OBAMA-BIDEN TRANSITION PROJECT

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DEFENDERS OF WILDLIFE
PRESIDENTIAL TRANSITION WHITE PAPER

PROTECTION AND RECOVERY OF IMPERILED SPECIES

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CHALLENGE

Thirty-five years ago, Congress enacted the current Endangered Species Act (ESA), and this nation put in place the world's most farsighted and important protection for imperiled wildlife and plant species and the ecosystems on which they depend. This protection has everyday value for humans because these plants and animals, many seemingly insignificant, play crucial roles in their ecosystems that help sustain all life on Earth.

The ESA has helped rescue hundreds of species from extinction. But the even greater achievement of the Act has been the efforts it has prompted to recover species to the point at which they no longer need special protections. It is because of the Act that we have wolves in Yellowstone, manatees in Florida and sea otters in California. We can marvel at the sight of bald eagles in the lower 48 states and other magnificent creatures like the whooping crane, the American alligator and California condors, largely because of the ESA.

Unfortunately, during the last eight years the outgoing administration largely abandoned, and in many cases actively undermined, our longstanding bipartisan commitment to protect imperiled species. The administration slowly starved ESA programs of critical funding and altered the fate of many species based on political agendas rather than scientific data. The net result has been to thwart protection for more than 280 species deserving protection under the Act and to hamstring recovery of those species already listed.

The stained legacy of the outgoing administration includes adoption of novel policies that re-interpret and weaken the ESA and our nation's efforts to protect and recover endangered and threatened species. The changes also have sought to sidestep any responsibility for addressing the impacts of global warming on polar bears and other rare wildlife and plants. In an era of global warming, a strong and forward-thinking approach to endangered species conservation is nothing short of essential.

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The new administration has the opportunity to provide a fresh start for imperiled species. We should renew our nation's courageous 35-year commitment to protect the wealth of our living natural resources by undoing the damage caused during the past eight years and by reauthorizing and strengthening the Endangered Species Act.

ACTION

First 100 days:

The new administration should request, and Congress should provide, substantial increases in U.S. Fish and Wildlife Service and National Marine Fisheries Service endangered species program funding over the next four years.

There is a pressing need to restore and increase funding for efforts by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to protect and recover species that are listed under the Endangered Species Act as well as species that are candidates for such listing.

The FWS Endangered Species program has four main accounts within the FWS budget: Candidate Conservation, Listing, Consultation, and Recovery. These four program areas are all currently experiencing significant staffing shortages due to budget constraints. To adequately implement the endangered species program, staffing levels must be increased by 30 percent to offset seven years of erosion in the number of FTEs and to begin to enhance program integrity. In conjunction with this re-building of staff, funding must gradually increase for the four main accounts to at least $305.8 million by Fiscal Year 2013, an increase of $155.3 million over the FY 2008 level.

The Candidate Conservation program protects species for which the FWS has sufficient information to warrant a proposal for listing under the ESA. As of early 2008, there were more than 280 candidate species awaiting listing under the ESA or other conservation actions. Although the number of imperiled species is likely to continue to increase, the Candidate Conservation program has experienced a 10 percent reduction in FTEs between FY 2002 and FY 2007. A doubling of this program's resources over the next five years to $25 million is needed to ensure protection of species awaiting listing. To begin rebuilding candidate conservation efforts, we recommend that $15 million be requested in the FY 2010 budget, an increase of approximately $5 million over the FY 2008 level.

The FWS Listing account, which supports the protection of new plants and animals under the ESA and designation of their critical habitat, faces a backlog of $160 million. Addressing this backlog will require increasing funding well over current levels, as well as making more efficient use of funds, given that the FWS currently lists far fewer species per dollar today than in 2000. To eliminate this backlog over the next five years, the new administration should request $32 million for FY 2010, an increase of approximately $14 million over the FY 2008 level.

The Consultation program provides the checks and balances that ensure actions by federal agencies adequately protect endangered fish, wildlife, and plants. The consultation budget also funds FWS work with non-federal entities for permitting and development of Habitat

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Conservation Plans. Lack of funding and a nine percent reduction in FTEs between FY 2002 and FY 2007 have prevented the FWS from ensuring that these plans are properly developed, implemented and monitored. To adequately implement the Consultation program would require $122.4 million by FY 2013. Consequently, we recommend the new administration request $75 million for FY 2010, an increase of $23 million above the FY 2008 level.

While the ESA has been extremely successful at preventing wildlife from going extinct, the full purpose of the Act is to recover endangered and threatened fish, plants and wildlife. Unfortunately, the Recovery program has experienced a 13 percent reduction in FTEs between FY 2002 and FY 2007. To meet the ESA's purpose, the recovery program should be funded at no less than $125 million by FY 2013. Therefore, we recommend the new administration request funding of recovery at $95 million for FY 2010 as a first step, an increase of approximately $24 million over the FY 2008 level.

In addition to these four FWS endangered species program accounts, the Cooperative Endangered Species Conservation Fund provides grants to state wildlife and natural resource agencies to support conservation of candidate, threatened, and endangered species. At least 65 percent of federally listed plants and animals are found on non-federal lands, with many absolutely dependent upon these lands for their survival. State conservation activities supported by these grants include: research, species status surveys, habitat restoration, captive propagation and reintroduction of species. Funding is also provided for planning assistance and land acquisition by states for Habitat Conservation Plans and recovery. Twenty-three states and one territory received planning assistance and land acquisition funding in FY 2008 to benefit species ranging from butterflies to Canada lynx. However, the amount of funding sought each year for HCP land acquisition and recovery land acquisition is two to three times greater than the amount actually provided. Increased emphasis should be placed on use of the ESA's Section 6 conservation grants to support state endangered species program activities targeted at reducing threats facing candidate species. Overall, it is critical to gradually increase funding under the Cooperative Endangered Species Conservation Fund to at least $170 million annually by FY 2013, including $30 million annually by that time for conservation grants to states to enhance protection of candidate species. Therefore, for FY 2010 we recommend as a first step that the new administration request $110 million for the Cooperative Endangered Species Conservation Fund, including $20 million for state program conservation grants, a total increase of approximately $36 million over the FY 2008 level.

There also are urgent needs to restore and increase funding for NMFS to carry out activities within its Protected Species Conservation and Management Programs. NMFS, which shares authority for implementing the ESA with FWS, is responsible for conservation of most marine mammals, most marine and anadromous fish, turtles at sea, corals and other marine invertebrates, and marine plants. Under its Protected Species programs, NMFS works to protect these species through proactive conservation of candidate species and species of concern, listing of threatened and endangered species and designation of critical habitat under the ESA, and support for active recovery efforts. To begin to reverse the chronic under-funding of these programs over the last eight years, we recommend that the new administration request $190 million for the NMFS Protected Species Conservation and

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Management programs for FY 2010, an increase of approximately $25 million above the FY 2008 funding level.

Of the $25 million increase recommended in FY 2010 for the NMFS Protected Species programs, we recommend that the new administration request an increase of approximately $13 million above the FY 2008 enacted level for marine turtle conservation ($27 million total). Efforts to conserve endangered and threatened sea turtles currently are inadequate under the ESA. Populations of sea turtles in U.S. waters continue to decline. Significantly greater resources are necessary to conduct enhanced sea turtle stock assessments, place additional observers in fisheries that interact with sea turtles, and protect important habitats.

Approximately $7 million of the remaining increase in the FY 2010 request for Protected Species Programs should be used to revise and begin implementation of a scientifically sound Columbia River Power System Biological Opinion that will promote the recovery of endangered and threatened salmonid species. The remaining increase should be allocated to other programs with Protected Species Conservation and Management, including those that address conservation of Atlantic salmon, right whales, Cook Inlet beluga whales and Hawaiian monk seals.

Significant increases in funding are necessary to conserve and restore sustainable Pacific salmon populations and their habitats beyond the amounts identified above for revision and implementation of the Columbia River Power System Biological Opinion. Twenty-six of the 51 wild Pacific salmon and steelhead stocks from Washington to California are listed under the ESA due to a variety of factors such as dams, unsustainable logging and agricultural practices, urban sprawl, and poor hatchery practices. The Pacific Coastal Salmon Recovery Fund was established to augment efforts to restore and protect habitat and to monitor the health of salmon populations and watersheds by the states of California, Oregon, Washington, Alaska, and Idaho and the Pacific Coastal and Columbia River Tribes. We recommend that the new administration request $120 million for FY 2010 to make possible completion and implementation of salmonid recovery plans from Southern California to Idaho and Alaska, an increase of $53 million over the FY 2008 enacted level of $67 million.

Undo the radical shifts in policies that have damaged implementation of the Endangered Species Act.

The new administration should prevent from going into effect, or propose regulations that would undo, the changes in the regulations implementing Section 7 of the ESA that were proposed on August 15, 2008. The proposal strikes at the heart of the Act's interagency consultation requirement in three major ways.

First, it limits the ability of wildlife experts in the FWS and NMFS to protect threatened and endangered species and categorically excludes numerous federal projects from consultation regardless of their impacts on listed species or critical habitat. The proposal allows federal agencies to decide unilaterally that consultation is not necessary because take of a threatened or endangered species is not likely to occur. Actions that the sponsoring federal agency determines on its own will have inconsequential, uncertain, unlikely or beneficial effects would not require any consultation. Independent experts at the FWS and NMFS would no

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longer review such agency determinations and their concurrence would no longer be required.

Second, even where an agency requests that FWS or NMFS concur, the August 15, 2008 proposal places an arbitrary 60 day limit (subject to a possible extension of 60 days) on completion of informal consultations; otherwise, the project can move forward regardless of the impacts on listed species.

Third, the proposal narrowly defines what effects of an action are subject to review under the ESA. Specifically, the definition of "effects of the action" in the proposed rule limits application of section 7 consultation to those federal agency actions that are an "essential cause" of the effects and for which there is "clear and substantial information" that they "are reasonably certain to occur." The proposal's new concept of essential causation would eliminate consultation for federal actions that contribute to an effect on a species, perhaps even substantially, if the effect would otherwise occur to some extent without the federal action. Thus, actions that contribute to the extent, duration or severity of global warming would escape review entirely under the ESA as long as global warming would otherwise occur to some extent.

A Solicitor's Opinion from March 16, 2007, changed the previously unvarying understanding of how the ESA applies to species that have been designated as "endangered" or "threatened." The new administration should revise this opinion and develop policy guidance to restore the long-standing interpretation that a species determined to be endangered or threatened "throughout a significant portion of its range" should be listed in its entirety. The Solicitor's interpretation is incorrect as a matter of law and unwise as a matter of policy and was adopted without any opportunity for public input. Further, the opinion departs dramatically from the text and history of the ESA. It limits protection to species that are facing risk of extinction in their current range, which could significantly limit the protections available to species that formerly occupied large geographical areas. The opinion also undoes long-standing ESA administrative practice of listing a species, subspecies or distinct population segment (DPS) of a vertebrate species wherever it occurs if it is threatened or endangered either in its entirety or in a significant portion of its range. For more than three decades, a species, subspecies or DPS has been listed in its entirety or not listed at all. Instead, under the 2007 opinion, a listed taxon may be protected in only some of the places it occurs.

In conjunction with revision of the March 2007 Solicitor's Opinion, the new administration should prevent from going into effect, or propose regulations that would reverse, the amendments to the format of the Lists of Endangered and Threatened Species, which were proposed on August 5, 2008. This proposed rule wrongly characterizes the changes as "editorial in nature" and involving "no substantive changes." In fact, the proposed changes actually codify the conclusions of that opinion, which reverse more than 30 years of ESA understanding and implementation.

First year:

Ensure that the short- and long-term impacts of global warming are incorporated in all aspects of species assessments and recovery planning.

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Global warming already is causing many wildlife species to change the timing of their breeding and migration, shift their ranges, and experience declines in the extent and quality of their habitat, population size, and genetic diversity. Left unchecked, these trends ultimately may lead to extinction of 40 percent or more of the world's known species. The complexity of climate change projections, the high level of uncertainty associated with future projections, and potential interaction between climate change and other stressors all make protection and recovery difficult for species that already are imperiled. The most efficient responses to help these species persist in this era of climate change will be ones that focus on maintaining ecological resilience through reduction of non-climate induced stressors, particularly those that result in fragmentation or degradation of habitats.

The new administration should promulgate policies through guidance or regulation to ensure that the biological analyses and actions taken by the FWS and NMFS under the ESA properly consider the direct, indirect and cumulative impacts of global warming on threatened and endangered species and their habitat. Prompt action to ensure consideration of these impacts in ESA analyses and decisions will be important given the potential for increasing litigation on these issues.

Listing decisions, biological opinions, critical habitat designations, recovery plans, and habitat conservation plans should be required to identify the potential effects of climate change on covered species and to integrate climate change adaptation strategies as necessary for such species. Recovery plans and habitat conservation plans also should be required to include monitoring protocols that make possible detection of climate change effects on covered species and habitats.

Finally, FWS and NMFS should produce a report that identifies (1) areas within the United States or any foreign country that warrant protection to assure that the effects of global warming will not significantly reduce the likelihood of recovery for threatened and endangered species, and (2) public and private means by which such areas may be protected.

Encourage endangered and threatened species recovery efforts on private lands, including working with Congress to pass legislation that incorporates the tax incentive provisions of the Endangered Species Recovery Act that were not included in the 2008 Farm Bill.

Private lands provide habitats for more than two thirds of all ESA-listed species. Consequently, endangered and threatened species conservation depends on private landowners voluntarily taking actions that go beyond simple compliance with the law to actions that will help recover these species. The most effective and efficient means of encouraging greater voluntary recovery efforts by private landowners is to provide them with additional incentives for taking such actions.

The new administration, therefore, should strongly support introduction and prompt enactment of those portions of the Endangered Species Recovery Act (ESRA) that were not enacted into law in 2008. This legislation (S. 700/H.R. 1422) offered a pragmatic approach broadly supported by environmental organizations and the regulated community to provide benefits to farmers and other private landowners who conserve habitats on their lands for

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imperiled species. Enactment of all the measures contained in this legislation would greatly enhance recovery efforts and provide a solid, bipartisan foundation for reauthorization of the ESA.

ESRA provided tax incentives in the form of credits, deductions, and exclusions to private landowners who voluntarily undertake measures to protect and restore endangered species habitat on their lands. The provisions of this legislation were passed in 2007 as part of the Senate version of the Farm Bill, but the only provisions that were included in the final conference report were those that allowed landowners to deduct the cost of measures taken to implement species recovery plans on their property

Enactment of the remaining ESRA provisions is essential if we are to encourage the level of conservation efforts on private lands needed to recover threatened and endangered species. These provisions would make available tax credits for landowners who place conservation easements on their property or manage their land to restore and enhance endangered species habitat. In addition, landowners would be allowed to exclude from their taxable income any payments received from conservation cost-share programs. ESRA also contained an innovative mechanism that would allow landowners to enter into partnerships with others to fund species conservation activities and receive the tax incentives. By creating a potential market for endangered species conservation partnerships, this legislation would benefit farmers, ranchers, and others who may not have sufficient cash to undertake conservation measures or sufficient income to take full advantage of the other incentives provided.

The new administration should provide additional staff and funding for the FWS to assist private landowners in making full use of the benefits already provided in the Farm Bill as well as to begin building capacity to ensure effective implementation of those additional incentives that will be provided by enactment of the remaining ESRA provisions.

Prior to FY 2008, Landowner Incentive Program Grants and Private Stewardship Program Grants rewarded private landowners with funding for the voluntary conservation actions that they took to conserve at-risk plants and animals on their lands. The Landowner Incentive Program awarded competitive grants to state and tribal conservation agencies for their work with private landowners and tribal lands, while the Private Stewardship Program allowed the FWS to provide funding directly to individuals and groups implementing private land conservation actions. In FY 2007, funding was awarded to efforts in 46 states. The need for these programs far outstrips available funding; the amount requested for worthy projects on average totals two to three times the yearly available funding. Unfortunately, neither program was funded in the FY 2008 Interior appropriations bill due to budget constraints; these important programs should be re-started in FY 2010. We recommend that the new administration request $24 million for the Landowner Incentives Program and $7 million for the Private Stewardship Program for FY 2010, which was the FY 2007 funding level. To support private landowners in their voluntary conservation efforts, a gradual increase to $77 million is needed by FY 2013 in these two incentive programs.

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First term:

Make recovery, not just staving off extinction, the focus of endangered species conservation efforts.

The purpose of the ESA is to prevent species extinctions and then provide measures to help bring species back to the point at which the measures provided by the law are no longer necessary. As a key first step in achieving this goal, section 4(f) of the ESA requires FWS and NMFS to develop recovery plans and "give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans."

Completion of recovery plans is no longer the principal issue concerning recovery of endangered and threatened species. Approximately 85 percent of listed species have completed plans. The more pressing recovery issues are the amount of time that is allowed to elapse between listing and plan completion, the absence of effective strategies in plans to achieve recovery goals, and the absence of coordinated activities to carry out these strategies.

FWS and NMFS should produce a Handbook that consolidates, revises and expands on existing 1983, 1990 and 1994 FWS recovery policies and the 2004 draft joint guidance to require that recovery plans:

- **Are prepared and plan implementation is initiated within 3 years of listing.** The Services have been hard pressed to produce in timely fashion recovery plans that reflect a good understanding of species recovery needs and a reasonable consensus among species experts and affected publics. Currently, 157 species listed longer than three years do not have final approved recovery plans. However, prompt development and implementation of recovery plans subsequent to listing is essential for achievement of recovery objectives.

- **Establish robust recovery objectives that are defined in terms of target probabilities of species persistence over a specified time frame.** A decision as to whether or not a species is recovered will often be based on threshold population sizes. Such thresholds should be set at a level that accounts sufficiently for anticipated future threats to persistence, such as global warming.

- **Identify in a spatially explicit manner the habitats that are essential to the recovery strategies for listed species, and establish measures for protection of these identified habitats.** Recovery habitat should be tied directly to the recovery objectives. Mapping at sufficiently high spatial resolution would allow clear identification of those currently occupied and unoccupied habitat areas that are potentially suitable and necessary to meet recovery objectives.

- **Ensure that scientists and agency experts define recovery plan biological objectives and quantitative targets, and that they alone assess whether an implementation strategy is likely to achieve biological goals.** Technical efforts to define the biological objectives of recovery plans for species, to define quantitative

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- **Ensure that a broader set of recovery planning participants contribute to the development of implementation strategies to achieve scientific goals and targets.** A transparent and understandable process needs to be maintained in the planning and implementation of recovery objectives. It should encourage communication and education among diverse interests and expertise and foster conditions for durable buy-in to prevent avoidable controversies and resolve those that are unavoidable.

- **Include provisions for regular monitoring to make possible evaluation of plan effectiveness, for updating of plan objectives and targets every five years, and for reporting on progress in achieving past objectives and targets.** Scientifically valid monitoring of species status and recovery activities is key to evaluation of plan effectiveness and revision of plan objectives and targets. A simplified process should be established by which FWS and NMFS are able to amend implementation strategies for recovery, while maintaining overall recovery goals. Recovery plan objectives as well as interim and final recovery plan targets should be required to be updated every five years.

Work with Congress to pass a 21st Century renewal of the Endangered Species Act that reauthorizes and strengthens the 35-year old law.

The new administration should propose legislation to reauthorize and strengthen the ESA and work with the Congress to enact it. This 21st Century renewal of the Act should incorporate the following principles and elements:

1. **Strengthen the focus of the ESA on recovery of listed species**.

    - Ensure that federal agency actions do not significantly delay or increase the cost of recovery of species.

    - Improve the conservation and management of habitat for recovery of species by requiring recovery plans to identify all occupied and unoccupied areas/habitats essential to the recovery strategy for a species.

    - Require recovery plans to be prepared and implementation of the plans initiated within three years of listing.

2. **Ensure integrity and transparency in listing decisions under the ESA.**

    - Restore listing program integrity and functionality by requiring development of a transparent plan to expeditiously eliminate the longstanding listing backlog based on biological benefits and needs.

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- Require identification of robust criteria, based on existing measures used by wildlife agencies throughout the U.S. and the world, that will trigger status reviews or listing actions when a species has reached a status of critically imperiled, imperiled, or vulnerable. More prompt listing of rare and declining species would provide more options for recovery and increase the likelihood and speed of achieving that goal.

3. **Ensure scientific integrity of decisions**.

- An independent, standing science advisory board should be established to provide scientific peer review and advice regarding conservation of imperiled fish, wildlife and plants at the request of the FWS Director or the Assistant Administrator of NOAA Fisheries.

- Dedicate funding for population surveys, population viability analyses, and genetic and other research on rare or declining plants and animals.

4. **Collaborate on conservation.**

- Facilitate development of stronger partnerships with state fish and wildlife agencies and tribal programs in carrying out the ESA, particularly in the efforts to prevent the need to list and to recover species, and in conservation efforts on private and other nonfederal lands.

5. **Provide greater encouragement for private lands conservation**.

- Establish explicit authority in the ESA for Safe Harbor Agreements and Candidate Conservation Agreements with Assurances and provide funding through the ESA to help landowners develop or implement these important private lands conservation measures.

- Encourage management activities that promote recovery on private lands within areas identified as essential to the recovery strategy for a species by making those activities eligible for incentive programs, such as conservation payments to landowners and expedited or simplified regulatory compliance.