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April 23, 2021

VIA E-MAIL

Mr. Aaron Valenta
Chief, Division of Restoration & Recovery
U.S. Fish and Wildlife Service
Southeast Regional Office
1875 Century Boulevard
Atlanta, GA 30345
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**Re: Halting Proposal to Downlist the Red-Cockaded Woodpecker
Docket No. FWS-R4-ES-2019-0018**

Dear Mr. Valenta:

On behalf of the Southern Environmental Law Center (“SELC”) and Defenders of Wildlife, we write to ask the U.S. Fish and Wildlife Service (“FWS” or “Service”) to pause and reconsider its proposed downlisting and accompanying 4(d) rule regarding the red-cockaded woodpecker. *See* [Proposed] Reclassification of the Red-Cockaded Woodpecker from Endangered to Threatened With a Section 4(d) Rule, 85 Fed. Reg. 63,474 (Oct. 8, 2020) (to be codified at 50 C.F.R. §§ 17.11(h) and 17.41(h)). SELC submitted comments, joined by more than two dozen groups working to protect Southeastern environments, highlighting how this proposal was not supported by the best available science and how the proposed 4(d) rule fell short of the Endangered Species Act’s requirements to provide for conservation of species. We are concerned that Region 4 of FWS may be moving ahead with finalizing the downlisting and proposed rule, contrary to President Biden’s commitment to science-based decisionmaking.

On January 20, 2021, President Biden issued Executive Order 13990 establishing a policy of science-based decisionmaking and improving resilience in the face of climate change.¹ To effectuate this policy, the order instructs agencies to take action towards protecting our environment and to “immediately commence work to confront the climate crisis.”² Executive Order 13990 specifically directs agencies to reconsider agency decisions issued between January 20, 2017 and January 20, 2021 that are inconsistent with science and promoting and protecting our environment. Along with Executive Order 13990, the Biden Administration released a “non-exclusive list of agency actions” that would be reviewed under Executive Order 13990, including several specific final Endangered Species Act (“ESA”) listing decisions from the past four years.³ On January 27, 2021, President Biden further issued his “Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking,” requiring again that—among other things—agencies review data or materials published

¹ Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Jan. 20, 2021), at Sec. 1.

² *Id.*

³ THE WHITE HOUSE, Fact Sheet: List of Agency Actions for Review, January 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

since January 20, 2017, and update any such materials that are inconsistent with the principles set forth in that scientific integrity memo, including the principle that scientific findings should never be distorted or influenced by political considerations.⁴

According to the policy established under Executive Order 13990 and the President’s memorandum on scientific integrity, the Service must pause and reassess its proposal to remove endangered status protections for the red-cockaded woodpecker.

As we detailed in our comments on the proposed downlisting and 4(d) rule, the Service appears to have spent the last two years working towards a predetermined outcome of downlisting, if not delisting, the red-cockaded woodpecker while ignoring the best available science, excluding the public from the process, and violating the standards set by the ESA for listing species. The proposed downlisting ignores the best available science and fails to consider significant sources of extinction risk to the species, and the proposed 4(d) rule lacks sufficient protections to provide for the species’ recovery.

We are also concerned this proposal may have been influenced by Region 4’s paradigm that emphasizes removal of protections for species. Beginning in 2017, Region 4 enacted a goal to delist, downlist, or preclude the need for listing 30 species per year.⁵ This quota system, known as the WIG or “wildly important goal” incentivizes decisions on species statuses based on meeting the arbitrary quota,⁶ rather than evaluating a species’ status based on the best available science as required under the Endangered Species Act. 16 U.S.C. § 1333(b)(1)(A). The quota tips the scales against protecting species, contrary to the clear requirements of the ESA. *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184, 98 S. Ct. 2279, 2297 (1978) (“The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost.”).

As we have explained in prior correspondence, the Department of Defense began pushing for a delisting of the red-cockaded woodpecker as early as fall 2018—less than a year after Region 4 Director Leopoldo Miranda first announced the “Wildly Important Goal,” and before the comment period had even closed on the Service’s initiation of a status review for the red-cockaded woodpecker.⁷ In April 2019, the FWS workplan included “downlisting or delisting” red-cockaded woodpeckers—without any recent

⁴ 86 Fed. Reg. 8,845 (Jan. 27, 2021) (“Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking”) at 8,847 (Sec. 3(b)(iv)), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>.

⁵ E.g. Jimmy Tobias, Pacific Standard, *Fish and Wildlife is ‘Conserving’ Imperiled Animals by Denying Them Protection*, May 1, 2019, <https://psmag.com/environment/fish-and-wildlife-is-conserving-nearly-extinct-animals-by-denying-them-protection>; see also E-mail from Leopoldo Miranda, Regional Director, USFWS, re: Our Wildly Important Goal (WIG) (Dec. 6, 2017), Attachment 1; USFWS, Talking Points for Next ARD Email on Wildly Important Goal (Jan. 31, 2018), Attachment 2.

⁶ See, e.g. E-mail from Leopoldo Miranda to Mark Davis (June 5, 2017) (stating goal of 30 species per year and measuring success solely by the number of species downlisted, delisted, or precluded from listing), Attachment 3; E-mail from Leopoldo Miranda to Region 4 Project Leaders and Chiefs (Apr. 3, 2017) (anticipating redirecting agency resources away from Section 7 consultation and other conservation areas so that they can be “redirected towards achieving the WIG”), Attachment 4; E-mail from Bill Pearson to Leopoldo Miranda (Feb. 14, 2017) (committing to complete species status assessments and make listing decisions based on limited data and only “go back . . . and fill in data gaps” under certain circumstance after a decision has already been made), Attachment 5.

⁷ See Comment Letter from SELC on Proposed Downlisting (Dec. 7, 2020), Att. 15 (DoD Conservation Committee Meeting Notes, at 2, Sept. 11, 2018), available at <https://www.regulations.gov/comment/FWS-R4-ES-2019-0018-0180>; see also Bullet Background Paper on Recovery and Sustainment Initiative Between U.S. Department of Defense and U.S. Department of the Interior (Oct./Nov. 2020) (detailing plans to downlist or delist multiple species and stating that the Department of Defense funded the red-cockaded woodpecker species status assessment to support downlisting), Attachment 6.

review of the status of the species to justify such a move.⁸ In the same month, the Region 4 Director began reaching out to state and federal partners seeking prospective “management assurances” so that the Service could consider the red-cockaded woodpecker to be “suitable for delisting,” based on future possible scenarios, and before actually achieving recovery in the wild.⁹ These actions and communications all indicate a predetermined goal of removing protections for the red-cockaded woodpecker without regard for the best available science.

In addition to returning the federal government to science-based decisionmaking, on January 27, 2021, President Biden issued Executive Order 14008 directing all federal agencies to “combat the climate crisis” by, among other things, “conserv[ing] our lands, waters, and biodiversity.”¹⁰ As part of this directive, the Administration called for “bold, progressive action” and emphasized the value of a coordinated approach across the federal government.¹¹

In order to fulfill these policy objectives, federal agencies must employ science-based decisionmaking and confront the climate crisis and its impact on their missions. For the Service, this requires recognizing the present and future anticipated effects of climate change on imperiled species and habitat, like the red-cockaded woodpecker and the Southeastern pine ecosystems it inhabits.

As we have repeatedly highlighted in past comments to the Service, the red-cockaded woodpecker is threatened by impacts from climate change, including increasingly severe and more frequent storm events throughout its range, sea level rise, and rising temperatures.¹² These threats are anticipated to cause large amounts of habitat loss, some of which are already being observed.¹³ We specifically noted how red-cockaded woodpeckers are endangered by such impacts throughout a significant portion of their range.¹⁴ Data already demonstrate that population productivity is declining in the southwest portion of the species’ range, and this trend will likely be exacerbated by climate change.¹⁵

⁸ U.S. FISH AND WILDLIFE SERV., National Workplan to Address Downlisting and Delisting Recommendations, Apr. 2019, Attachment 7.

⁹ Comment Letter from SELC on Proposed Downlisting (Dec. 7, 2020) at 10-11; *see also id.* Att. 21 (Letter to Alvin A Taylor, Director, S.C. Dep’t of Natural Res., from Leopoldo Miranda, Regional Director, USFWS, Apr. 10, 2019); *id.* Att. 22 (E-mail to Ryan Orndorff, U.S. Airforce, from Leopoldo Miranda, Regional Director, USFWS, Apr. 4, 2019). Additionally, public records show the military was providing input on drafts of the proposed 4(d) rule. *See* Email from Ryan Orndorff to U.S. Navy, Army, and Air Force Staff (May 28, 2020), Attachment 8.

¹⁰ Executive Order 14,008, *Tackling the Climate Crisis at Home and Abroad* (Jan. 27, 2021), at Sec. 201.

¹¹ *Id.*

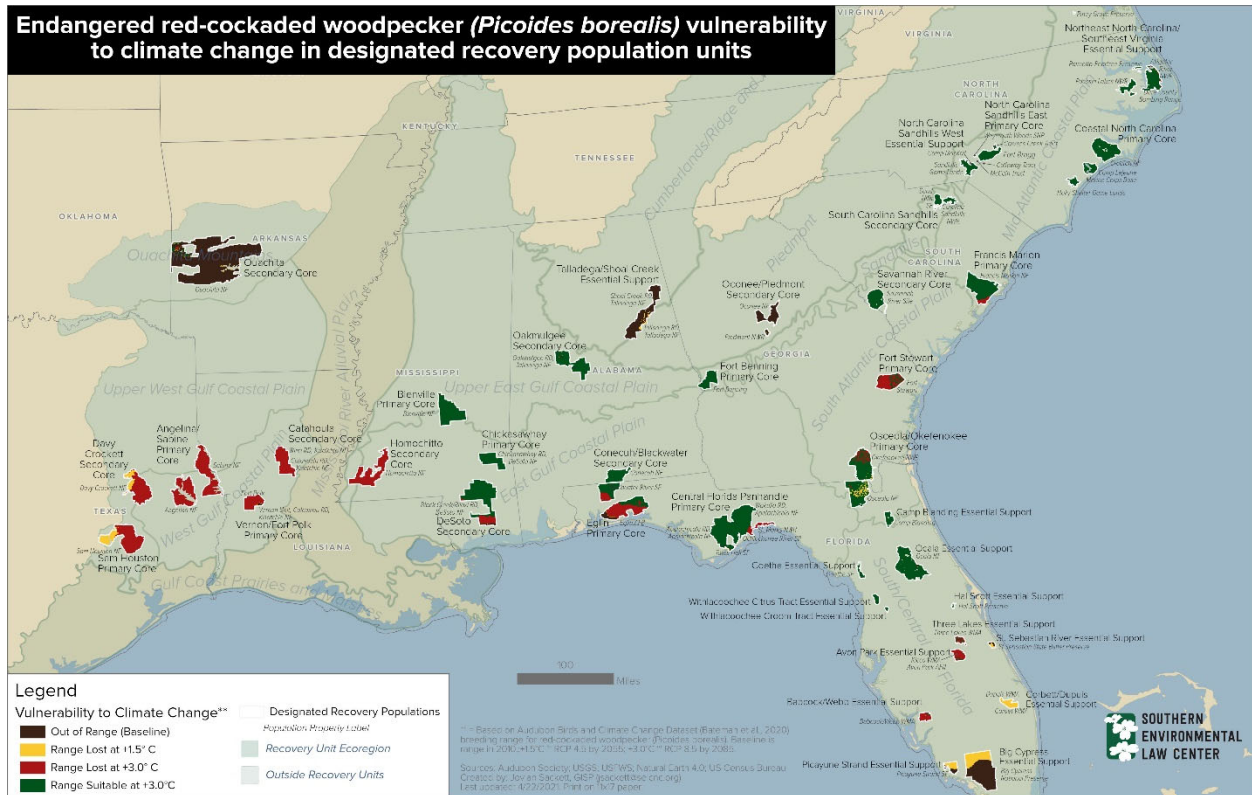
¹² *E.g.* Comment Letter from SELC on Proposed Downlisting, at 18-21 (Dec. 7, 2020); Letter from SELC Regarding Species Status Assessment, at 10 (May 1, 2018); SELC Comments on Notice of Initiation of Status Review for Red-cockaded Woodpecker, at 10-11 (Oct. 5, 2018); SELC Supplemental Comments on Notice of Initiation of Status Review for Red-cockaded Woodpecker, at 1-4 (Nov. 20, 2018); Letter from SELC Regarding Red-cockaded Woodpecker ESA Protections, at 6-8 (Oct. 7, 2019).

¹³ For example, a recent study demonstrated that in the Alligator River National Wildlife Refuge, sea level rise and salinization have been instrumental in converting up to 11% of all forested land cover to “ghost forests”—characterized by standing dead trees and fallen tree trunks—over the last 35 years. *See* Emily Ury et al., *Rapid Deforestation of a Coastal Landscape Driven by Sea Level Rise and Extreme Events*, Ecological Applications (Apr. 4, 2021), Attachment 9.

¹⁴ Indeed, the Service’s own record on the species establishes its precarious position across that significant portion of its range. *See* Jacob Malcom and Andrew Carter, (2021) *Better Representation Is Needed in U.S. Endangered Species Act Implementation*, FRONT. CONSERV. SCI., 9-10 (Apr. 20, 2021) 2:650543 (critiquing the Service’s interpretation of red-cockaded woodpecker representation data), <https://doi.org/10.3389/fcsc.2021.650543>, Attachment 10.

¹⁵ *See* Stephanie M. DeMay and Jeffrey R. Walters, *Variable Effects of a Changing Climate on Lay Dates and Productivity Across the Range of the Red-cockaded Woodpecker*, THE CONDOR: ORNITHOLOGICAL APPLICATIONS (Oct. 2019), <http://dx.doi.org/10.1093/condor/duz048>, Attachment 11.

Additionally, a recent analysis applied habitat suitability models of the red-cockaded woodpecker's range under different climate change scenarios to recovery population units.¹⁶ The results show how serious this threat is to the red-cockaded woodpecker, with the species losing significant swaths of its western and southern range in recovery population units just due to warmer climates.¹⁷



Under a 3-degree Celsius increase in global temperatures, *no suitable habitat would remain in the five recovery unit populations west of the Mississippi River, in Texas and Louisiana.*¹⁸ At the same 3-

¹⁶ See U.S. Fish & Wildlife Serv., Recovery Plan for the Red-cockaded Woodpecker (*Picoides borealis*), Second Revision, at 145-161 (Jan. 27, 2003) (describing recovery units), available at <https://www.fws.gov/rcwrecovery/files/RecoveryPlan/finalrecoveryplan.pdf>.

¹⁷ The red-cockaded woodpecker was one of 604 North American bird species whose vulnerability to climate change was modeled by scientists at the Audubon Society for the Survival by Degrees Report, and those data are used here with permission. The map depicted above was created from analyses of those data by Jovian Sackett, SELC Director of Geospatial Science. See Attachment 12 (map of red-cockaded woodpecker vulnerability to climate change). A description of Survival by Degrees can be found here: <https://www.audubon.org/survival-degrees-about-study>. For peer-reviewed scientific papers on the study, see Brooke L. Bateman et al., *North American Birds Require Mitigation and Adaptation to Reduce Vulnerability to Climate Change*, CONSERVATION SCI. AND PRAC. (May 2020), <https://doi.org/10.1111/csp2.242>; and Brooke L. Bateman et al., *Risk to North American Birds from Climate Change-Related Threats*, CONSERVATION SCI. AND PRAC. (May 2020), <https://doi.org/10.1111/csp2.243>.

¹⁸ See Attachment 13 (table of results by red-cockaded woodpecker recovery population, analyzed from Survival by Degrees data). Under RCP 4.5, global temperatures rise 1.5 degrees Celsius by about 2055, and under RCP 8.5, 3 degrees Celsius by about 2085. Representative Concentration Pathways (RCPs) are used by the Intergovernmental Panel on Climate Change (IPCC) to make climate change projections based on different possible greenhouse gas concentration trajectories. The IPCC used four RCPs in its Fifth Assessment Report in 2014. See IPCC, 2014:

degree Celsius increase, more than one-third of the recovery population units are likely to lose most or all of their suitable habitat range, including population units currently meeting the downlisting criteria 2 and 4 under the species' recovery plan.¹⁹ Even under an increase of 1.5 degrees Celsius by 2055—which is considered an optimistic outcome—the species is vulnerable to a significant loss of its range within recovery unit populations.²⁰ Within recovery population units for the red-cockaded woodpecker, an increase of 1.5 degrees Celsius corresponds to a loss of almost 3,500 square kilometers of currently suitable habitat, and 3 degrees Celsius corresponds to a loss of more than 15,000 square kilometers, or a 40 percent reduction.²¹ Additionally, these losses do not account for the cumulative effect of storm events, which will likely continue to increase in severity and frequency, or rising sea levels that may threaten other populations—or the many other non-climate change induced threats to red-cockaded woodpeckers and their habitat, such as the increasing pressures of development.

Climate change poses a real risk to this iconic Southeastern species, and the Service's decisionmaking thus far has not been supported by the best available science. We urge the Service to pause and reconsider its proposed downlisting and accompanying 4(d) rule regarding the red-cockaded woodpecker according to the best available science, including climate change data.

Sincerely,



Ramona H. McGee
Staff Attorney



Elizabeth Rasheed
Associate Attorney

With copy via e-mail to:

Martha Williams, Principal Deputy Director, U.S. Fish and Wildlife Service; martha_williams@fws.gov

Shannon Estenoz, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Department of Interior; shannon_estenoz@ios.doi.gov

Climate Change 2014: Synthesis Report, available at https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf.

¹⁹ See Attachment 13 (table of results).

²⁰ *Id.*

²¹ *Id.*