct the EPA to immediately promulgate regulations setting ambitious, technology-forcing emission standards for aircraft above and beyond the minimal requirements of the International Civil Aviation Organization.** Such standards should require fuel efficiency improvements of at least 3.5% annually and complete electrification of short-haul and long-haul aircraft by 2040 and 2045, respectively.

The United States also has an urgent need to modernize its shipping networks, including both fossil fuel powered rail and marine cargo vessels. Again, despite clear legal authority to limit greenhouse gas emissions from ships and trains, it has failed to take any meaningful action to address these emissions sources. **President Biden should direct the EPA to immediately promulgate regulations setting ambitious, technology-forcing emission standards for ships, trains and all other remaining transportation sectors with the goal of fully decarbonizing these sectors as quickly as possible.**

⁴⁷ U.S. ENVTL PROT. AGENCY, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS 1990-2017 (2019), available at <https://www.epa.gov/sites/production/files/2019-04/documents/us-ghg-inventory-2019-main-text.pdf>

⁴⁸ Clean Air Act, 42 U.S.C. § 7521; *Massachusetts v. EPA*, 549 U.S. 497 (2007).

⁴⁹ *Finding That Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare*, 81 Fed. Reg. 54,422, 54,425 (Aug. 15, 2016).

17) Accelerate Rural America’s Transition to 100% Renewable Energy.

Unlocking a clean energy transition for rural America is a critical step to achieving the country’s decarbonization and a golden opportunity to advance energy democracy among millions of low-wealth communities, including a growing number of new immigrants, who account for 37% of the population growth in rural areas.⁵⁰

More than 830 electric cooperatives deliver electricity to 42 million rural Americans, covering 56% of the nation’s landmass.⁵¹ Unfortunately, while most utility-scale renewable energy is built in rural areas, nearly all of that electric power is sent to distant urban areas. And ironically, rural America remains heavily reliant on fossil fuels, with over 70% of rural cooperative electricity being generated from coal, oil and gas and only 8% of electricity generated from renewable energy sources like solar and wind, despite rapidly dropping clean energy costs.

The primary barrier to transitioning to renewable energy in rural America is that many electric cooperatives are locked into multi-decade fossil fuel energy contracts, burdening them with billions of dollars in debt.⁵² If rural cooperatives can be freed of their stranded fossil fuel assets with financial assistance to eliminate coal debt in exchange for commitments to purchase clean energy and energy efficiency technology, they can move rapidly toward a clean energy future.

Under the Rural Electrification Act, the Rural Utilities Service, an agency in the Department of Agriculture, possesses broad authority to issue and refinance loans for rural electrification.⁵³ This includes financing rural electric cooperatives to implement clean energy systems.

We recommend that President Biden direct the Rural Utilities Service to purchase stranded fossil fuel assets of rural cooperatives pursuant to the agency’s existing authority under the Rural Electrification Act. The assumption of these debts should be conditioned upon the transitioning of the cooperatives’ electricity portfolios to 100% clean and renewable energy generation by 2030. All new generation should prioritize the construction of distributed solar energy — including community solar — and should be built in compliance with all relevant environmental laws and with strong labor protections and standards in place.

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18) Implement a “Green Transition” of the Tennessee Valley Authority and Other Federal Power Marketing Agencies.

There are five federally owned power utilities in the United States: the Tennessee Valley Authority (“TVA”) and four Federal Power Marketing Agencies (“PMAs”) – Bonneville Power Administration, Western Area Power Administration, Southeastern Power Administration and Southwestern Power Administration, which primarily generate hydropower at large dams to customers of smaller utilities and cooperatives across 33 states. Together these five federal

⁵⁰ Pew Research Center, <https://www.pewsocialtrends.org/2018/05/22/demographic-and-economic-trends-in-urban-suburban-and-rural-communities/>

⁵¹ National Rural Electric Cooperative Association, America’s Electric Cooperatives (2019), *available at*: https://www.electric.coop/wp-content/uploads/2019/04/Co-op_Facts_and_Figures_4-2019.pdf.

⁵² See Hatlestad, Erik, Katie Rock, and Liz Veazey, Rural Electrification 2.0: The Transition to a Clean Energy Economy, Center for Rural Affairs, Clean Up The River Environment Minnesota *et al.* (2019), *available at*: https://www.cureriver.org/wp-content/uploads/2019/06/Rural-Electrification-2.0-report_CURE-1.pdf (Oct. 7, 2019).

⁵³ 7 U.S.C. §§ 902(a), 904(a), 907.

utilities generate and sell electricity to smaller utilities and rural electric cooperatives across a vast area of the country. TVA in particular was established to electrify the largely rural Tennessee Valley region, but sadly to this day obtains 45% of its power through the burning of fossil fuels, with only 3% solar and wind.⁵⁴

These federally owned power utilities are falling behind what climate science and justice demand with respect to the timescale needed for a clean and just energy transition. Renewable energy sources should be built in ways that maximize decarbonization and energy democracy systems as well as minimize environmental and ecological damage.

Federal power utilities should not be an obstacle to the nationwide development of new clean energy projects; they should be leaders in the transition. **We recommend that President Biden direct all federally owned power utilities to expeditiously replace all existing fossil fuel generation with clean and renewable energy generation nationwide by 2025.** New solar and wind projects should be rapidly deployed to replace these fossil fuel sources. In the long term, these utilities should phase out nuclear and wildlife-harming hydropower electricity generation after all fossil fuels are eliminated.

Second **we recommend that President Biden issue an Executive Order to compel federally owned power utilities to increase local, distributed clean energy, storage and efficiency technologies — technologies that are critical drivers of energy democracy.**⁵⁵ This order should require federal utilities to plan for and invest in the adoption of new distributed energy resources including rooftop and community solar by (1) requiring federal utilities to incorporate distributed energy development into their grid planning and (2) requiring federal utilities to reduce their energy-related emissions by a specific amount, specifically through energy efficiency, conservation and distributed energy measures.

This massive investment in distributed, clean energy generation and efficiency will create a significant number of new, quality green jobs. Provisions to ensure strong labor protections and standards should be incorporated into all these actions.

19) Enact Science-based Limits on Greenhouse Gas Emission From the Animal Agricultural Sector Domestically and Abroad.

The animal agriculture sector is responsible for approximately 15% of global greenhouse gas emissions.⁵⁶ This amount could increase to 52% of greenhouse gas emissions from agriculture globally by 2050, 70% of which will come from animal agriculture.⁵⁷ Effectively addressing

⁵⁴ See Tennessee Valley Authority, “Our Power System,” <https://www.tva.com/energy/our-power-system>.

⁵⁵ See, e.g., “TVA issues updates to its [Strategic Sustainability Performance Plan](#) under [Executive Order 13834, Efficient Federal Operations](#). The executive order (EO), signed by President Trump in May 2018, challenges TVA and other federal agencies to develop, implement and annually update sustainability plans in a manner which increases efficiency, optimizes performance, eliminates unnecessary use of resources and protects the environment.”

⁵⁶ Gerber, P.J. et al., *Tackling climate change through livestock—A global assessment of emissions and mitigation opportunities*, Food and Agriculture Organization of the United Nations (FAO), Rome (2013); FAO, Global Livestock Environmental Assessment Model (GLEAM), Rome, www.fao.org/gleam/en/.

⁵⁷ Greenpeace, *Less is More: Greenpeace Vision of the Meat and Dairy System Towards 2050* (2018), <https://www.greenpeace.org/international/publication/15093/less-is-more/>

domestic and international greenhouse gas emissions from the animal agriculture sector — especially cattle, pigs and chickens — is essential to stopping climate change, deforestation and habitat loss.⁵⁸

We recommend that President Biden direct the EPA and U.S. Department of Agriculture to establish mandatory, science-based targets to reduce greenhouse gas emissions from the animal agriculture sector 40% by 2030. Specifically, the EPA should re-designate methane as a volatile organic compound and ozone precursor, which would then give the agency the ability to address methane emissions under both the New Source Review permitting program and existing State Implementation Plans for ozone. Furthermore, President Biden should direct the EPA to regulate methane from concentrated animal-feeding operations under the New Source Performance Standard.

In reducing emissions from animal agriculture, the EPA must account for the entire lifecycle of animal agriculture using metrics similar to the Food and Agriculture Organization’s Global Livestock Environmental Assessment Model. This will ensure that all aspects of the supply chain are factored into the total emissions estimated for the animal agriculture, including the following: (1) upstream emissions from feed production and manufacturing; (2) midstream emissions from animal-generated methane, nitrous oxide from manure management, and on-farm energy use; and (3) downstream emissions such as those produced from the transport, processing and packaging of animals. Only by following the best available science will there be a full accounting of the total greenhouse gas footprint from the animal agriculture industry and significant reductions in greenhouse gas emissions.

Internationally the Biden administration must focus on areas of highest rainforest loss due to animal agriculture, specifically the Amazon rainforest. Often called the “lungs of the planet,” the Amazon rainforest is one of the Earth’s best defenses against climate change. Since 1970 700,000 square kilometers — approximately 20% — of the forest has been cleared for human use, driven primarily by cattle ranching. **To protect the Amazon rainforest, we recommend that President Biden impose sanctions against Brazilian agricultural products including beef and soy until deforestation of the Amazon reaches zero, and then offer financial incentives to Brazil to develop sustainable agricultural practices and standards similar to those used in the United States.**

20) Establish Ocean Acidification Water Quality Criteria Within One Year and Require All States to Set Binding Standards.

As the ocean absorbs more carbon pollution from the atmosphere, carbon dioxide reacts with seawater and causes the ocean to become more acidic, threatening water quality and the integrity of entire marine ecosystems. Ocean acidification impairs the growth, survival and reproduction of marine animals, and if unabated will massively disrupt entire ecosystems. It’s already causing massive die-offs of oyster larvae in the Pacific Northwest, dissolving corals in Florida and the Caribbean, and increasing the toxicity of harmful algal blooms.

⁵⁸ IPCC, *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*, Summary for Policymakers (2019), <https://www.ipcc.ch/srccl/>.

One of the most powerful tools we have to combat ocean acidification is the Clean Water Act — a law that has successfully solved our nation’s most intractable water-pollution problems for decades. Congress enacted the Clean Water Act with the express purpose of restoring and maintaining “the *chemical*, physical, and biological integrity of the Nation’s waters” and promptly eliminating water pollution.⁵⁹ Ocean acidification now represents the greatest threat to the chemical integrity of our waters, and must be addressed as expeditiously and comprehensively as possible before the ocean is irrevocably altered and degraded.

Section 303 of the Clean Water Act requires the EPA to establish nationwide water-quality criteria for pollutants — including pollutants that affect “plankton, fish, shellfish [and] wildlife.”⁶⁰ These criteria provide the foundation of the EPA’s water-quality program. Sadly the EPA has failed to set any water-quality criteria, despite knowing about the threat from climate-change induced acidification for over a decade, and despite Congress’ clear intent for the EPA to update and add water-quality criteria to meet the demands of new water-pollution problems and new scientific information about the impacts of water pollution.

We recommend that President Biden issue an Executive Order requiring the EPA to establish final water quality criteria specifically for ocean acidification within the first 18 months of his administration.

Just as the EPA has failed to update and add new water-quality criteria despite the overwhelming scientific and environmental need to do so, the states often fail to update their water-quality standards every three years, as required by the Clean Water Act. The EPA contains numerous tools in the Clean Water Act to encourage states to take prompt action to update their water quality standards. **We recommend that the EPA aggressively use its authorities to publish federal water-quality standards for states that fail to update their water quality standards for acidification, such that all 50 states shall have updated their standards for acidification no later than July 2024.**

⁵⁹ Federal Water Pollution Control Act, 33 U.S.C. § 1251(a) (emphasis added)..

⁶⁰ Federal Water Pollution Control Act, 33 U.S.C. § 1313(a)-(c).



Pesticide application on crops / Pixabay

PROTECTING HUMAN AND ENVIRONMENTAL HEALTH

The health of people, wildlife and our environment are inextricably intertwined. Despite the warnings of Rachel Carson's *Silent Spring* almost 60 years ago, and the early promise of the Environmental Protection Agency — founded 50 years ago — each day we're bombarded with more chemicals, pesticides and pollution than the day before. While every corner of our nation is affected by pollution, Black, Indigenous and communities of color continue to disproportionately bear its burdens, suffering from far higher rates of cancer, asthma and other diseases as a result.

The EPA's failure to regulate Per- and polyfluoroalkyl substances — or PFAS chemicals — despite knowing the dangers of these highly persistent chemicals illustrates the power of polluting industries, and their willingness to protect their profits even at the expense of people's lives. The EPA's paralysis in Republican and Democratic administrations alike spreads far beyond PFAS. For decades the agency has failed to consistently regulate or restrict chemicals under the Toxic Substances Control Act, even after the reforms passed by Congress in 2016. Thousands of different chemicals continue to be used daily without even the most modest regulatory safeguards. At this rate it will take the EPA centuries to complete its review of the chemicals we're regularly exposed to every day.

The situation with pesticides is equally disturbing. Pesticide use continues to rise in the United States, with over 1 billion pounds used each year just in agriculture. In 2017 and 2018, the EPA approved about 94% of the pesticides that industry requested, never rejecting an application on substantive grounds. As the world shifts away from neonicotinoid pesticides — one of the leading causes of global decline in insect populations — the EPA continues to approve and cheerlead their widespread use.

The EPA has also fallen short on protecting rivers, streams, wetlands and lakes, as well as protecting our drinking-water supplies. Over half of all U.S. river and stream miles are impaired by pollution, and approximately half of all wetlands and potentially millions of miles of streams are at risk of destruction after Trump gutted regulatory protects for surface waters.

And in the midst of a respiratory pandemic, the COVID-19 pandemic has struck with particular ferocity in communities suffering from the highest levels of air pollution. Air pollution is already

a leading cause and contributor to premature deaths; every year 7 million people worldwide are killed by it.

The Trump administration's callous disregard for people and the environment as it advanced its relentless efforts to roll back environmental safeguards on all fronts was outrageous. But undoing the Trump rollbacks and "deregulatory" actions — returning to the 2016 status-quo — will not be sufficient, because in 2016, every person in our country was already exposed to unacceptable levels of pollution. President Biden must embark on an effort to rid the environment of *all* harmful pollution and rectify the environmental injustices perpetuated upon frontline communities that have suffered the most from decades of neglect and indifference.

21) Require All EPA Programs to Complete Endangered Species Consultations to Protect Human Health and to Prevent Wildlife From Going Extinct.

Wildlife, almost literally, have been the canaries in the coal mine for decades, warning us about the dangers of pollution. The near extinction of bald eagles from eggshell thinning caused by DDT was one of the earliest and clearest signs that modern chemicals and toxic pollution could have devastating and unpredicted consequences. The threat of pollution is so severe that even just last year — even under the Trump administration — the U.S. Fish and Wildlife Service could not find an excuse not to protect the trispot darter fish under the Endangered Species Act because of the threat of pollution.⁶¹ Indeed, nearly every year, as wildlife populations plunge across the country, more plant and animal species must be listed because the EPA continues to fail to properly protect wildlife from all forms of pollution.

When pollution standards are set at levels to protect the most imperiled species, those standards will be far more protective for people, who are less sensitive to pollution. Protecting imperiled wildlife from pollution could be one of the most effective strategies to reduce cancer and other diseases in people that the EPA could embark upon in the Biden administration. Under the Endangered Species Act, all federal agencies must consult with the expert wildlife agencies to ensure its actions will not jeopardize listed species' survival or affect critical habitat.⁶² This clear legal requirement is needed to ensure — whatever the cost — that the federal government does not cause the extinction of the natural heritage of this nation.

Despite this clear requirement, the EPA remains the single most recalcitrant agency in the federal government when it comes to protecting endangered species. Through Republican and Democratic administrations alike, it has steadfastly refused to consult on the impacts of its actions. Therefore **we recommend that President Biden issue an Executive Order requiring the EPA to comply with the Endangered Species Act on all of its actions in its major programs, including air, water, pesticides, toxics, Superfund and hazardous waste.**

The EPA must fully protect endangered species because it would strengthen every aspect of the agency's mission. It can no longer ignore the climate impacts of its actions on polar bears and coral reefs, refuse to assess any impacts from pesticides on any wildlife, or set meaningful water

⁶¹ *Threatened Species Status for Trispot Darter*, 83 Fed. Reg. 67,131, (Dec. 28, 2018).

⁶² Endangered Species Act, 16 U.S.C. 1536(a)(2).

quality protections designed to protect fish or shellfish. The EPA has simply ignored endangered species everywhere, nationwide.

The agency must revise all its outdated protocols and methodologies that consistently ignore the protection of endangered species. It continues to use an antiquated “handbook” from 1994 to guide its assessments for determining water-quality criteria that are protective of aquatic life and an outdated “guidance” for assessing pesticides.⁶³ Protecting aquatic endangered species like killer whales, salmon, amphibians and freshwater mussels from pollution would not only avert extinctions but result in significant benefits to people.

22) Slash Air Pollution by Requiring Zero-emissions Pollution Control Technology and Aggressively Setting New National Ambient Air Quality Standards.

Nearly 150 million Americans still live in counties with unhealthy ground-level ozone or particle pollution, which leads to more asthma attacks, more illnesses and missed school days in children, and higher levels of premature death.⁶⁴ But air-pollution impacts are not experienced equally by all Americans. Black, Indigenous and other communities of color suffer from excessive air-pollution levels at far higher rates than other Americans. The consequences of this have been vividly demonstrated as the COVID-19 pandemic has disproportionately sickened and killed people living in these communities, showing the insidious consequences of air pollution and environmental racism.

Despite the inherent strength of the Clean Air Act to address even the most challenging air-pollution problems, the EPA has routinely failed to act aggressively enough to slash air pollution, often caving to the demands of polluters and anti-environment politicians that have successfully undermined and weakened the Clean Air Act. The Trump administration gutted air-pollution safeguards by enacting the most sweeping rollbacks of protections in the 50-year history of the Clean Air Act. Undoing the damage from Trump will not be enough to ensure clean air for all Americans. The EPA must undertake the most dramatic effort since the beginning of the Clean Air Act to finally rid our nation of air pollution.

We recommend that President Biden issue an Executive Order requiring the EPA to enact zero-emission requirements in all Clean Air Act technology-based rulemakings to the maximum extent possible. The EPA should undertake a comprehensive effort to revise and strengthen every industry sectors’ requirements for Best Available Control Technology, Reasonably Available Control Technology, New Source Performance Standards and Maximum Achievable Control Technology. While the Clean Air Act allows the EPA to consider economic concerns during this review, it does not require the EPA to sacrifice human health for industry profits. Accordingly, during this review, EPA should assess if technological solutions exist that would allow air pollution standards to be reduced to zero or near-zero. If technology exists, it should be adopted regardless of industry propaganda regarding economic costs. This will finally put human health above industry concerns regarding the air everyone must breathe.

⁶³ See U.S. Env’tl. Prot. Agency, Water Quality Standards Handbook: Appendix X: Water Quality Criteria, *available at* <https://www.epa.gov/sites/production/files/2014-10/documents/handbook-appendixx.pdf>

⁶⁴ American Lung Association, 2020. State of the Air. <https://www.stateoftheair.org/key-findings/people-at-risk.html>

Second we recommend that President Biden issue an Executive Order requiring EPA to expeditiously revise all National Ambient Air Quality Criteria within the next three years, starting with ozone and particulate matter. In previous Democratic and Republican administrations alike, the EPA has too often set air-quality standards based on a political judgment of an “acceptable” level of death and disease that will be caused by air pollution.⁶⁵ The agency must revise all of its NAAQS criteria, including setting ozone at no-greater-than 60 ppb and setting particulate matter at or near zero. Enacting rigorous NAAQS will provide an additional benefit of greatly reducing greenhouse gas emissions in the United States, along with saving thousands of lives every year.

23) Eliminate Water Pollution by Updating Effluent Limitation Guidelines for Toxics, Plastics and Animal Agriculture Discharges.

The Clean Water Act’s stated goal and policy is to *completely eliminate* pollution in our nation’s waters, not simply reduce it to a level that industry finds acceptable.⁶⁶ To achieve this goal the Act requires facilities to meet a series of increasingly stringent, technology-forcing Effluent Limitation Guidelines that constantly ratchet down water pollution, and which forces industry “to adopt technologies that achieve the greatest reductions in pollution.”⁶⁷

One of the most effective ways to reduce toxic pollution from entering waterways would be to aggressively update all Effluent Limitation Guidelines (ELGs) from industries that emit substantial pollution into our nation’s waters. Unfortunately, water quality continues to degrade across the country, in no small part because of polluting industries’ efforts to weaken ELGs and politicians’ efforts to cut funding to the EPA for it to complete this vital work.

The industries that have the greatest impacts on our nation’s waters are those whose ELGs have not been updated for many years or even decades. Coal and other steam-electric power plants remain responsible for the majority of arsenic, lead, mercury, selenium and other toxic metals discharged into our nation’s waters every year, making it unsafe to swim or eat fish from many water bodies.⁶⁸ Plastics industry facilities — whose ELGs have not been updated in 26 years — leak billions of tiny micro-pellets of plastic into the water each year and continue to discharge toxic chemicals such as benzene, polycyclic aromatic hydrocarbons and phthalates.⁶⁹

In order to address these grave threats to our nation’s waters, **we recommend President Biden issue an Executive Order requiring the EPA to complete a review of all Effluent Limitation Guidelines for (1) all industry sectors that discharge toxic pollutants, (2) the plastics industry sector, and (3) the meat and poultry products sector within 18 months.**

⁶⁵ Obama Administration Abandons Stricter Air-Quality Rules, New York Times, Sept 2. 2011.
<https://www.nytimes.com/2011/09/03/science/earth/03air.html>

⁶⁶ Federal Water Pollution Control Act, 33 U.S.C. § 1251(a)(1) (establishing national goal that all discharges of water pollution from point sources “be eliminated by 1985”).

⁶⁷ *Nat. Res. Def. Council v. EPA*, 808 F.3d 556, 563-64 (2d Cir. 2015); *see also Natural Res. Def. Council, Inc. v. Train*, 510 F.2d 692, 709-10 (D.C. Cir. 1974).

⁶⁸ U.S. Env’tl. Prot. Agency, Environmental Assessment for the Proposed Effluent Limitation Guidelines and Standards for the Steam Electric Power Generating Point Source Category 3-14 (April 2013).

⁶⁹ *See* Siemens, Process Analytics in Ethylene Production Plants (Dec. 2007), available at <https://pdfs.semanticscholar.org/3071/6e9b1e2708fd14113b1a881b6ae0ad3b7c33.pdf>

In too many instances, despite the availability of technology that can achieve either a zero-discharge standard or an extremely strict reduction in pollution, the EPA has chosen to implement a far-weaker set of Effluent Limitation Guidelines in order to appease industry.

President Biden must order the EPA to set pollution limits as stringently as the law allows — including whenever possible establish a zero-discharge standard — for that industry.

Allowing status quo pollution to continue indefinitely will lock in toxic pollution that harms frontline communities for decades to come.

24) Restore the Full Scope of the Clean Water Act by Implementing a Comprehensive, Science-based Definition for “Waters of the United States.”

Wetlands are some of the richest, most diverse and important wildlife habitats in the United States, providing free water filtration, flood control, water storage and storm buffers to countless communities. Unfortunately, since the founding of this nation, the lower 48 states have lost approximately half of their wetlands, with approximately 110 million acres of wetlands being destroyed and converted to human uses.⁷⁰

Despite the general success in stabilizing wetlands acreage and achieving “no net loss,”⁷¹ anti-government interests and conservative members of the Supreme Court waged a successful campaign to weaken the core of the Clean Water Act, resulting in the *SWANCC* and *Rapanos* court decisions that curtailed the reach of the Clean Water Act. This produced dubious judicial tests for wetland jurisdiction such as the “significant nexus” test — a standard not found in the law or based in science. In 2015 the Obama administration published a regulation defining “waters of the United States” that *weakened* the regulatory framework for wetlands and provided unjustified, political exemptions for industrial agriculture.⁷² In 2020 the Trump administration decimated the Clean Water Act with its “Navigable Waters Protection Rule” that will result in the loss of protections for tens of millions of wetland acres.⁷³

Resetting the clock and merely repealing the Trump “Navigable Waters Protection Rule” is not sufficient. Instead **we recommend that President Biden order the EPA and Army Corps to immediately begin a rulemaking process to repeal all previous rulemakings and start with a clean slate by protecting — without exceptions or loopholes for industry — all hydrologically connected wetlands, stream and rivers, including water bodies connected via shallow groundwater.**

We recommend against the use of the “significant nexus” test contrived by Justice Kennedy. The stated goal of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” By myopically focusing on wetlands that *currently* affect the chemical, physical or biological integrity of navigable waters, the EPA and Army Corps — including during the Obama administration — ignored the need to “restore” our

⁷⁰ L. Gatz & M. Stubbs, 2017. Congressional Research Service, RL 33483, WETLANDS: AN OVERVIEW OF ISSUES.

⁷¹ T.E. Dahl, U.S. Fish and Wildlife Serv., Status and Trends of Wetlands in the Conterminous United States 2004 to 2009 (2011), available at <https://www.fws.gov/Wetlands/documents/Status-and-Trends-of-Wetlands-in-the-Conterminous-United-States-2004-to-2009.pdf>

⁷² See, *Clean Water Rule: Definition of “Waters of the United States,”* 80 Fed. Reg. 37,053, 37,055 (June 29, 2015).

⁷³ *The Navigable Waters Protection Rule: Definition of “Waters of the United States,”* 85 Fed. Reg. 22250 (April 21, 2020).

nation's waters. **We recommend that if a body of water is hydrologically connected — not an isolated water — then it should be protected if it has the *potential* to benefit the restoration of our nation's waters.** Otherwise water quality will not improve, wetlands will not be restored, and aquatic environments will continue to degrade.

25) Cease Using Nationwide Wetland Permits in Order to Better Protect Frontline Communities, Clean Water and Endangered Species.

One of the biggest drivers of wetland loss in recent decades has been the cynical use of “nationwide” general permits that have allowed the U.S. Army Corps of Engineers to obliterate millions of acres of natural habitats and perpetuate some of the greatest environmental injustices in recent history.

The Clean Water Act prohibits the filling or destruction of wetlands unless a permit is issued by the Army Corps under Section 404 of the Act.⁷⁴ The Army Corps issues two types of permits to destroy wetlands: individual permits and general permits. Individual permits entail a meaningful review of the environmental impacts when wetlands are destroyed, while general permits contain nearly no meaningful review or public comment — sometimes as little as after-the-fact notification — because the Army Corps presumes that impacts will only cause “minimal” cumulative and adverse environmental effects.⁷⁵ Unsurprisingly, of the tens of thousands of projects the Army Corps authorizes every year, 97% are covered by nationwide general permits.⁷⁶

Nationwide permits (NWP) have rubber-stamped mountaintop-removal coal mining in Appalachia, which has resulted in the permanently filling of 2,000 miles of streams, leached toxic chemicals into downstream water supplies, and destroyed the livelihoods of thousands of people — perpetuating some of our nation's most egregious environmental injustices. Nationwide permits have also been used to approve climate-killing fossil fuel pipelines across the United States, including the Keystone XL pipeline and Mountain Valley pipeline.

Despite the requirement that NWP-covered activities only have “minimal” environmental impacts, in reality the individual and cumulative effects of these projects have resulted in significant environmental harm. The failure of the Army Corps to limit the use of general permits has led to the destruction and degradation of essential habitats for native species, including threatened and endangered species. Most egregiously the Army Corps continues to assert — even after repeated losses in the federal courts — that it does not need to consult regarding the impacts to endangered species, meaning that virtually unlimited impacts to streams and wetlands occur without any cumulative, landscape-level review.

We recommend that President Biden institute a moratorium on the use of nationwide permits under the CWA and instead require developers to obtain individual permits that are fully transparent, ensure environmental justice, and are protective of our environment

⁷⁴ Federal Water Pollution Control Act, 33 U.S.C. §§1251(a); id. § 1311(a); id. § 1344.

⁷⁵ Federal Water Pollution Control Act, 33 U.S.C. § 1344(e)(1); 33 C.F.R. § 323.2(g).

⁷⁶ Congressional Research Service, The Army Corps of Engineers' Nationwide Permits: Issues and Regulatory Development (Jan. 12, 2017).

and imperiled species. Without wholesale reform of the wetland permitting system, the Army Corps will continue to put polluters and developers above the needs of the American people for clean water and thriving wetlands.

26) Phase Out the 100 Most Dangerous Pesticides Within Four Years and Reduce Overall Pesticide Use Nationwide 25% by 2025.

The United States is the second highest user of pesticides globally and uses some of the most dangerous pesticides available anywhere in the world, including dozens of active ingredients that have already been banned in the European Union, Canada, Brazil and China.⁷⁷ Each year the country falls further behind the rest of the world in terms of pesticide regulation, putting farmworkers at greater risk, causing ever increasing environmental harm, and pushing countless species closer to extinction.

Our inadequate pesticide-regulation scheme has facilitated the near-complete regulatory capture of the EPA Office of Pesticide Programs by the pesticide industry. Despite possessing the authority to crack down on dangerous pesticides, the EPA has only cancelled five pesticides without industry's consent over the past 20 years, and has not invoked its "imminent hazard" authority to restrict pesticide use to protect endangered species since 1986.⁷⁸ The ease with which the pesticide industry was able to keep chlorpyrifos — a notorious pesticide that causes neurological damage in children and is known to harm more than 1,300 endangered species — on the market is just one symptom of the total failure of the EPA to fulfil its mission to protect human health and our environment from pesticides.

We recommend that President Biden issue an Executive Order requiring the EPA to immediately suspend the 100 most harmful and toxic pesticides, using its "imminent hazard" authority, and fully cancel them within four years. The EPA has already compiled a list of the most acutely toxic pesticides⁷⁹ and should prioritize those pesticides, plus pesticides that have been phased out in the European Union or Canada — including atrazine, paraquat, all organophosphates and all neonicotinoids.

In addition to using far too many dangerous and toxic pesticides, the United States uses far too great a *quantity* of pesticides. Despite having only 5% of the world's population, the nation uses over one billion pounds of pesticides annually — 20% of global pesticide use. To reduce pesticide use, the EPA should force the reduction in use of pesticides. For example, in 2015 the EPA granted a condition registration for the use of a new pesticide — bicyclopyrone — on the ability of the pesticide industry to reduce atrazine usage nationwide by 3%. While paltry, the EPA's authority to condition the registration of pesticides based on a reduction in current use provides a model that can be followed across the board. **We recommend that the EPA condition future registrations and re-registrations of all pesticides based on a 25% reduction in overall amount used for each respective pesticide within five years and a 50%**

⁷⁷ N. Donley (2019). *The USA lags behind other agricultural nations in banning harmful pesticides.* ENVIRONMENTAL HEALTH, 18(1).

⁷⁸ *Dinoseb—Intent to cancel and deny registrations*, 51 Fed. Reg. 36650 (Jan. 2, 1986).

⁷⁹ See EPA's Proposal to Mitigate Exposure to Bees from Acutely Toxic Pesticide Products, Appendix A (May 28, 2015), Available at: <https://www.epa.gov/pollinator-protection/policy-mitigating-acute-risk-bees-pesticide-products>

reduction within 10 years. If a pesticide continues to be used in excessively high amounts and there is no reduction in volume used, then the EPA will be able to remove the pesticide from the market.

27) Provide the Food and Drug Administration the Authority to Veto Reckless Use of Antibiotics by the EPA and Other Federal Agencies.

Misuse and overuse of antibiotics is the greatest contributing factor in the development of antibiotic resistance, which kills up to 162,000 Americans each year.⁸⁰ The World Health Organization (WHO) has ranked antibiotic resistance among the top 10 global health threats. Despite this, under the Trump administration, the EPA has recklessly approved the use of massive amounts of antibiotics to be used as pesticides in a futile attempt to treat bacterial infections in crops.

In 2019 the EPA approved the use of up to 380,000 pounds of oxytetracycline — a WHO-designated “highly important” medicine for treating human disease — on half a million acres of citrus trees in Florida and California each year. This amount is nearly double all oxytetracycline used in medicine.⁸¹ The EPA has also recently proposed to allow the use of 650,000 pounds of streptomycin — another vitally important antibiotic for people — on various crops *each year*.⁸²

Despite objections and concerns raised by the Centers for Disease Control and Prevention (CDC), the EPA Office of Pesticide Programs ignored those objections and approved the use of antibiotics on those crops even though it may further lead to antibiotic resistance.⁸³ In essence the EPA’s decision represents a massive and unprecedented human and environmental experiment — in the middle of a global pandemic — to saturate the landscape with antibiotics, regardless of the impacts.

It is absurd that a federal agency like the EPA could ignore the concerns raised by our nation’s public health experts — who are also the experts on antibiotic resistance — at the CDC. **We recommend that President Biden issue a government-wide directive — with special focus on the EPA Office of Pesticide Programs — that no federal agency authorize the use of antibiotics in any context without the affirmative consent of the Centers for Disease Control and Prevention.** If the CDC objects to the use of antibiotics because it determines that the action will contribute to antibiotic resistance, then the other federal agency would be prohibited from approving its proposed use of antibiotics.

⁸⁰ Infectious Disease Society of America, *New Estimate of Annual Deaths Caused by Treatment Resistant Infections Highlights Gaps in Research, Stewardship, Surveillance* (Dec. 3, 2018), <https://www.idsociety.org/news--publications-new/articles/2018/new-estimate-of-annual-deaths-caused-by-treatment-resistant-infections-highlights-gaps-in-research-stewardship-surveillance/>; WHO, *Ten Threats to Global Health in 2019*, <https://www.who.int/news-room/feature-stories/ten-threats-to-global-health-in-2019>.

⁸¹ EPA, Final Registration Decision for the New Use of the Active Ingredient Oxytetracycline Hydrochloride on Citrus Crops Group 10-10 (Dec. 7, 2018).

⁸² EPA, Streptomycin – Tolerance for Use In/On Citrus Fruit (Crop Group 10-10) and Citrus, Dried Pulp, available at www.regulations.gov (Docket No. EPA-HQ-OPP-2016-0067).

⁸³ Andrew Jacobs, *Citrus Farmers Facing Deadly Bacteria Turn to Antibiotics, Alarming Health Officials*, New York Times (May 17, 2019), <https://www.nytimes.com/2019/05/17/health/antibiotics-oranges-florida.html>.

28) Prohibit the Use of Toxic Chemicals and Pesticides That Have Any Unreasonable Human Health and Environmental Impacts.

The EPA is responsible for regulating nearly every chemical substance in the country. The Toxic Substances Control Act (TSCA) requires the EPA to ensure that chemicals do not present an “unreasonable risk of injury to health or the environment,”⁸⁴ while the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) allows the EPA to register a pesticide only if the EPA determines that the pesticide will not result in “unreasonable adverse effects on the environment.”⁸⁵

For both “unreasonable risk of injury” and “unreasonable adverse effects” Congress requires the EPA to weigh both the benefits and impacts of pesticides and chemicals on human health and the environment in determining whether or how to regulate them. Beyond that, when balancing costs and benefits, the EPA has virtually unfettered discretion to decide whether the economic benefits of using a pesticide or chemical outweigh the environmental impacts.

Unfortunately the agency almost always elevates economic benefits above human health and environmental concerns. And once approved, neither TSCA or FIFRA provides a viable mechanism to remove pesticides or chemicals from the market in a timely or effective manner, even if the scientific information overwhelmingly demonstrates that substantial harm to people and the environment is occurring. Under this industry-friendly approach, even if a pesticide is devastating native pollinator insects — like most neonicotinoids — that pesticide could still be approved. Likewise TSCA has been helpless in forcing the EPA to fully ban asbestos, despite *decades* of proof that it causes lung cancer.

We recommend President Biden order the EPA to enact binding regulations that balance the scales in favor of people and the environment. If a chemical or pesticide has the potential to cause adverse effects or a risk of injury, then the EPA must fully mitigate and ameliorate that harms so that there is zero risk of harm to people or the environment. If the EPA cannot fully address all potential harms to people and the environment, then under the new regulatory approach, by default the impacts of the chemical or pesticide outweigh the benefits, and the EPA must prohibit its use. With this approach, people and the environment will no longer be discounted in favor of industry profits and short-term economic benefits.

Second we recommend that President Biden order the EPA to fully consider all types of scientific information when evaluating environmental and human health harms, instead of discounting such information in favor of lab-based testing. For decades the EPA has cynically discounted the validity and importance of scientific information that does not meet “good laboratory practices” in deciding how to regulate pesticides and chemicals. This arbitrary, cultural practice by the EPA only benefits corporate profits, since human beings cannot be tested in the laboratory, and nor can our most endangered species. But peer-reviewed science — whether derived from epidemiological studies or field research — is just as valid as lab-based studies. The EPA cannot address all impacts if, at the outset, the agency ignores the overwhelming majority of scientific information as “unreliable.”

⁸⁴ Toxic Substances Control Act, 15 U.S.C. § 2604(a)(3)(a).

⁸⁵ Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136a(a).

29) Cut the Environmental Footprint of U.S. Agriculture in Half by 2035.

Over half of all land in the lower 48 states is now used for agriculture and livestock production. Agriculture causes substantial air-pollution problems, degrades water quality and causes ocean dead zones, exacerbates climate change, and is pushing many species of wildlife closer to extinction. To make matters worse, the specific choices that we make in agriculture are reckless and wasteful. Nearly half of all crops grown in the United States are grown to feed other animals in the meat and dairy industry, and millions more acres are devoted to growing corn for ethanol fuel.

We recommend that President Biden issue an Executive Order requiring that USDA develop binding targets that cut the environmental footprint of U.S. agriculture by 50% over 10 years. These targets must be comprehensive and cover the following aspects of agriculture: (1) pesticide use, (2) fertilizer use, (3) water use, (4) all forms of pollution. While such targets are ambitious, even Sonny Perdue, secretary of the Department of Agriculture during the Trump administration, announced a policy to reduce the footprint of agriculture 50% by 2050.⁸⁶ But this policy contained few binding measures that would actually put agriculture on such a path. We therefore recommend one critical reform that would jump-start efforts to reduce U.S. agricultural impacts.

We recommend that President Biden direct the USDA and EPA to phase out the Renewable Fuel Standard (RFS) for corn-based ethanol to zero within three years. While the RFS program was initially designed to reduce greenhouse gas emissions, it has only served to perpetuate internal combustion vehicles and has greatly accelerated land conversion — which itself worsens climate change and environmental degradation — and exacerbated ocean dead zones.⁸⁷

Even the EPA itself noted in its 2018 report to Congress on that there are “strong indications” that changes in land use because of demand for the growing biofuels — over 20 billion gallons of corn based ethanol a year — was responsible for significant harm to the environment.⁸⁸ And the U.S. Geological Survey has estimated that 156,000 metric tons of nitrate from fertilizers now enter the Gulf of Mexico each year due to ethanol production.⁸⁹ Ethanol-blended gasoline also releases more smog-forming particles into the air, leading some scientists to raise concerns that it increases public health risks.⁹⁰ The benefits of corn-based ethanol are meager, just 0.23% fewer GHG emissions compared to gasoline.⁹¹ All things considered, phasing out the RFS to zero is the “low-hanging fruit” for reducing U.S. agricultural impacts.

⁸⁶ <https://www.usda.gov/sites/default/files/documents/agriculture-innovation-agenda-vision-statement.pdf>

⁸⁷ <https://iopscience.iop.org/article/10.1088/1748-9326/ab0399/pdf>

⁸⁸ https://cfpub.epa.gov/si/si_public_record_Report.cfm?Lab=IO&dirEntryId=341491

⁸⁹ <https://www.noaa.gov/media-release/noaa-forecasts-very-large-dead-zone-for-gulf-of-mexico>

⁹⁰ <https://pubs.acs.org/doi/pdfplus/10.1021/es062085v>

⁹¹ <https://www.cato.org/sites/cato.org/files/2019-10/regulation-v42n3-4-update.pdf>

30) Eliminate Industry Influence and Put Human Health First When Setting National Dietary Guidelines and Implementing the National School Lunch Programs.

Even before the pandemic, over 10.5% of all U.S. households experienced food insecurity at some point during 2019. That percentage doubled in 2020, with tens of millions of households at risk of food insecurity as the nation grapples with one of the worst economic downturns in modern history.⁹² Because the cheapest food to purchase is often the most unhealthy, nearly half of all American adults now live with one or more diet-related chronic disease, with communities of color suffering higher rates of diabetes and other diseases.⁹³ Unfortunately the Department of Agriculture (USDA) consistently ignores the needs of the poorest people, and instead promotes the interests and profits of the largest agribusinesses by including cheap and unhealthy foods in the Dietary Guidelines and National School Lunch programs.

The USDA is mandated by Congress with setting national Dietary Guidelines in cooperation with the Department of Health and Human Services (HHS). Yet, these agencies have consistently made decisions that undermine nutrition science and threaten public health. The Trump administration made matters worse by pre-determining what topics the Dietary Guidelines Advisory Committee — over half of which had ties to industry — was allowed to assess rather than letting the expert committee members identify issues of importance and restricting the committee's ability to conduct a thorough review of the latest nutrition science by narrowing the allowable research to only studies vetted by agency officials. As a result, critical issues such as the need to eat less meat were excluded from the committee's review.

We recommend that President Biden issue an Executive Order directing the USDA and HHS to require that the Dietary Guidelines be based solely on the best available scientific information and are free from industry influence. Members of the Dietary Guidelines Advisory Committee should be free of all financial and nonfinancial conflicts of interest and picked by a neutral process free of political interference. The only purpose of the Committee should be to provide technical assistance to the federal agencies in identifying the best scientific information, and the federal agencies should then be required to set these standards based solely on that information.

We also recommend that the Biden administration order the USDA to require that the National School Lunch program be based solely on the best nutritional science. In 2018 the American Medical Association recommended that meat and dairy products should be optional in the National School Lunch program due to high levels of lactose intolerance, particularly among communities of color. The Biden administration should update nutrition standards for National School Lunches to ensure there is access to fresh fruits, vegetables and whole grain, and should also include a requirement for plant-based milk and plant-based protein.

⁹² See, Schanzenbach, D. W., & A. Pitts. (2020). How much has food insecurity risen? Evidence from the Census Household Pulse Survey. Institute for Policy Research Rapid Research Report. <https://www.ipr.northwestern.edu/documents/reports/ipr-rapid-researchreports-pulse-hh-data-10-june-2020.pdf>

⁹³ Kern, David M., et al. 2017. *Neighborhood prices of healthier and unhealthier foods and associations with diet quality: Evidence from the multi-ethnic study of atherosclerosis*. International journal of environmental research and public health 14.11 (2017): 1394.



RESTORING ABUNDANT WILDLIFE AND FIGHTING THE EXTINCTION CRISIS

Wildlife populations are crashing around the world, with 1 million species facing extinction in the coming decades. From the blinking lights of fireflies at night to the dawn chorus of migratory birds, the animals and plants that many of us grew up with are disappearing before our eyes. Each species lost tells the story of a place that has been irrevocably harmed and reveals the heartbreaking wildlife extinction crisis unfolding all around us. As species disappear, key ecosystem functions — including pollination, water purification, oxygen production and carbon sequestration — unravel even further. And as COVID-19 has unequivocally demonstrated, the consequences of recklessly exploiting wildlife can have massive global impacts.

President Biden has an opportunity to take strong executive action to stop the extinction crisis and begin the process of restoring abundant wildlife populations in the United States and abroad. The Endangered Species Act remains our best tool for addressing that crisis. The Act has helped save from extinction 99% of the 1,700 species under its protection and put hundreds of listed species — including bald eagles, gray whales and American alligators — on the road to recovery. However, chronic underfunding, political interference and powerful special interests have undermined the effectiveness of the Act.

Stopping the extinction crisis and restoring abundant wildlife populations will require strengthening the implementation of the Endangered Species Act and other wildlife laws including the Migratory Bird Treaty Act and Marine Mammal Protection Act. It will also require revitalizing the leadership within the U.S. Fish and Wildlife Service and National Marine Fisheries Service, empowering scientists to act without fear of retribution by restoring scientific integrity and reinvigorating the agencies' commitment to their core wildlife conservation mission.

Internationally the United States used to play a leading role in many global wildlife and environmental treaties, and our own environmental laws were the gold standard that inspired other nations to protect the environment. Unfortunately the country has relinquished the role of global conservation leader. It must reclaim its world-leader status in conservation by wildlife officials on the frontlines cracking down on illegal wildlife trade, vastly increasing support for programs worldwide to conserve the most biologically rich and diverse habitats on the planet, and finally joining and ratifying key environmental treaties that are essential to stopping the extinction crisis.

31) Declare That the Global Extinction Crisis Represents a National Emergency and Enlist All Federal Agencies in the Fight Against Extinction.

Just like the climate crisis, the global extinction crisis represents a fundamental threat to humanity, which depends on the ecosystem services that the natural world provides. The extinction of a million species and the decimation of millions more in the coming decades will wreak havoc on our society. The COVID-19 pandemic is just one of many pandemics that humanity will likely set in motion as we push deeper and deeper into the remaining natural places left on the planet. Pollination, pest control, water filtration and air-pollution control are but a few of the services that natural ecosystems will no longer be able to provide as extinctions mount.

In order to stop the sixth mass extinction in the geological history of our planet, President Biden must declare that the extinction crisis represents a national emergency under the National Emergencies Act.

This is not merely a symbolic gesture. The National Emergencies Act unlocks specific powers that the president can employ to stem the loss of biodiversity both within the United States and around the world. Declaring a national emergency would compel all federal agencies to stop ignoring the environmental impacts that their actions continue to inflict upon the world and would allow the United States to use its economic influence to address everything from deforestation in the tropics to fighting illegal wildlife trade that is sanctioned by governments and corporations around the world.

As part of this emergency declaration, President Biden should direct the U.S. Fish and Wildlife Service to aggressively use its emergency powers to protect more than 500 species that are still waiting for listing and protection under the Endangered Species Act, and also move rapidly to protect — either as candidate species or through the listing process — all species identified as critically imperiled by NatureServe, endangered or vulnerable by the International Union for Conservation of Nature, or as endangered or threatened by a recognized scientific society such as the American Fisheries Society.

This emergency declaration should direct the Department of Defense to prioritize the protection of endangered species and rare habitats on its military bases around the world. For example, the Marine Corps continues to work toward the construction of a new base and other military infrastructure on Okinawa that will likely result in the extinction of the Okinawa dugong and Okinawa woodpecker and destroy vital seagrass and marine habitats in the area.

Finally President Biden should require all federal agencies to work with the U.S. Fish and Wildlife Service to identify and protect within 12 months all critical habitat within their lands for the more than 1,000 threatened and endangered species that were wrongly denied critical habitat over the past 30 years due mainly to political pressure and agency indifference.

32) Implement an Ecosystem Approach to Recovery, Meaningfully Address Climate-affected Species and Require All Federal Agencies to Proactively Conserve Endangered Species.

In 2019 the Trump administration finalized three rollbacks to the regulations implementing the Endangered Species Act (ESA). The first slashed 40-year-old regulatory protections under Section 4(d) of the ESA for any species listed as “threatened” moving forward, making it harder to conserve and recover species like the monarch butterfly or wolverine. The second rollback drastically undermined the procedures for listing species and designating critical habitat by sharply limiting analysis of future threats to species and withholding designation of critical habitat based on climate change. The third rollback slashed protections for critical habitat, allowing fossil fuel and other resource extraction projects to destroy that habitat, causing species to go extinct through “death by a thousand cuts.”

As a whole the Trump rollbacks to the Endangered Species Act represent the largest attack on the law and imperiled wildlife in the past 40 years. President Biden must rescind the regulations in their entirety and not defend them in court.

Rescinding these regulations alone, however, is not sufficient to save thousands of species from extinction and restore America’s wildlife. Instead the Biden administration must realize the full potential within the Endangered Species Act instead of caving to special interests that have successfully hamstrung the law since the Carter administration.

First President Biden should order all federal agencies to implement an ecosystem approach to recovering wildlife that protects habitat. An ecosystem approach would require federal agencies to work cooperatively to manage across the landscape, prioritize the restoration of ecological processes, and plan for inevitable climate-driven habitat change. The Northwest Forest Plan is one of the few examples of ecosystem management, resulting in the protection of millions of acres of federal forests to foster the recovery of old-growth forests and other habitats. This model has not been replicated beyond the Northwest, and it is long past time that federal agencies work together across the landscape to ensure the recovery of ecosystems.

Second President Biden should order the U.S. Fish and Wildlife Service and National Marine Fisheries Service to fully integrate climate change into the conservation and recovery of endangered species. While a handful of climate-affected species like the polar bear and staghorn coral have been listed under the Endangered Species Act, the Services have refused — in both Democratic and Republican administrations — to consult on how federal agency actions that increase greenhouse gases harm those species, require mitigation to address those impacts, or develop recovery plans that require greenhouse gas emissions reductions.

Third President Biden should order each federal agency to develop a proactive conservation plan — as required by Section 7(a)(1) of the Act — that meaningfully benefits every species within its jurisdiction or control, including by identifying and protecting all habitat under its purview that is essential to the recovery of endangered species.

33) Crack Down on Illegal Wildlife Trade Using the Pelly Amendment and Aggressively Implement Sanctions on Nations That Perpetuate Illegal Wildlife Trade.

Wildlife exploitation, including trade, is the second leading driver of terrestrial species' extinction, and trade is threatening thousands of species, from iconic elephants and sharks to lesser-known sea cucumbers and pangolins.⁹⁴ Wildlife trafficking remains one of the world's most lucrative criminal enterprises — valued at an estimated \$5-\$20 billion each year — and a source of funds for terrorists.⁹⁵ But perhaps most starkly, the exploitation of wildlife in trade is the near-certain source of the COVID-19 virus.

The United States is a party to numerous wildlife protection treaties that limit trade and provide other critical wildlife protections, including the Convention on International Trade in Endangered Species (CITES) and treaties on sea turtles, migratory birds, whales, polar bears and Antarctic wildlife. Yet most environmental treaties lack significant enforcement mechanisms that, by themselves, ensure all nations abide by them.

Recognizing that environmental treaties both protect wildlife abroad and level the playing field for U.S. businesses, Congress enacted the Pelly Amendment. Under the Pelly Amendment, the departments of the Interior and Commerce must certify any nation that is “directly or indirectly...engaging in trade or taking which diminishes the effectiveness” of an international wildlife treaty. Following certification, the president can direct the secretary of the Treasury to prohibit the importation “of any products from the offending country.”⁹⁶

In the past the United States used the Pelly Amendment to force compliance with key environmental treaties, including closure of Taiwan's rhino market, phasing out high-seas driftnet fishing, and curtailing the slaughter of whales.⁹⁷ But in recent years — despite growing illegal wildlife trade and threats to the world's wildlife — the Pelly Amendment has been underutilized and requests for sanctions largely ignored.

We recommend that President Biden direct the Interior and Commerce Departments to conduct an expedited review of every nations' compliance with CITES and all other wildlife treaties under the Pelly Amendment, and immediately impose sanctions on all nations perpetuating the illegal wildlife trade.⁹⁸ Unless all nations comply with the legal agreements they have already assented to, wildlife will continue to slide toward extinction, and

⁹⁴ IPBES (2019): Summary for policymakers of the global assessment report on biodiversity and ecosystem services: <https://ipbes.net/global-assessment>.

⁹⁵ Rosen, G.E. and Smith, K.F., 2010. *Summarizing the evidence on the international trade in illegal wildlife*. EcoHealth, 7(1): 24-32.

⁹⁶ See 22 U.S.C. § 1978(a)(2), (h)(4), (a)(5).

⁹⁷ *Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 222 (1986).

⁹⁸ The Pelly Amendment requires that the Departments shall “periodically monitor” and “promptly investigate” actions by nations that may affect treaties. 22 U.S.C. § 1978(a)(3).

we'll be at risk of future pandemics. The United States' significant leverage should not sit idle when it possesses the ability to ensure every nations' compliance with these critical, international wildlife treaties.

34) To Prevent Pandemics and Extinctions, Require 100% Inspections and Full Traceability of All Commercial Wildlife Trade.

Each year the United States legally imports approximately a billion individual wild animals — 224 million live animals and 883 million dead animals — which represents around 20% of wildlife traded worldwide.⁹⁹ Of this amount, only an infinitesimally small number of wildlife imports are inspected by just 120 U.S. Fish and Wildlife Service inspectors, spread desperately thin across 38 ports of entry, and almost no wildlife exports are inspected at all.¹⁰⁰

Even before COVID-19, zoonotic diseases — those that jump from wildlife or domestic animals to humans — caused over 2 million deaths worldwide each year.¹⁰¹ The emergence of novel zoonotic diseases like COVID-19 continue to occur — and with more frequency — primarily because of the legal trade of wildlife. Most importantly, because a person who is infected by a zoonotic disease can now travel halfway around the world on an airplane in under 24 hours — less time than the incubation period of most diseases — it is critical to address wildlife trade everywhere it's occurring.¹⁰² We must reduce wildlife trade, which is currently little more than a free-for-all enterprise with almost no restrictions, to a rare, well-regulated set of activities that only occur under narrow circumstances.

We recommend that President Biden issue an Executive Order requiring the U.S. Fish and Wildlife Service to develop a comprehensive traceability program — similar to that being used in seafood harvesting — that documents where wildlife is taken from the wild and tracks all intermediary sales up to the point of import or export at the U.S. border. This information should be made freely available to the public in near real time, and will allow the United States to fully understand its role in global wildlife trade, especially in regions where novel, zoonotic disease risk is highest. This information will also serve as an early warning sign to address specific wildlife trade that has become unsustainable and that is pushing wildlife towards extinction.

To reduce disease risk even further, we recommend that the U.S. Fish and Wildlife Service increase its permitting fees for importing and exporting wildlife such that the agency can hire enough law enforcement agents and port inspectors to guarantee that 100% of wildlife that is imported into, and exported from, the United States is inspected and verified.

Similar action should be taken within the U.S. Department of Agriculture to inspect all domestic animals that are imported and exported. Without inspecting 100% of all animal shipments into,

⁹⁹ Keusch, G. T., et al. (2009). *Drivers of Zoonotic Diseases. In Sustaining Global Surveillance and Response to Emerging Zoonotic Diseases*. National Academies Press (US).

¹⁰⁰ See GAO. 2017. *Combating Wildlife Trafficking: Agencies Are Taking Action to Reduce Demand but Could Improve Collaboration in Southeast Asia*. Available at: <https://www.gao.gov/assets/690/687709.pdf>

¹⁰¹ Gebreyes WA, et al. 2018. *The global One Health paradigm: challenges and opportunities for tackling infectious diseases at the human, animal, and environment interface in low-resource settings*. PLoS Negl Trop Dis. 2018.

¹⁰² Kruse, H., Kirkemo, A. M., & Handeland, K. (2004). *Wildlife as source of zoonotic infections*. Emerging infectious diseases, 10(12): 2067.

and out of, the United States, our nation will continue to play a very dangerous game of Russian roulette, where the danger of another pandemic continues unabated.

35) Restore the Full Power of the Migratory Bird Treaty Act by Developing a Permitting Scheme for Incidental Killing of Migratory Birds.

Passed over 100 years ago, the Migratory Bird Treaty Act (MBTA) provides critically important protections to birds, prohibiting their killing “by any means or in any manner.” For decades — under both Republican and Democratic administrations alike — the U.S. Fish and Wildlife Service had recognized that this prohibition applies to foreseeable “incidental” killing caused by industrial activities and infrastructure for which the purpose was not specifically to kill birds, including power lines, pesticide application, communication towers, oil and contaminant spills, oil waste pits, surface mining tailing ponds, commercial fishing and wind turbines.

To address the harm caused by these activities, the Service conducted law-enforcement investigations, brought prosecutions, levied fines and issued permits that allowed activities to continue while requiring sensible actions to reduce further loss of birds, such as requiring power lines to install bird diverters, requiring netting to cover oil-waste pits and other reasonable mitigation to compensate for unavoidable, incidental killing of migratory birds.

In December 2017 Trump political operative Daniel Jorjani — serving as “acting” solicitor of the Department of the Interior —unilaterally issued a legal opinion that rejected decades of bipartisan implementation of the MBTA, exempting *all* incidental take from the Act’s reach. As a result the Fish and Wildlife Service is no longer addressing the killing of birds from oil spills, power-pole electrocutions, fishing bycatch, poisoning, or collisions with wind turbines. Only poaching and illegal hunting are now prohibited by the MBTA, putting one of the world’s first wildlife conservation treaties — the Migratory Bird Treaty — at risk of becoming defunct.

We recommend the Biden administration immediately rescind the Jorjani opinion, halt the Trump rulemaking process that would lock in the Jorjani interpretation, and cease defending the Jorjani opinion in court.

However, undoing the damage from the Trump administration and returning to the status quo is not enough. Since 1979 North America has lost nearly a third of all its birds — three billion birds in total.¹⁰³ Each year incidental take kills tens of millions of birds, including from building collisions, powerline collisions, powerline electrocutions, communication towers, agricultural pesticides and wind turbine collisions.¹⁰⁴ **We recommend that the Biden administration immediately begin a rulemaking process to establish a permit system for the incidental killing of birds from industrial sources that requires compensatory mitigation for foreseeable incidental take at the rate of 2:1 to help rebuild bird populations.**

¹⁰³ Kenneth Rosenberg, et al., 2019. *Decline of the North American Avifauna*, 366 SCIENCE 120-24.

¹⁰⁴ Loss, S.R., T. Will and P.P. Marra. 2015. *Direct Mortality of Birds from Anthropogenic Causes*. *Annual Review of Ecology, Evolution and Systematics* 46:99–120. Annual estimates for incidental killing of birds are as follows: building collisions - 104,000-1,600,000; powerline collisions - 7,700,000-57,300,000, powerline electrocutions - 920,000-11,550,000; communication towers - 6,600,000; agricultural pesticides - 960,011-4,430,819; wind turbines - 467,000-679,000.

36) Require Full Mitigation for All Federal Projects That Damage or Destroy Public Lands, or Harm Wildlife.

Mitigation is a cornerstone for many environmental laws including the Clean Water Act, Clean Air Act, Endangered Species Act, Federal Lands Policy and Management and dozens more. The basic hierarchy to address impacts is simple. First, avoid harm whenever possible. Second, minimize harms that cannot be avoided. And third, mitigate the remaining damage so that overall the federal government does as little damage as possible from its activities.

The Trump administration took sweeping action to undo many mitigation policies. For example, pursuant to a Trump Executive Order, in 2017 Secretary Bernhardt revoked the Landscape-scale Mitigation Policy, the Bureau of Land Management Compensatory Mitigation policy, and the Bureau of Land Management's offsite mitigation policy.¹⁰⁵ And in 2018 the U.S. Fish and Wildlife Service withdrew its 2016 Endangered Species Act Compensatory Mitigation Policy, reverting to a much weaker 1981 mitigation standard.¹⁰⁶

The relative ease with which the Trump administration reversed these policies demonstrates the need for the Biden administration to develop more permanent mitigation requirements. **We recommend that each federal agency that manages public lands, waters or wildlife implement binding regulations that require rigorous avoidance, minimization and mitigation measures for all federal projects that cause impacts to natural resources.**

These regulations must recognize that the efficacy of compensatory mitigation measures is limited at best, and that mitigation projects often fail to achieve required restoration and offset impacts fully.¹⁰⁷ **First, all federal agencies must require a minimum mitigation ratio of at least 2:1 to ensure that restoration truly offsets impacts.** Mandatory mitigation ratios have been a longstanding policy tool to protect wetlands under the Clean Water Act and should be expanded government wide and include impacts to all habitats.¹⁰⁸ Following the approach adopted by California, mitigation ratios should be higher for rare or unique habitat (3:1) and endangered species (5:1).¹⁰⁹ A higher mitigation ratio should also be required in situations where there's uncertainty regarding the effectiveness of mitigation, or where there will be a significant temporal lag between when mitigation occurs and when the benefits to the environment accrue.

Second, we recommend that all agencies require mandatory self-reporting on publicly available websites, with real penalties for failing to report or falsifying information.

Allowing the public to serve as watchdogs of mitigation projects will help to ensure that all parties complete their mitigation obligations to make the environment whole again.

¹⁰⁵ Secretarial Order 3360 (Dec. 22, 2017).

¹⁰⁶ *Endangered Species Act Compensatory Mitigation Policy*, 83 Fed. Reg. 36,469 (July 30, 2018).

¹⁰⁷ See, e.g., Margaret Race & Mark Fonseca, *Fixing Compensatory Mitigation: What Will it Take?*, 6 Ecological Applications 94-101 (1996) (finding the success rate of mitigation projects low).

¹⁰⁸ *The Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines*, February 6th 1990. Available at: <http://water.epa.gov/lawsregs/guidance/wetlands/mitigate.cfm>

¹⁰⁹ California Department of Fish and Game-South Coast Region: Guidelines for Wetland Mitigation.

37) Fully Protect National Wildlife Refuges by Ending Resource Extraction, Banning Pesticides and Banning the Use of Toxic Lead Ammunition.

America's 562 national wildlife refuges play a critical role in protecting fish, plants and other wildlife, including 280 species protected under the Endangered Species Act. The National Wildlife Refuge System Improvement Act mandates that the Fish and Wildlife Service "ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations."¹¹⁰ Yet destructive activities continue to cause harm to national wildlife refuges and the animals and plants that live there, including oil and gas development and extraction, widespread use of pesticides for commercial agriculture, and contamination from spent lead ammunition.

More than 5,000 oil and gas wells are found on 107 wildlife refuge units, with approximately one-third actively producing oil and gas. In addition to the inherent climate change impacts, oil and gas extraction on wildlife refuges has caused "significant damages from leaks and spills, unplugged or inadequately plugged wells, abandoned equipment, and insufficient or no reclamation of refuge lands and resources."¹¹¹ **We recommend the Biden administration strengthen the existing regulations for oil and gas extraction on wildlife refuges, and use all available tools — including buyouts — to phase out oil and gas extraction on refuges as quickly as possible.**

In 2018 alone more than 350,000 pounds of pesticides were applied across more than 363,000 acres of national wildlife refuge lands.¹¹² To address the threats pesticides pose to wildlife, the Fish and Wildlife Service under the Obama administration ordered the phase out of neonicotinoid pesticides and pesticide-intensive genetically engineered crops on the national wildlife refuge system, but the Trump administration reversed that policy.¹¹³ **We recommend the Biden administration implement uniform regulations that ban the use of neonicotinoid pesticides and genetically-modified crops, and restrict all other pesticide use on all national wildlife refuges.**

The Trump administration also reversed a policy by the Obama administration to phase out use of lead ammunition on wildlife refuges. Even though nontoxic ammunition has been required for waterfowl hunting for decades, and cost-effective nontoxic ammunition is now available, powerful special interests have blocked restrictions on lead ammunition. **We recommend that the Biden administration develop binding regulations that halt the use of lead ammunition on all national wildlife refuges.**

¹¹⁰ See 16 U.S.C. § 668dd(a)(4)(B).

¹¹¹ *Management of Non-Federal Oil and Gas Rights*, 80 Fed. Reg. 77204 (December 11, 2015).

¹¹² Center for Biological Diversity, *No Refuge: How America's national wildlife refuges are needlessly sprayed with nearly half a million pounds of pesticides each year*, (May 2018), https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/No-Refuge.pdf

¹¹³ U.S. Fish and Wildlife Service, *Withdrawal of Memorandum Titled "Use of Agricultural Practices in Wildlife Management in the National Wildlife Refuge System"* (August 2, 2018), https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/2018-8-2-FWS-memo-GMO-Neonics-on-wildlife-refuges.pdf

38) Stop All Lethal Removal of Native Wildlife on Public Lands by Wildlife Services and Exhaust Nonlethal Options on Private Lands.

“Wildlife Services” is a program within the U.S. Department of Agriculture that is tasked with resolving wildlife conflicts to allow people and wildlife to coexist. But rather than focus on prevention of conflicts using proven-effective nonlethal methods, the controversial program continues to employ methods and tactics from a century ago. In 2018 alone Wildlife Services killed 1,500,000 native animals, using cruel methods including strangulation snares, leghold traps and dangerous M-44 “cyanide bombs.”¹¹⁴ Because of the program’s reliance on such indiscriminate methods, each year thousands of “nontarget” animals also die, including people’s pets, endangered species and ecologically important animals like eagles and bobcats.

Killing large carnivores — such as coyotes, bears and wolves — to benefit livestock or enlarge game populations is not only devastating for natural ecosystems, it is wholly counterproductive and wasteful. Killing wildlife too often just leads to more conflict and then even more killing.¹¹⁵ Instead of first turning to cruel traps and indiscriminate poisons, Wildlife Services should utilize modern scientific knowledge that shows most conflicts with wildlife can be prevented through nonlethal measures.¹¹⁶ **We recommend the Biden administration develop binding regulations that require Wildlife Services to utilize modern science and exhaust nonlethal measures to prevent conflicts before killing wildlife on private lands.**

Much of Wildlife Services’ killing occurs on federal public lands in response to complaints from livestock operators, who already receive significant subsidies through grazing their animals on public lands at a fraction of market rates. But the nation’s public lands should be managed for the benefit of wildlife, who depend on these essential habitats, and the benefit of the public, not a small number of special interests that have exploited public lands for their own gains for decades.

In 2017 a 14-year-old boy was walking with his dog on public lands in Idaho when he stumbled upon an M-44. The boy triggered the device, which exploded in his face, temporarily blinding him and killing his dog. Each year dozens of pet dogs are killed by Wildlife Services, and people are put at unreasonable risk. **We recommend that the Biden administration develop binding regulations that prohibit the killing of native wildlife by Wildlife Services on all federal public lands and prohibit the use of pesticides that target native carnivores and other predators on all public lands.** Littering our public lands with traps, cyanide bombs and other dangerous devices is fundamentally incompatible with a modern, recreation-based economy where families can visit our public lands for wildlife watching, hiking or other recreation without fear that they or their pets will be killed for the livestock industry.

¹¹⁴ U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Program Data Reports.

¹¹⁵ Scientists Agree: It’s Time to End the War on Wildlife, Huffpost (Feb. 20, 2017), available at: https://www.huffpost.com/entry/scientists-agree-its-time-to-end-the-war-on-wildlife_b_58a77e73e4b026a89a7a2b08

¹¹⁶ S. Stone et al., 2017. *Adaptive use of nonlethal strategies for minimizing wolf-sheep conflict in Idaho*, 98 Journal of Mammalogy 33, available at: <https://academic.oup.com/jmammal/article/98/1/33/2977254>

39) Require the Use of “Ropeless” Fishing Gear Nationwide to Conserve Whales and Other Marine Mammals.

In 2020 the International Union for Conservation of Nature downgraded the North Atlantic right whale to “critically imperiled” status — one step away from extinction. The main reason for the right whale’s decline is entanglement in fishing gear, both in Canada and the United States.¹¹⁷ Unless urgent conservation actions are taken, the right whale will be extinct within our lifetimes. Unfortunately the right whale is not the only whale that is harmed by fishing gear. Humpback whales, gray whales and even blue whales — the largest animals ever to live on Earth — are also regularly entangled by fishing gear, and the problem is growing.

When marine animals get tangled up in commercial fishing gear, they often drag the gear for weeks or months — for hundreds or even thousands of miles — until they ultimately succumb to starvation, infection, dehydration or exhaustion. Those that survive are often permanently injured, interfering with breathing, feeding, and reproducing. Continued entanglements harm individual animals but also threaten the survival and recovery of several species protected under the Endangered Species Act and the Marine Mammal Protection Act.

“Ropeless” fishing gear (also known as buoy-less fishing gear) eliminates unattended vertical fishing line in the water column, and thus substantially reduces the risk of entanglements in vertical lines, and the attendant serious injuries, mortalities and sublethal impacts these entanglements cause.¹¹⁸ This type of gear is already being deployed by fishermen around the globe, including in waters off the U.S. East and West Coasts, in the Gulf of St. Lawrence in Canada, and in Australia.

We recommend that President Biden order the National Marine Fisheries Service to develop binding regulations that phase in the use of ropeless gear nationwide over five years. The National Marine Fisheries Service should prioritize the phase-in of ropeless gear first within two years for all Category I commercial fisheries — fisheries that cause frequent mortality or serious injuries of marine mammals where the level of harm exceeds 50% of the projected total amount of harm that would cause the population to decline. Within five years, the Fisheries Service should then require the phase-in of ropeless gear in all remaining Category II commercial fisheries — fisheries that cause lower level of injury or mortality that is below 50% of the projected amount of harm that would cause a population to decline.

Requiring the use of ropeless fishing gear in all Category I and II fisheries will help eliminate the suffering of individual animals that get caught in vertical lines and help promote the survival and recovery of the numerous endangered marine mammal species threatened by ongoing entanglements in fishing gear. It will also help reduce mortality and serious injury of marine mammals to insignificant levels approaching “zero mortality” rate — a requirement of the Marine Mammal Protection Act that the United States still fails to meet.

¹¹⁷ See North Atlantic Right Whale, NOAA Fisheries, available at: <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale> (last visited October 13, 2020).

¹¹⁸ H. J. Myers et al., *Ropeless fishing to prevent large whale entanglements: Ropeless Consortium report*, 107 Marine Policy 103587 (Sept. 2019).

40) Restore the Health of the Oceans by Requiring Fisheries to Set Harvest Goals Based on Historic Abundance of Overfished Species.

Congress passed the Magnuson-Stevens Fisheries Conservation and Management Act with the goal to “prevent overfishing, to rebuild overfished stocks...and to realize the full potential of the Nation's fishery resources.”¹¹⁹ This inherent tension in the law means that fisheries managers at the National Marine Fisheries Service attempt to set harvest levels as high as possible now, while trying to avoid negative impacts to future catches. But because of political pressure and industry influence, managers almost always set harvest levels too high and set recovery targets far below what is scientifically warranted.

Overfished stocks degrade the marine environment to the point of losing biodiversity and diminishing ecosystem functioning, sometimes irreversibly.¹²⁰ Impacts of overfishing also include a lack of forage fish for predators such as the critically endangered Southern Resident killer whale. These whales prefer to eat Chinook salmon, and overfishing of Chinook salmon — as well as overfishing of the small forage fish like anchovy and sardine that Chinook feed upon — means that Southern Resident killer whales are prone to miscarriages, stillborn calves and young animals failing to survive.¹²¹

In 2006 Congress amended Magnuson-Stevens to put a greater emphasis on rebuilding “overfished” fisheries. Unfortunately it only defined “overfished” as the level of fishing that jeopardizes the ability of a fishery to “produce the maximum sustainable yield” of fish.¹²² As a result fisheries are commonly considered “rebuilt” even if they are only at historic abundance. By forgetting the past, we accept a “shifting baseline” that prevents any fishery from ever recovering to healthy levels.¹²³ The National Marine Fisheries Service must consider a species’ historic abundance, so that it does not set stock-rebuilding targets at a mere fraction of the species’ historic abundance.

Therefore we recommend that the Biden administration require federal fisheries managers to reform all fisheries regulations to set harvest goals based on maintaining historic abundance levels of fisheries, as set by time periods over the previous 50-100 years, at a minimum. Doing so would finally allow our oceans to begin to recover, and over the long term would actually lead to far greater and more sustainable fishery harvests.

41) Reform the National Flood Insurance Program to Promote Climate Resilience and Environmental Justice and Protect Endangered Species.

As climate change worsens, more frequent and severe hurricanes, more extreme flooding events, and sea-level rise will put more and more coastal areas, floodplains and other low-lying

¹¹⁹ See 16 U.S.C. § 1801(6).

¹²⁰ B. Worm et al. 2006. *Impacts of biodiversity loss on ocean ecosystem services*. Science 314: 787-790.

¹²¹ S.K. Wasser, et al. 2017. *Population growth is limited by nutritional impacts on pregnancy success in endangered Southern Resident killer whales (Orcinus orca)*. PLoS ONE 12(6): e0179824.

¹²² A Run on the Banks How “Factory Fishing” Decimated Newfoundland Cod. E/The Environmental Magazine!. March 2001.

¹²³ Pauly, D., 1995. Anecdotes and the shifting baseline syndrome of fisheries. *Trends in ecology & evolution*, 10(10), p.430.

properties at risk. Historically, the primary goals of the National Flood Insurance Program (NFIP) — administered by the Federal Emergency Management Agency — was to reduce the socioeconomic impacts of flooding events and provide affordable, subsidized insurance for people living in 23,000 participating NFIP communities in order to qualify for government-backed mortgages, and guide future development away from areas threatened by flooding.

Unfortunately the NFIP has become a massive government boondoggle that is over \$20 billion in the red. The program perpetuates and encourages development in environmentally sensitive areas that do flood, provides the wealthiest property owners the greatest windfalls to keep rebuilding high-end beach properties, and leaves many poorer communities trapped in homes that are extremely prone to flood damage and that have virtually no resale value. This dynamic will only worsen and further devastate the poorest communities if the NFIP continues in a “business as usual” mindset.

The NFIP needs two key reforms if it is to continue operating. **First we recommend that President Biden issue an Executive Order to FEMA that it must fully comply with the Endangered Species Act and all other environmental laws before it authorizes or approves subsidized flood insurance.** Despite numerous losses in court, FEMA has remained intransigently opposed to complying with the Endangered Species Act, and has continued to subsidize developments in habitat of endangered species like the Florida Key deer and Pacific salmon.¹²⁴ Destroying endangered species habitat to build structures that will likely be destroyed in future floods and storms is simply nonsensical, and undermines conservation efforts for endangered species that are most threatened by climate change. FEMA must consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service before it develops its eligibility maps for subsidized flood insurance.

Second we recommend that President Biden order FEMA to elevate environmental justice as a top priority in all aspects of the NFIP. It makes little sense to force those in the most disadvantaged communities — often Black, Indigenous and other communities of color — to only have the option to rebuild in the very same flood-prone areas where storms already have destroyed their homes. As Hurricane Harvey most recently demonstrated, existing infrastructure often directs floodwaters toward areas where poor people live in order to spare more affluent areas.¹²⁵ The NFIP must prioritize, focus and shape financial assistance in such a way that allows poorer people to move out of flood-prone areas if they so choose, rather than focusing on helping the wealthiest rebuild quickly. By avoiding development in the most environmentally sensitive areas and assisting people to move away from flooded areas, FEMA could put the NFIP on a more sustainable and just footing.

¹²⁴ See *Florida Key Deer v. Stickney*, 864 F. Supp. 1222 (S.D. Fla. 1994); *Nat'l Wildlife Fed'n v. FEMA*, 345 F. Supp. 2d 1151 (W.D. Wash. 2004); *Audubon Soc'y of Portland v. FEMA*, Case No. 3:09-cv-729-HA (D. Ore. 2010).

¹²⁵ Jeremy Deaton, *Hurricane Harvey hit low-income communities hardest*, ThinkProgress (September 1, 2017), available at: <https://thinkprogress.org/hurricane-harvey-hit-low-income-communities-hardest-6d13506b7e60/>



Bears Ears National Monument / Bob Wick, BLM

STRENGTHENING PUBLIC LANDS, WATERS AND OCEANS

Historian Wallace Stegner once called national parks one of America's best ideas that it shared with the world. National parks, like all public lands, were in his view "absolutely American, absolutely democratic, they reflect us at our best rather than our worst."¹²⁶ Whether or not this overly romantic view was ever true, our public lands are under greater threat than ever before, and are losing whatever vestiges of democratic governance they once possessed. Every year millions more acres of public lands are turned over to industry — including for fossil fuel extraction, mining, timber and livestock grazing. Once these lands are turned over to industry, the public loses the ability to recreate on those lands, wildlife populations decline or disappear, and more often than not, the public is left with the tab to pay for restoration and clean-up costs.

Attacks on public lands drastically increased during the Trump administration. President Trump dismantled Bears Ears National Monument and Grand Staircase-Escalante National Monument to placate the fossil fuel industry and far-right anti-public lands extremists. The dismantling of Bears Ears was a particularly egregious insult to the Indigenous groups that had worked for years to preserve thousands of irreplaceable cultural and archaeological sites. Trump also gutted protections for the Northeast Canyons and Seamounts Marine National Monument in a desperate political stunt. And just as tragically, his minions in the Department of the Interior and Department of Agriculture embarked on the largest expansion of fossil fuel extraction in modern history, attempting to lease tens of million acres of public lands over the four years of their tenure.

Our public lands are potentially critical tools in fighting the twin challenges of climate change and the extinction crisis. However, to fully serve their purpose for the benefit of all people, we must not only undo the horrific actions of the Trump administration but reform all the public-land management agencies and place the public good above that of industry profits. We must better protect treasured landscapes like the Grand Canyon — by permanently protecting it from the threat of uranium mining — and the Arctic National Wildlife Refuge, which is at imminent risk from oil drilling. We must restore declining wildlife populations by reconnecting fragmented landscapes and creating new wildlife refuges across the United States. We must enlist public lands in the fight against climate change by protecting forests and grasslands that sequester

¹²⁶ See America's Best Idea Today, <https://www.nps.gov/americasbestidea/>

carbon and create more resilient landscapes to help adapt to the worst impacts of climate disruption. We must change our management of our oceans to rebuild fisheries, restore declining marine wildlife and stop mindless and destructive oil and gas extraction from our oceans. Below are the key recommendations for this nation's public lands and waters.

42) Permanently Protect 30% of All Lands, Waters and Oceans by 2030.

In 2016 famed conservation scientist E. O. Wilson proposed saving half the Earth — its lands and waters — as a long-term mechanism to halt and reverse the extinction crisis, restore and maintain ecosystem services, and ultimately help ensure humanity's long-term survival.¹²⁷ This goal is supported by President Biden, many members of Congress, every other Democratic candidate for president in 2020, and hundreds of environmental organizations.

We recommend President Biden issue an Executive Order that sets a national goal of conserving at least 30% of all U.S. lands and oceans by 2030, including an interim goal of reaching 25% protection for all U.S. lands over the first four years of his presidency.

While the United States' existing public lands provide the foundation for achieving this goal, the majority of all public lands and waters are not managed for conservation purposes, nor do existing protected areas represent the full ecological breadth and diversity of the United States — one of the central goals of the 30 by 2030 vision. Only 13% of all lands in the United States — 300 million acres of public lands — are fully protected. An additional 400 million acres must still be fully protected to meet the 30% by 2030 goal. The Biden administration should use its existing authorities to expand and create new wildlife refuges, designate new national monuments and marine monuments, and designate wildlife corridors, focusing especially on areas with imperiled wildlife and plants and where threats to biodiversity are highest.

Elevating the conservation status of public lands is very important to achieving the 30% by 2030 goal. However the most under-protected landscapes are located on non-federal lands, especially in the eastern and central parts of the nation. The National Wildlife Refuge System Improvement Act of 1997 allows the U.S. Fish and Wildlife Service to administratively designate and create new wildlife refuges and acquire lands from willing sellers.¹²⁸ The Biden administration should prioritize the establishment of new wildlife refuges in the underrepresented parts of the country by creating at least one new wildlife refuge in every EPA Level III ecoregion using existing funding that is available for land acquisition.

Nearly 30% of federal ocean waters are already managed as marine national monuments, those areas are heavily concentrated in the remote western Pacific Ocean, and some are still open to resource extraction including fishing.¹²⁹ The Biden administration should push to protect 50% of ocean waters as soon as possible by creating a well-distributed network of marine protected areas — designated as Marine National Monuments — that protects at least 30% of each major type of marine habitat found within the United States coastal zone and economic exclusion zone,

¹²⁷ E.O. Wilson, 2016. Half-Earth: Our Planet's Fight for Life.

¹²⁸ 16 U.S.C. § 668dd.

¹²⁹ A resolution expressing the sense of the Senate that the Federal Government should establish a national goal of conserving at least 30 percent of the land and ocean of the United States by 2030, S.Res. 372, 116th Cong. (2020)

including the: (1) northeast continental shelf, (2) southeast continental shelf, (3) Gulf of Mexico, (4) California Current, (5) Gulf of Alaska, and (6) Arctic's Bering, Chukchi and Beaufort Seas.

43) Establish a National Network of Wildlife Corridors and Prioritize Construction of Wildlife Passages.

Existing public lands often provide the most rigorous protections for wildlife possible, but even our largest national parks and wilderness areas can be too small to support self-sustaining wildlife populations. For example, Yellowstone National Park and the Greater Yellowstone Ecosystem are just too small and too isolated from other public lands to support a genetically viable population of grizzly bears. Populations of iconic species like pronghorn have declined precipitously in large measure due to fossil fuel development blocking their migratory paths.

The creation of a National Wildlife Corridor System — including both wildlife corridors and wildlife crossings — will provide connectivity, resilience and adaptability of native wildlife on public lands. Reconnecting wildlife populations that have become isolated by roads, development and other human infrastructure can also save many lives by reducing wildlife-vehicle collisions. The need to provide connectivity and re-establish wildlife corridors is not new, but too little progress has been made in making this a high priority and important strategy to help address the wildlife extinction crisis.

We recommend that President Biden issue an Executive Order to the Departments of the Interior, Agriculture and Transportation to establish and prioritize the creation of a National Wildlife Corridor System that protects key wildlife-migration corridors for terrestrial and aquatic species in all regions of the country.

First the Department of the Interior and Department of Agriculture should develop new regulations that identify “wildlife corridors” as a recognized priority use of public lands, and amend all resource management plans to designate wildlife corridors. Management goals for wildlife corridors should include removing fencing, eliminating barriers to native fish passage, decommissioning roads, and restricting resource extraction activities and development of other infrastructure that displaces wildlife or hinders the movement of wildlife.

Second, in coordination with the Interior and Agriculture departments, **we recommend that President Biden direct the Department of Transportation's Office of Federal Lands Highway to prioritize the construction of wildlife crossings — including wildlife underpasses and wildlife overpasses — in each part of the nation where the public lands management agencies have identified and designated wildlife corridors.** Doing so would not only help to restore wildlife populations but save lives. From 2015 to 2018 more than 26,000 wildlife-vehicle collisions on state highways were reported to the California Highway Patrol — mostly involving deer, but also coyotes, bears, elk and mountain lions.¹³⁰ Relevant federal agencies should coordinate with state wildlife and transportation agencies and tribal governments to maximize efficiencies and resources. And all other offices within the Department of Transportation should allocate discretionary funding toward the construction of wildlife crossings in all hotspots where large numbers of wildlife-vehicle collisions continue to occur.

¹³⁰ Impact of Wildlife-Vehicle Conflict on California Drivers and Animals, Road Ecology Center (2019).

44) Manage All Public Lands Primarily for the Benefit of Wildlife, Climate Stability and Compatible Recreational Uses.

Current “multiple use” mandates for the National Forest System and lands administered by the Bureau of Land Management (BLM) have resulted — as a practical matter — in the elevation of resource extraction activities above all other uses across hundreds of millions of acres of public lands. However, the “multiple use” mandate could be administratively reimaged so that America’s public lands play an outsized role in helping to combat both the wildlife extinction and climate crises.

Under both the National Forest Management Act — which guides the U.S. Forest Service — and the Federal Lands Policy and Management Act — which guides the BLM — Congress has set forth a “multiple use” mandate to balance extractive uses like timber harvest, mining, grazing, and oil and gas, with non-extractive uses including conserving wildlife, protecting watersheds, providing recreation opportunities and cultural and historic preservation.¹³¹ While each extractive use generally precludes all other uses, the opposite is not true. Importantly, both laws include language that requires the agencies to make “the most judicious use” of public lands such that multiple uses “are utilized in the combination” that will best meet “the needs of the American people” rather than “greatest dollar return or the greatest unit output” or result in “permanent impairment of the productivity of the land.”¹³² While both the Forest Service and BLM have regulations about each use of public lands, neither has defined what the “needs of the American people” should mean — putting the national public interest above that of industry profit.

We recommend that President Biden order the Forest Service and BLM to enact regulations with 18 months that define “the needs of the American people” under multiple use, such that protecting wildlife, safeguarding the climate and compatible recreation are the highest priority activities for all public lands. If a proposed activity on public lands does not help to protect the climate, rebuild native wildlife populations, preserve watershed integrity or further compatible recreation or preserve cultural resources, then that activity should not be allowed in that area of public lands.

Once new regulations are in place, the Biden administration should work toward revising every National Forest Management Plan and every BLM Land and Resource Management Plan to ensure that existing uses fully meet the needs of the American people now and into the future, instead of subsidizing and propping up extractive industries that continue to degrade our public lands. This new approach to multiple use would not necessarily prohibit extractive activities everywhere, but it would finally create a level playing field for non-extractive uses of public lands that have been historically disfavored by both Democratic and Republican administrations alike and ensure that America’s public lands meaningfully contribute to climate stability, restoring native wildlife and watershed health.

¹³¹ 16 U.S.C. § 1600, et seq., 43 U.S.C. § 1701, et seq.

¹³² 16 U.S.C. § 531, 43 U.S.C. § 1702.

45) Establish a Carbon Reserve on Public Lands to Sequester Carbon and Fight Climate Change.

Safeguarding and increasing biological carbon stores is an indispensable component of addressing the climate crisis.¹³³ Every year public lands' forests, shrublands, grasslands and wetlands sequester the equivalent of 15% of U.S. carbon emissions.¹³⁴ Unlogged old-growth forests — almost all of which are now only found on public lands — store 30% to 70% more carbon and are more resilient to natural disturbances than logged forests.¹³⁵ Logging — for whatever purpose — is the largest source of carbon emissions from all forests nationwide, well above emissions caused by wildfire or insect disturbances.¹³⁶ Protecting all remaining forest carbon sinks — including allowing logged forests to grow older and reach their full biological carbon sequestration potential — is one of the most effective, immediate, and low-cost methods of removing carbon dioxide from the atmosphere.¹³⁷

We recommend that President Biden issue an Executive Order that directs the secretary of Agriculture and secretary of Interior to issue a moratorium on the logging of mature and old-growth forests on U.S. Forest Service and Bureau of Land Management lands. During the moratorium period, the two Secretaries should complete rulemakings to permanently protect these forests as carbon reserves whose primary purposes are carbon sequestration.

In addition to old growth, it is vital to protect mature trees and forest stands as they have the potential to become old growth, storing and sequestering significant amounts of carbon. We recommend that the secretary of Agriculture and secretary of Interior develop regulations to protect mature trees from logging defined by their Biological Age of Maturity consistent with forest type.

Finally, non-forest ecosystems on public lands also have the potential to increase their ability to sequester large amounts of carbon. **We recommend President Biden direct the secretary of Agriculture and secretary of Interior to ensure that carbon reserves are established on at least 40% of public lands, outside existing congressionally protected areas, within four years.** The secretaries, together with the U.S. Geological Survey, Environmental Protection Agency and independent scientific bodies, should develop criteria for identifying potential carbon reserves and techniques to maximize ecological restoration with the goal of increasing carbon sequestration and carbon stores on all national grasslands and BLM lands. Within four years, every respective public-lands administrative unit should have established carbon reserves that are managed primarily for this new purpose of public lands.

¹³³ Intergovernmental Panel on Climate Change, Global Warming of 1.5°C, 2018.

¹³⁴ M.D. Merrill et al. 2018. Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005–14.

¹³⁵ Watson, J.E.M. et al. 2018. The exceptional value of intact forest ecosystems. *Nature Ecology & Evolution* 2:599-610, doi: 10.1038/s41559-018-0490-x.

¹³⁶ N.L. Harris, et. al Attribution of net carbon change by disturbance type across forest lands of the coterminous United States 2016 DOI 10.1186/s13021-016-0066-5

¹³⁷ Moomaw W.R et al. 2019. Intact Forests in the United States: Proforestation Mitigates Climate Change and Serves the Greatest Good. *Front. For. Glob. Change* 2:27. doi: 10.3389/ffgc.2019.00027

46) End Subsidized Livestock Grazing on Public Lands and Restore Rangeland Ecological Integrity Nationwide.

Grazing of domestic livestock is one of the most subsidized and destructive activities that occur on public lands, and costs taxpayers hundreds of millions of dollars every year in direct and indirect costs. Over half of all grazing allotments on public lands managed by the Bureau of Land Management (BLM) fail to meet rangeland health.¹³⁸ Livestock grazing on public lands imperils native fish and wildlife, pollutes rivers and streams, spreads invasive species, damages the water table, and conflicts with recreational activities such as hiking, camping and wildlife watching.

The federal grazing fee is just a fraction of private lands grazing fees set by the market. In 2020 the average private forage rate for one Animal-Unit-Month (AUM) in the western United States was \$19.90/AUM, nearly 15 times more than BLM and U.S. Forest Service (USFS) fee of \$1.35/AUM. Indeed, the federal grazing fee today is lower than the rate charged in the 1980s, once it is adjusted for inflation. The main reason that grazing fees have been locked at absurdly low levels is Executive Order 12548 — issued by President Reagan in 1986 — which effectively froze grazing fees based on the Public Rangelands Improvement Act of 1978. This law expired in 1985, but the Executive Order has lingered for decades to the detriment of public lands.¹³⁹

We recommend that President Biden revoke President Reagan’s Executive Order 12548 and then require the secretaries of the Interior and Agriculture to set grazing levels no lower than the market rate set on private lands within two years.

In order to ensure that public lands and resources are not further degraded, the BLM and the USFS should increase the AUM fee to ensure all the costs of grazing on public lands are fully offset by special interests that receive this privilege. If the full cost recovery and fair market value for public lands grazing fees were charged by BLM and the USFS, livestock grazing would better reflect the ecological carrying capacity of the land, thereby reducing environmental damage including to imperiled species and western watersheds while increasing total revenues from federal grazing fees. In addition, the BLM and the USFS should audit the collection of the AUM fees every year to ensure that all ranchers are current with their AUM fees to the taxpayers. Any outstanding AUM fees from years past should be collected without delay.

Finally, we recommend that President Biden require the secretaries to develop new regulations that temporarily suspend any grazing allotments that do not meet all rangeland standards within two years. If grazing can be achieved in an ecologically sustainable level that preserves the integrity of grazing lands, then it should be allowed to continue. However, if cattle ranchers continue to abuse public lands, their leases should be suspended until they become able to be responsible stewards of those lands.

¹³⁸ Table 5 - Standards for Rangeland Health, B. Cumulative Accomplishments, BLM (2018)
https://www.peer.org/wp-content/uploads/2020/03/3_4_20_2018_RIMEreport_Land_Health.pdf

¹³⁹ New Mexico Agricultural Statistics – 2012, NMDA at 12 (2012).

47) Curtail Destructive Mining on Public Lands and Require the Mining Industry Fully Pay for All Mine Reclamation and Restoration Costs Up Front.

The Mining Law of 1872 is one of the most outdated, regressive laws in existence. Since its enactment, public lands have become littered with hundreds of thousands of abandoned mines, which have polluted 40% of headwaters in the western United States, leaving taxpayers on the hook for billions in clean-up costs. Although public lands agencies possess authority to set environmental standards for mine operations and post-mining cleanup requirements, they have never enacted measures to fully protect land, water and wildlife from mining damage to the fullest extent possible under the law. Large mining corporations — mostly foreign-owned — game the system, extracting valuable minerals and leaving a toxic legacy of pollution behind.

We recommend that President Biden order the departments of the Interior and Agriculture to develop binding regulations that strictly limit damage to public lands before approving any mining projects. The agencies’ regulations should be revised to define, “unnecessary or undue degradation” on BLM lands and define “depredations of public forests” on Forest Service lands, so the agencies’ fully protect all natural resources when considering whether to approve a mining plan on public lands.¹⁴⁰ Until now these statutory requirements have been left weakly enforced, which has allowed mining industry profits to be elevated above the public interest.

We also recommend that President Biden order the departments to develop binding regulations that prevent public lands from becoming dumping grounds for mining waste. Policies put in place by both the Bush administration and the Trump administration have allowed mining companies to place massive piles of waste rock and mine tailings — that are often laced with toxic chemicals — on public lands, forever turning those public lands into permanent waste dumps.¹⁴¹ Mining companies assert dubious mining claims on public lands where there are no valuable mineral deposits, and then use these locations to dump their waste. Thankfully, a federal court in Arizona stopped a massive open-pit copper mine and ruled that public lands cannot use mining claims for dumping mining waste. The Biden administration should end its appeal of that ruling and develop binding regulations that fully protect public lands from this type of abuse.¹⁴²

President Biden should also order the Environmental Protection Agency and public lands agencies to develop regulations that require 100% reclamation and remediation of mine locations and cover worst-case scenarios for environmental damage. In too many instances, mines are approved where they will require perpetual water treatment and bonding is insufficient to cover worst-case cost scenarios despite the legacy of thousands of abandoned hard-rock mines that taxpayers foot the bill to clean up. The EPA started to work on mining financial assurances under the Obama administration, but that effort fell short of being completed, and thus should be re-started and finished.¹⁴³ Regulations should also define and require 100% reclamation, which would include no perpetual water treatment, and base bonding on the worst-case scenario for what it would cost to restore an area to the same conditions post-mining.

¹⁴⁰ See, 43 U.S.C. § 1732(b) and 16 U.S.C. § 551).

¹⁴¹ M-37010 (Oct. 7, 2003); M-37011 (Nov. 14, 2005); M-37012 (Nov. 14, 2005). M-37057 (Aug. 17, 2020).

¹⁴² See, M-37004 (Jan. 18, 2001) and M-36988 (Nov. 7, 1997)

¹⁴³ 82 Fed. Reg. 3,388 (Jan. 11, 2017); 83 Fed. Reg. 7,556 (Feb. 21, 2018).

48) Dismantle President Trump’s Border Wall, a Monument to Hatred and Xenophobia.

With the declaration of a fake national “emergency” and no congressional approval, the Trump administration has built hundreds of miles of disastrous border walls through some of the most stunning and biodiverse landscapes along the southern border.¹⁴⁴ Wall construction has bulldozed pristine wildlands, harmed endangered species and destroyed Indigenous burial grounds and sacred sites.

Trump’s Department of Homeland Security (DHS) expedited construction on protected public lands to avoid legal battles over land condemnation. As a result, Trump’s wall has ripped through wildlife refuges, wilderness areas, national parks and a UNESCO biosphere reserve.¹⁴⁵

We recommend that President Biden immediately revoke President Trump’s Emergency Declaration and permanently halt all border-wall construction by canceling existing construction contracts and eminent domain proceedings on Day One.

Construction of the border wall has taken place outside the scope of environmental, public health and cultural resource protection laws through use of the REAL ID Act waiver¹⁴⁶ — the broadest waiver of law in U.S. history. Laws like the Endangered Species Act, National Environmental Policy Act, Native American Graves Protection and Repatriation Act, Clean Water Act and dozens more have been cast aside, and President Trump’s wall has gone up with no analysis of the clear harms it inflicts on wildlife, communities, sacred sites and cultural resources. **We recommend that the Biden administration rescind all prior waivers of law issued by DHS and support legislative efforts to repeal section 102 of the REAL ID Act to restore legal protections to the borderlands.**

Much of the damage inflicted on wildlife and communities in the borderlands will take decades to restore, but habitat connectivity in key areas can be quickly repaired and the threat from devastating floods mitigated by removing sections of barrier in areas where they are already causing the most harm. **We recommend that the Biden administration identify priority areas to remove sections of wall built in wildlife refuges, wilderness areas, and National Park lands to mitigate the worst environmental impacts from the wall and restore habitat connectivity for wildlife.**

Finally, Trump’s DHS utterly failed to consult with border community residents, Indigenous people and sovereign tribal nations, including the Tohono O’odham Nation and Cocopah Indian Tribe. Wall construction has harmed or destroyed sacred sites including Quitobaquito Springs, Las Playas, the Tinajas Altas Mountains and other cultural areas and burial grounds. **We recommend the Biden administration initiate a process to respectfully consult with and compensate tribal nations and Indigenous people for damages inflicted to ancestral lands, communities, cultural and historic sites during the construction.**

¹⁴⁴ Teo Armus, ‘You don’t control the border’: Indigenous groups protesting wall construction clash with federal agents, The Washington Post (Sept. 23, 2020).

¹⁴⁵ Christine Hauser, Blasting in Construction of Border Wall Is Affecting Tribal Areas, N.Y. Times (Feb. 15, 2020), <https://www.nytimes.com/2020/02/11/us/trump-border-wall-arizona-native-americans.html>

¹⁴⁶ Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. § 1103 note).

49) Create a Bureau of Ocean Protection and Dismantle the Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, and Office of Natural Resource Revenue.

In April 2010 the Deepwater Horizon drilling rig catastrophically exploded, killing 11 workers and causing the largest oil spill in U.S. history — over 200 million gallons — and resulted in massive damage to ecosystems across the Gulf of Mexico. The Deepwater Horizon operation was permitted and approved by the Obama administration’s Mineral Management Service (MMS), an agency within the Department of the Interior. During the subsequent investigations into the causes of the Deepwater Horizon catastrophe, it was learned that the MMS completed cursory, boilerplate reviews under the National Environmental Policy Act and ignored substantial risks to endangered species and marine wildlife. And egregiously, over a dozen officials within MMS were implicated in 2008 by the Inspector General in unethical and criminal conduct in the performance of their duties. The investigation found MMS employees had received illegal gifts from energy industry representatives — including free holidays, cocaine and illicit sex.

Following these revelations, the MMS was disbanded into three agencies: the Bureau of Ocean Energy Management (BOEM), Bureau of Safety and Environmental Enforcement (BSEE), and Office of Natural Resource Revenue (ONRR). Unfortunately the underlying culture of MMS persisted in these agencies, with the interest of industry being placed above that of the public and the environment. In the remaining six years of the Obama administration, BOEM and BSEE rubber-stamped fracking in the oceans, despite the total lack of scientific support finding such practices are safe. The agencies also refused to update any of their regulations on how they implemented the National Environmental Policy Act or Endangered Species Act. The few, minor regulatory changes enacted in the following six years — including new standards for blowout preventers — were modest at best, and then gutted by the Trump administration.¹⁴⁷

Because BOEM, BSEE and ONRR are beyond repair, we recommend that President Biden issue an Executive Order to disband all three agencies and establish a Bureau of Ocean Protection within the Department of the Interior. The mission of a Bureau of Ocean Protection would be to ensure that any development or resource extraction in offshore waters within the jurisdiction of the Department of the Interior only occur if they are proven to be 100% safe for people, marine wildlife and ocean ecosystems following the precautionary principle.

The second mission of a Bureau of Ocean Protection would be to begin the wind-down of existing fossil fuel extraction in offshore waters. Under the authority provided within the Outer Continental Shelf Lands Act, the Bureau would set the rate of production for the offshore waters, and would gradually reduce the rate of production every year as part of the larger effort to wean the U.S. off of fossil fuels.¹⁴⁸ Finally we recommend the Bureau devote all remaining staff efforts to rigorous and constant oversight of existing fossil fuel extraction in offshore waters, and if any company is found to be violating any safety standard, then the Bureau should immediately begin debarment and suspension procedures for that company.

¹⁴⁷ *Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions*, 84 Fed. Reg. 21,908(May 15, 2019).

¹⁴⁸ See, Outer Continental Shelf Lands Act, 43 U.S.C. 1350(c)(5)

50) Prioritize Removal of Dams, Restoration of Natural Rivers, and Building Resiliency Against Climate Change at All Bureau of Reclamation-operated Dams.

Established in 1902, the Bureau of Reclamation (BOR) operates over 600 dams and reservoirs, canals and hydropower facilities across the western United States. Unfortunately, communities and industries have become dependent on the highly subsidized water deliveries from BOR. This has created enormous political pressure to ignore the environmental damage caused by the damming of nearly every major river in the West and has also created resistance to taking action to make our rivers and water supplies more resilient in the face of climate change.¹⁴⁹ Dams have decimated fish populations across the nation, imperiling many species with extinction and harming the traditional, cultural harvests of Indigenous peoples.

We recommend that President Biden direct the Bureau of Reclamation to complete a comprehensive review of all federal dams it operates, assess all impacts and environmental costs, and initiate planning to remove no less than half of all BOR dams over the next twenty-five years. The BOR should prioritize the removal of dams that would provide the greatest benefits to wildlife, including native fisheries, the greatest benefit to Indigenous people, and the greatest benefit to ensuring climate resiliency. By the end of 2024, the BOR should have completed the initial scoping process under the National Environmental Policy Act for each dam that is identified for removal.

For all other dams, we recommend that President Biden direct the Bureau of Reclamation to reform the management and operations of those dams, including by using market-based incentives to minimize wasteful water practices and maximize in-stream water flows in rivers. Too many dams operated by the BOR are uneconomical and heavily subsidize activities and practices that waste enormous amounts of water, including irrigating water-intensive crops in desert regions. Water prices must be adjusted to reflect market conditions, and incentives should be provided to agricultural operations that adopt water-conservation measures. Furthermore, the BOR should implement a surcharge on water-users — as the Congressional Budget Office recommended decades ago — to fund restoration efforts to address rebuilding fisheries, restoring natural floodplains, and mitigating heightened salinity levels in rivers caused by irrigation.

Overall we recommend the BOR establish new restoration targets — including setting minimum amounts of water for spawning and migration and maintaining natural temperature regimes — focusing restoration efforts on the Sacramento River, San Joaquin River, the desert rivers of Arizona, the Platte River and the Rio Grande. Finally the BOR should focus its management on providing compatible recreational opportunities that are consistent with the larger goals of river and watershed restoration such as rafting and kayaking, wildlife watching, and fishing and hunting.

¹⁴⁹ Congressional Budget Office, 1997. Conflicts in the West: Implications of Reforming the Bureau of Reclamation's Water Supply Policies, available at: <https://www.cbo.gov/sites/default/files/105th-congress-1997-1998/reports/wateruse.pdf>.

Appendix

Executive Orders that Need to be Revoked

E.O. Number	President	Executive Order Title	Why E.O. is Harmful
12291	Reagan	Federal Regulation	Undermines regulatory safeguards in rulemaking process
12350	Reagan	Termination of Urban and Community Impact Analyses	Undermines environmental justice in reviews of federal projects
12417	Reagan	Strategic and Critical Materials	Elevates mining industry profits above public lands protections
12548	Reagan	Grazing Fees	Subsidizes destructive grazing practices on public lands
12630	Reagan	Governmental actions and interference with constitutionally protected property rights	Perpetuates myths regarding purported impact of regulations on private property
12866	Clinton	Regulatory Planning Review	Prioritizes economic outcomes and alternatives in rulemaking
12893	Clinton	Principles for Federal Infrastructure Investments	Cost-benefit analysis requirements prioritize financial benefits over environment
13274	Bush	Environmental Stewardship and Transportation Infrastructure Project Reviews	Undermines the permitting process and environmental review of transportation infrastructure projects
13302	Bush	Amending Executive Order 13212, Actions to Expedite Energy-Related Projects	Accelerates energy-related production and transmission projects
13337	Bush	Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States	Accelerates projects that export and import fossil fuels
13432	Bush	Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines	Fails to meaningfully address greenhouse gas emissions while creating convoluted, hostile, obstructive bureaucratic maze

13457	Bush	Protecting American Taxpayers from Government Spending on Wasteful Earmarks	Gives federal agencies too much authority over spending decisions
13580	Obama	Interagency working group on Coordination of Domestic Energy Development and Permitting in Alaska	Facilitates destructive oil and gas development in Alaska
13604	Obama	Improving Performance of Federal Permitting and Review of Infrastructure Projects	Streamlines permitting process and undermines environmental review for infrastructure projects
13605	Obama	Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources	Promotes the continued use of natural gas
13689	Obama	Enhancing Coordination of National Efforts in the Arctic	Perpetuates the continued use of oil and gas development in the Arctic

Agency Policy or Guidance Documents that Need to be Revoked

Agency	Date	Policy/Guidance Title	Why it is Harmful
USFWS	June 14, 1999	Notice of Intent to Clarify the Role of Habitat in Endangered Species Conservation	Perpetuates false narrative that critical habitat does not have any added value
USFWS	January 16, 2009	The Meaning of “Foreseeable Future” in Section 3(20)	Limits the ability of science to inform listing determinations
USFWS	December 22, 2010	Supplemental Explanation for the Legal Basis of the Department’s May 15, 2008, Determination of Threatened Status for Polar Bears	Limits protections by claiming endangered species must be “currently on the brink of extinction.”
USFWS	July 1, 2014	Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the ESA’s Definitions of “Endangered Species” and “Threatened Species”	Renders the “significant portion of its range” phrase meaningless in application. Has been overturned by multiple federal courts.
USFWS	August 2016	USFWS Species Status Assessment Framework	Improperly injects politics into purely scientific listing decisions