

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR ENVIRONMENTAL	)	
SCIENCE, ACCURACY, &	)	
RELIABILITY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	17-cv-02313 (JDB)
	)	
U.S. DEPARTMENT OF INTERIOR, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Defendants,	)	
	)	
NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.	)	
40 West 20th Street	)	
New York, NY 10011;	)	
	)	
NATIONAL AUDUBON SOCIETY	)	
1200 18 Street NW	)	
Washington, DC 20036;	)	
	)	
CENTER FOR BIOLOGICAL	)	
DIVERSITY	)	
378 North Main Avenue	)	
Tucson, AZ 85701;	)	
	)	
ENDANGERED HABITATS LEAGUE	)	
8424 Santa Monica Blvd., Suite A592	)	
Los Angeles, CA 90069;	)	
	)	
LAGUNA GREENBELT, INC.	)	
P.O. Box 860	)	
Laguna Beach, CA 92652,	)	
	)	
<u>Proposed-Defendant-Intervenors.</u>	)	

**MEMORANDUM IN SUPPORT OF CONSERVATION GROUPS'  
MOTION TO INTERVENE**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
BACKGROUND .....	2
I. The coastal California gnatcatcher .....	2
II. FWS’s denial of Plaintiffs’ 2014 petition to delist the coastal California gnatcatcher .....	5
III. Conservation Groups and their interests in this case .....	6
ARGUMENT .....	9
I. Conservation Groups have Article III standing.....	10
A. Conservation Groups’ members would have standing.....	11
B. Conservation Groups have standing on behalf of their members .....	13
II. Conservation Groups have a right to intervene .....	14
A. Conservation Groups’ motion is timely .....	15
B. Conservation Groups have protectable interests at stake.....	16
C. An adverse judgment would impair Conservation Groups’ interests ..	17
D. Federal Defendants may not adequately represent Conservation Groups’ interests .....	18
III. Conservation Groups alternatively merit permissive intervention.....	21
CONCLUSION.....	23

## TABLE OF AUTHORITIES

### *Cases*

<i>Am. Forest Res. Council v. Hall</i> , 07-cv-484 (JDB), 2007 WL 1576328 (D.D.C. May 29, 2007) .....	15, 16, 18, 21
<i>Am. Horse Prot. Ass’n v. Veneman</i> , 200 F.R.D. 153 (D.D.C. 2001) .....	19, 20
<i>Am. Trucking Ass’ns v. Fed. Motor Carrier Safety Admin.</i> , 724 F.3d 243 (D.C. Cir. 2013) .....	10, 13–14
<i>Associated Dog Clubs of N.Y. State v. Vilsack</i> , 44 F. Supp. 3d 1 (D.D.C. 2014) .....	19
<i>Butte Cty. v. Hogen</i> , 08-cv-519 (HKK) (AK), 2008 WL 2410407 (D.D.C. June 16, 2008).....	22
<i>Coalition of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep’t of Interior</i> , 100 F.3d 837 (10th Cir. 1996) .....	21
<i>Crossroads Grassroots Pol’y Strategies v. FEC</i> , 788 F.3d 312 (D.C. Cir. 2015) .....	10–11, 13, 16, 18, 19
<i>Ctr. for Biological Diversity v. EPA</i> , 861 F.3d 174 (D.C. Cir. 2017) .....	10, 13–14
<i>Defs. of Wildlife v. Perciasepe</i> , 714 F.3d 1317 (D.C. Cir. 2013) .....	14
<i>EEOC v. Nat’l Children’s Ctr., Inc.</i> , 146 F.3d 1042, 1046 (D.C. Cir. 1998) .....	21, 22
<i>Endangered Species Comm. of Bldg. Indus. Ass’n of S. Cal. v. Babbitt</i> , 852 F. Supp. 32 (D.D.C. 1994), <i>as amended on recon.</i> (June 16, 1994).....	4
<i>Envtl. Integrity Project v. Pruitt</i> , No. 17-5010 (D.C. Cir. Nov. 28, 2017) .....	10
<i>Friends of Animals v. Kempthorne</i> , 452 F. Supp. 2d 64 (D.D.C. 2006) .....	20
<i>Foster v. Gueory</i> , 655 F.2d 1319 (D.C. Cir. 1981) .....	17

<i>Fund for Animals, Inc. v. Norton</i> , 322 F.3d 728 (D.C. Cir. 2003) .....	10, 13, 15, 16, 18, 19–20
<i>Humane Soc’y of the U.S. v. Clark</i> , 109 F.R.D. 518 (D.D.C. 1985) .....	22
<i>Idaho Farm Bureau Fed’n v. Babbitt</i> , 58 F.3d 1392 (9th Cir. 1995) .....	16, 17
<i>In re Brewer</i> , 863 F.3d 861 (D.C. Cir. 2017) .....	14, 18
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992) .....	12
<i>Military Toxics Project v. EPA</i> , 146 F.3d 948 (D.C. Cir. 1998) .....	11, 13
<i>Mova Pharm. Corp. v. Shalala</i> , 140 F.3d 1060 (D.C. Cir. 1998) .....	16
<i>Moden v. U.S. Fish &amp; Wildlife Serv.</i> , 281 F. Supp. 2d 1193 (D. Or. 2003) .....	5
<i>Nat’l Ass’n of Home Builders v. EPA</i> , 667 F.3d 6 (D.C. Cir. 2011) .....	10
<i>NB ex rel. Peacock v. District of Columbia</i> , 682 F.3d 77 (D.C. Cir. 2012) .....	14
<i>NRDC v. Costle</i> , 561 F.2d 904 (D.C. Cir. 1977) .....	17, 19
<i>NRDC v. U.S. Dep’t of Interior</i> , 113 F.3d 1121 (9th Cir. 1997) .....	3, 20
<i>NRDC v. U.S. Dep’t of Interior</i> , 275 F. Supp. 2d 1136 (C.D. Cal. 2002) .....	3, 20
<i>Nuesse v. Camp</i> , 385 F.2d 694 (D.C. Cir. 1967) .....	14, 17, 19
<i>Safari Club Int’l v. Salazar</i> , 281 F.R.D. 32 (D.D.C. 2012) .....	15, 17, 21

<i>Sagebrush Rebellion, Inc. v. Watt</i> , 713 F.2d 525 (9th Cir. 1983) .....	17
<i>Sierra Club v. Van Antwerp</i> , 523 F. Supp. 2d 5 (D.D.C. 2007) .....	22
<i>SEC v. Dresser Indus., Inc.</i> , 628 F.2d 1368 (D.C. Cir. 1980) .....	18
<i>Smoke v. Norton</i> , 252 F.3d 468 (D.C. Cir. 2001) .....	15
<i>Town of Chester v. Laroe Estates</i> , 137 S. Ct. 1645 (2017) .....	10
<i>Trbovich v. United Mine Workers of Am.</i> , 404 U.S. 528 (1972) .....	18, 20
<i>United States v. Am. Tel. &amp; Tel. Co.</i> , 642 F.2d 1285 (D.C. Cir. 1980) .....	15, 18
<i>United States v. Philip Morris USA Inc.</i> , 566 F.3d 1095 (D.C. Cir. 2009) .....	11
<i>WildEarth Guardians v. Jewell</i> , 738 F.3d 298 (D.C. Cir. 2013) .....	12, 13
<i>WildEarth Guardians v. Salazar</i> , 272 F.R.D. 4 (D.D.C. 2010) .....	11, 15
<i>Williams &amp; Humbert Ltd. v. W. &amp; H. Trade Marks (Jersey) Ltd.</i> , 840 F.2d 72 (D.C. Cir. 1988) .....	14

### ***Statutes***

16 U.S.C. § 1532(6) .....	2
16 U.S.C. § 1532(19) .....	3–4
16 U.S.C. § 1532(20) .....	2
16 U.S.C. § 1536(a) .....	3
16 U.S.C. § 1536(o).....	4

16 U.S.C. § 1539(a) .....	4
28 U.S.C. § 1331 .....	22

### ***Regulations***

50 C.F.R. § 17.3 .....	4
50 C.F.R. § 17.21(c) .....	4
50 C.F.R. § 17.31(a) .....	4
50 C.F.R. § 17.41(b) .....	4
12-Month Finding on a Petition to Delist the Coastal California Gnatcatcher, 81 Fed. Reg. 59,952 (Aug. 31, 2016) .....	1, 5
90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf of Maine Distinct Population Segment, 71 Fed. Reg. 66,298 (Nov. 14, 2006) .....	5
90-Day Finding on Two Petitions, 79 Fed. Reg. 78,775 (Dec. 31, 2014) .....	5
90-Day Finding on a Petition to Delist the Coastal California Gnatcatcher as Threatened, 76 Fed. Reg. 66,255 (Oct. 26, 2011) .....	3
Determination of Threatened Status for the Coastal California Gnatcatcher, 58 Fed. Reg. 16,742 (Mar. 30, 1993) .....	2
Final Determination of Critical Habitat for the Coastal California Gnatcatcher, 65 Fed. Reg. 63,680 (Oct. 24, 2000) .....	3
Notice of Determination to Retain the Threatened Status for the Coastal California Gnatcatcher Under the Endangered Species Act, 60 Fed. Reg. 15,693 (Mar. 27, 1995) .....	3
Revised Designation of Critical Habitat for the Coastal California Gnatcatcher ( <i>Polioptila californica californica</i> ), 72 Fed. Reg. 72,010 (Dec. 19, 2007) .....	3

### ***Rules***

Fed. R. Civ. P. 24(a) .....	14, 16, 17, 18
Fed. R. Civ. P. 24(b) .....	21, 22
LCvR 7(m) .....	1

***Other Sources***

U.S. Fish & Wildlife Serv., Coastal California Gnatcatcher 5-Year Review (2010) ...	3
U.S. Fish & Wildlife Serv., RIN: 1018-BC88 (Fall 2017) .....	20

## INTRODUCTION

The Natural Resources Defense Council, National Audubon Society, Center for Biological Diversity, Endangered Habitats League, and Laguna Greenbelt (Conservation Groups) seek to intervene as defendants in this case to protect their and their members' interests in the coastal California gnatcatcher and its habitat. The gnatcatcher is a songbird unique to coastal southern California that has been imperiled by habitat destruction and fragmentation. The U.S. Fish and Wildlife Service (FWS) listed the gnatcatcher as "threatened" under the Endangered Species Act (ESA) in 1993, and has reaffirmed that listing on multiple occasions. Most recently, in August 2016, FWS denied a petition asking it to remove the gnatcatcher from the list of species protected under the ESA. *See* 81 Fed. Reg. 59,952 (Aug. 31, 2016). Plaintiffs seek an order setting aside that decision. Such an order would harm Conservation Groups and their members. Conservation Groups have worked for decades to attain the existing protections for the gnatcatcher and its habitat. Their members' recreational, aesthetic, scientific, and professional interests in the gnatcatcher and its habitat benefit from those protections. But if Plaintiffs succeed here, those protections may disappear. The Court should grant Conservation Groups' motion to intervene so they can defend their unique interests in this case.

Pursuant to LCvR 7(m), counsel for Conservation Groups conferred with counsel for Plaintiffs and Federal Defendants on the relief requested. Plaintiffs and Federal Defendants reserve their positions on the motion to intervene pending their review of the motion and its supporting materials.



## BACKGROUND

### I. The coastal California gnatcatcher

The coastal California gnatcatcher (*Polioptila californica californica*) is a small songbird unique to coastal southern California and northern Baja California. The bird's plumage is dark-blue gray above and grayish-white below. Males have a distinctive black cap, which is absent during winter months; both sexes have a distinctive white eye ring. 58 Fed. Reg. 16,742, 16,742 (Mar. 30, 1993); *see* Decl. of Jess Morton ¶ 20. The bird is also known for its distinctive call consisting of a series of kitten-like mews. 58 Fed. Reg. at 16,742.

While coastal California gnatcatchers were once considered common, their population declined significantly in the latter half of the twentieth century. *Id.* at 16,743. The bird's survival depends on the availability of vegetation known as coastal sage scrub. *Id.* But decades of urban and agricultural development decimated that habitat. *Id.* at 16,746. By 1993, FWS estimated that only around 2500 breeding gnatcatcher pairs remained in the United States. *Id.* at 16,743.

In the early 1990s, several environmental groups, including movant Natural Resources Defense Council (NRDC), petitioned FWS to list the coastal California gnatcatcher as endangered under the ESA. *Id.* In 1993, FWS determined that the coastal California gnatcatcher was a distinct subspecies of gnatcatcher, *id.* at 16,744, and listed the bird as "threatened" under the ESA, *id.* at 16,751.<sup>1</sup> Since this

---

<sup>1</sup> A species is "endangered" if it "is in danger of extinction throughout all or a significant portion of its range," 16 U.S.C. § 1532(6), and is "threatened" if it "is likely to become an endangered species within the foreseeable future," *id.* § 1532(20).

initial listing, FWS has repeatedly reaffirmed its conclusion that the coastal California gnatcatcher warrants protection under the ESA. *See* 60 Fed. Reg. 15,693, 15,699 (Mar. 27, 1995) (reaffirming initial listing decision after remand); U.S. Fish & Wildlife Serv., Coastal California Gnatcatcher 5-Year Review, at 36 (2010), [https://ecos.fws.gov/docs/five\\_year\\_review/doc3571.pdf](https://ecos.fws.gov/docs/five_year_review/doc3571.pdf) (reaffirming listing decision); 76 Fed. Reg. 66,255, 66,255 (Oct. 26, 2011) (denying petition to delist gnatcatcher).

When it originally listed the coastal California gnatcatcher, FWS refused to designate “critical habitat” for the bird. Movants NRDC and the National Audubon Society successfully challenged FWS’s refusal, *see NRDC v. U.S. Dep’t of Interior*, 113 F.3d 1121 (9th Cir. 1997), leading to the agency’s designation of over 500,000 acres of critical habitat for the gnatcatcher in 2000, *see* 65 Fed. Reg. 63,680, 63,680 (Oct. 24, 2000). NRDC challenged that designation as too limited, while industry groups challenged the designation as too broad. *NRDC v. U.S. Dep’t of Interior*, 275 F. Supp. 2d 1136, 1138–39 (C.D. Cal. 2002). After a voluntary remand, *id.* at 1156, FWS removed over 300,000 acres of gnatcatcher habitat from its critical habitat designation, *see* 72 Fed. Reg. 72,010 (Dec. 19, 2007).

The coastal California gnatcatcher’s listing and critical habitat designations under the ESA nonetheless provide significant protections for the bird. Federal agencies are required to consult with FWS to ensure their actions do not jeopardize the gnatcatcher’s existence or result in destruction of any critical habitat. *See* 16 U.S.C. § 1536(a)(2). And, with limited exceptions, no individual, business, or government entity can “take”—that is, “harass, harm, pursue, hunt, shoot, wound,

kill, trap, capture, or collect,” *id.* § 1532(19)—a gnatcatcher without a permit. *See* 50 C.F.R. § 17.31(a) (incorporating take prohibition from 50 C.F.R. § 17.21(c)). This ban on “take” includes a ban on “significant habitat modification or degradation” that would kill or injure gnatcatchers “by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” *Id.* § 17.3. Activities likely to result in “incidental” take of the gnatcatcher—such as development in gnatcatcher habitat—must conform either to terms and conditions set through consultation under section 7 of the ESA, *see* 16 U.S.C. § 1536(o), a habitat conservation plan approved under section 10 of the ESA, *see id.* § 1539(a)(1)(B), (a)(2), or gnatcatcher-specific regulations issued under section 4(d) of the ESA, *see* 50 C.F.R. § 17.41(b)(2).

All told, the ESA’s protections for the gnatcatcher require real estate developers to follow specific regulatory processes to minimize and mitigate harm to the gnatcatcher and its habitat. These protections, though developed specifically for the gnatcatcher, also benefit the numerous other species that rely on coastal sage scrub, as well as the members of the public who have recreational, aesthetic, scientific, or professional interests in the gnatcatcher or the coastal sage scrub ecosystem. But because these protections impose restrictions on development, building industry groups have long opposed the gnatcatcher’s listing under the ESA. *See, e.g., Endangered Species Comm. of Bldg. Indus. Ass’n of S. Cal. v. Babbitt*, 852 F. Supp. 32 (D.D.C. 1994), *as amended on recon.* (June 16, 1994) (challenging initial listing).

## **II. FWS’s denial of Plaintiffs’ 2014 petition to delist the coastal California gnatcatcher**

In May 2014, the Pacific Legal Foundation—representing a broad set of building industry groups—petitioned FWS to delist the coastal California gnatcatcher. This petition claimed that new studies showed the gnatcatcher was not a valid subspecies eligible for protection under the ESA. 79 Fed. Reg. 78,775, 78,777 (Dec. 31, 2014).

In December 2014, FWS concluded that the petition presented enough information to indicate that delisting of the gnatcatcher “may be warranted,” and thus initiated a status review for the gnatcatcher. *Id.* The standard for a “may be warranted” determination “is not overly-burdensome” and “does not require conclusive information.” *Moden v. U.S. Fish & Wildlife Serv.*, 281 F. Supp. 2d 1193, 1204 (D. Or. 2003). Indeed, at this stage, FWS “do[es] not conduct additional research” or “subject the petition to critical review.” 71 Fed. Reg. 66,298, 66,298 (Nov. 14, 2006). FWS was clear here that its “may be warranted” finding did not mean that, after a full status review, it would conclude delisting the gnatcatcher was warranted. 79 Fed. Reg. at 78,778.

In August 2016, after taking public comment and conducting its status review, FWS denied the petition. 81 Fed. Reg. at 59,952. FWS concluded that, despite the petition’s arguments, the best available data continued to support the agency’s long-standing conclusion that the coastal California gnatcatcher is a distinguishable subspecies eligible for protection under the ESA. *Id.* at 59,962. FWS also reaffirmed its prior conclusion that the bird is “threatened.” *Id.* at 59,975.

On November 2, 2017, Plaintiffs filed this lawsuit challenging the denial of their petition. *See* Compl., ECF No. 1. Plaintiffs allege that FWS violated the ESA and/or the Administrative Procedure Act because it did not “articulate a standard or definition for what constitutes a subspecies” when it denied the petition. *Id.* ¶ 55. Plaintiffs also allege that FWS violated the Federal Advisory Committee Act when it considered opinions from a panel of experts organized by an outside consultant. *Id.* ¶ 62. Plaintiffs ask the Court to set aside the denial of their petition, enjoin FWS from giving effect to that denial, bar FWS from considering the expert panel report, and remand the petition to FWS for reconsideration. *Id.* at 21–22.

### **III. Conservation Groups and their interests in this case**

Conservation Groups are organizations dedicated to the protection of the environment, including imperiled species and the habitats on which they depend. For decades, Conservation Groups have led efforts to protect the coastal California gnatcatcher and its coastal sage scrub habitat through participation in administrative processes, policy advocacy, public education, and litigation. Each Conservation Group has members who derive recreational, aesthetic, scientific, and/or professional benefits from observing the coastal California gnatcatcher and its natural habitat. Conservation Groups’ and their members’ interests in the gnatcatcher and its habitat will be harmed if Plaintiffs are successful in this suit.

The **Natural Resources Defense Council** (NRDC) is a national, non-profit environmental and public health organization with several hundred thousand members nationwide, including around thirty thousand members in the counties the coastal California gnatcatcher calls home. Decl. of Gina Trujillo ¶¶ 3–4. NRDC’s

mission is to safeguard the Earth—its people, its plants and animals, and the natural systems on which all life depends. *Id.* ¶ 6. NRDC has advocated for robust protections for the coastal California gnatcatcher for decades. *Id.* ¶ 7. NRDC was one of the original groups that petitioned FWS to list the gnatcatcher in the early 1990s. *Id.* And in the late 1990s, NRDC successfully challenged FWS’s refusal to designate critical habitat for the bird. *Id.* NRDC’s members include individuals who enjoy observing the gnatcatcher in its natural habitat, *id.* ¶ 8, and worry that the gnatcatcher population will decline further if it is no longer protected under the ESA, Decl. of Victor Benson ¶¶ 7–10.

The **National Audubon Society** is a national non-profit organization founded in 1905. Decl. of Sandra DeSimone ¶ 2. Its mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats, for the benefit of humanity and the earth’s biological diversity. The National Audubon Society has about 350,000 members and supporters in California. *Id.* The National Audubon Society has been active in protecting the critical habitat of the coastal California gnatcatcher from development. *Id.* ¶ 9. The National Audubon Society’s members include individuals who live in and near critical habitat for the coastal California gnatcatcher, and who would be personally and professionally harmed if the coastal California gnatcatcher were removed from the endangered species list. *Id.* ¶¶ 11–15; Decl. of Victor Leipzig ¶¶ 4–7.

The **Center for Biological Diversity** (the Center) is a non-profit environmental organization whose mission is to protect endangered species and

their habitats through science, policy, education, and environmental law. Decl. of Ilene Anderson ¶ 6. The Center has a specific interest in protecting the coastal California gnatcatcher. *Id.* ¶ 14. The Center has challenged development projects that threaten gnatcatcher habitat, advocated for strong regional conservation measures for the gnatcatcher, and won a landmark settlement to protect the gnatcatcher and other species in southern California's national forests. *Id.* ¶ 15. The Center has members who live, visit, and recreate regularly in gnatcatcher habitat, and whose interests in enjoying the gnatcatcher and its habitat would be harmed if FWS's decision denying the delisting petition were invalidated. *Id.* ¶¶ 10–13, 16–17.

The **Endangered Habitats League** (EHL) is a non-profit membership organization dedicated to the protection of the diverse ecosystems of southern California and to ensuring sensitive and sustainable land use for the benefit of all the region's inhabitants. Morton Decl. ¶ 6. EHL was founded in 1991 specifically to advocate for protections for the coastal California gnatcatcher, *id.* ¶¶ 5, 8, and has played a central role in local and regional conservation planning to protect the gnatcatcher and its habitat, *id.* ¶¶ 10–12. EHL's members include individuals with recreational, aesthetic, scientific, and professional interests in the gnatcatcher and its habitat, and who benefit from FWS's continued recognition that the gnatcatcher is a distinct subspecies in need of protection under the ESA. *Id.* ¶¶ 18–28; Decl. of Cathleen E. Chadwick ¶¶ 14–15; Decl. of Robert A. Hamilton ¶¶ 8–11, 13, 15–18.

**Laguna Greenbelt** is a grassroots, non-profit, membership organization dedicated to protecting wildlife habitat in Orange County, California. Decl. of Allan

Schoenherr ¶ 10. Founded in 1968, Laguna Greenbelt has successfully advocated for the protection of thousands of acres of natural areas around Laguna Beach, and continues to push for the expansion and interconnection of dedicated wilderness areas. *Id.* ¶¶ 12–14. The undeveloped areas around Laguna Beach are dominated by coastal sage scrub habitat and home to the coastal California gnatcatcher. *Id.* ¶ 15. Laguna Greenbelt has members who live, visit, and recreate regularly in coastal sage scrub habitat, and whose interests in enjoying the gnatcatcher and its habitat would be harmed if the bird lost federal protection under the ESA. *Id.* ¶¶ 16–22.

### **ARGUMENT**

Conservation Groups have fought for decades to secure the existing protections for the coastal California gnatcatcher and its coastal sage scrub habitat. Those protections are critical to the bird’s survival. This lawsuit, by threatening those protections, also threatens Conservation Groups’ and their members’ interests in the gnatcatcher and its habitat. FWS is charged with representing the broader American public and may not adequately represent Conservation Groups’ focused dedication to the gnatcatcher and coastal sage scrub. This Court should grant Conservation Groups’ motion to intervene so they can ensure their and their members’ interests are fully represented in this case.



## I. Conservation Groups have Article III standing

To the extent standing is required to intervene in this case,<sup>2</sup> Conservation Groups have associational standing on behalf of their members. “The irreducible constitutional minimum of standing contains three elements: (1) injury-in-fact, (2) causation, and (3) redressability.” *Nat’l Ass’n of Home Builders v. EPA*, 667 F.3d 6, 11 (D.C. Cir. 2011) (internal quotation marks omitted). An organization has associational standing “if (1) at least one of its members would have standing to sue in his own right; (2) the interest it seeks to protect is germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the member to participate in the lawsuit.” *Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 182 (D.C. Cir. 2017) (quoting *Am. Trucking Ass’ns v. Fed. Motor Carrier Safety Admin.*, 724 F.3d 243, 247 (D.C. Cir. 2013)). For would-be defendant-intervenors, like Conservation Groups, the controlling question is whether plaintiffs seek relief that

---

<sup>2</sup> The Supreme Court’s decision in *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017), calls into question the D.C. Circuit’s requirement that defendant intervenors must show standing, *see Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731–32 (D.C. Cir. 2003). In *Town of Chester*, the Supreme Court held that a would-be intervenor must have standing “to pursue relief that is different from that which is sought by a party with standing.” 137 S. Ct. at 1651. The Court assumed that Laroe Estates (the would-be plaintiff-intervenor) did not have standing, *id.* at 1650 n.2, and remanded the case for Second Circuit to determine whether Laroe sought different relief than the plaintiff, *id.* at 1652. If all intervenors—regardless of the relief sought—had to demonstrate standing, the question the Court presented for remand would be immaterial. Indeed, the Court recognized this by acknowledging that the “resolution” of Laroe’s standing might not “become[] necessary on remand.” *Id.* at 1650 n.2. The only way to square *Town of Chester*’s clear holding with its disposition is to recognize that intervenors do not need standing if they seek the same relief as a party with standing. Thus, if Federal Defendants defend this suit, Conservation Groups do not need standing to defend it as well. The D.C. Circuit has not yet addressed this issue in a binding opinion. *But see* Judgment, *Env’tl. Integrity Project v. Pruitt*, No. 17-5010 (D.C. Cir. Nov. 28, 2017).

would harm the defendant-intervenors' members. If so, causation and redressability "rationally follow[]." *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015).<sup>3</sup>

#### **A. Conservation Groups' members would have standing**

Conservation Groups' members would have standing because they benefit from FWS's denial of Plaintiffs' petition to delist the coastal California gnatcatcher and would be harmed if the Court sets aside that determination. *See Crossroads*, 788 F.3d at 317 ("Our cases have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."); *accord WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 13 (D.D.C. 2010).

Conservation Groups' members have concrete interests in the protection of the coastal California gnatcatcher and its coastal sage scrub habitat. Some members have recreational, aesthetic, scientific, and professional interests in observing the gnatcatcher in the wild. *See* Prop. Answer 10; Anderson Decl. ¶¶ 8–13; Benson Decl. ¶ 10; DeSimone Decl. ¶¶ 12–13; Hamilton Decl. ¶¶ 8–10; Leipzig Decl. ¶¶ 4–5; Morton Decl. ¶¶ 13–22; Schoenherr Decl. ¶¶ 16, 18. Others have interests in utilizing or enjoying the coastal sage scrub (and associated flora and fauna) for recreational, aesthetic, scientific, and professional purposes. *See* Prop. Answer 10–11; Anderson Decl. ¶¶ 8–11, 13; Benson Decl. ¶¶ 7–8; Chadwick Decl.

---

<sup>3</sup> Although each Conservation Group has standing, this Court need only determine that one Conservation Group has standing to grant the motion to intervene. *See United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1146 (D.C. Cir. 2009); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998).

¶ 14; DeSimone Decl. ¶¶ 11–12; Hamilton Decl. ¶ 13; Morton Decl. ¶ 23; Schoenherr Decl. ¶¶ 16, 18. These members’ interests are cognizable for purposes of standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562–63 (1992); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 305 (D.C. Cir. 2013).

Conservation Groups’ members benefit from FWS’s denial of Plaintiffs’ petition to delist the coastal California gnatcatcher. Their interests in the gnatcatcher and its habitat are furthered by the existing gnatcatcher protections under the ESA. *See* Prop. Answer 10; Anderson Decl. ¶ 7; Benson Decl. ¶ 10; Chadwick Decl. ¶ 13; DeSimone Decl. ¶¶ 8, 15; Hamilton Decl. ¶¶ 13, 15; Morton Decl. ¶¶ 25–27; Schoenherr Decl. ¶ 22. Had FWS granted Plaintiffs’ petition to delist the gnatcatcher, the ESA’s protections for the bird and its habitat would have ended.<sup>4</sup> By denying that petition, FWS ensured the important federal protections for the gnatcatcher and its habitat—and the benefits to Conservation Groups’ members from those protections—remain in place.

Conservation Groups’ members therefore would be harmed if Plaintiffs succeed in this case. *See* Prop. Answer 10–11; Anderson Decl. ¶¶ 7, 17; Benson Decl. ¶ 10; Chadwick Decl. ¶¶ 14–15; DeSimone Decl. ¶¶ 14–15; Hamilton Decl. ¶¶ 15–

---

<sup>4</sup> Indeed, Plaintiffs want the gnatcatcher delisted because that would undo the critical habitat designation, take prohibition, and related permit requirements. *See* Compl. ¶ 8 (“The critical habitat designation hinders the ability of these property owners to use their property as well as decreases the value of their property.”); *id.* ¶ 10 (bemoaning alleged “improper and unreasonable habitat conservation and recovery plans”); *id.* ¶ 11 (“Regulatory restrictions related to the gnatcatcher, including large swaths of land marked as critical habitat, have long hampered the building industry.”).

18; Leipzig Decl. ¶ 7; Morton Decl. ¶ 28; Schoenherr Decl. ¶ 23. Plaintiffs request that this Court set aside the petition denial that benefits Conservation Groups' members. *See* Compl. 21–22. This is enough to establish a “sufficient injury in fact” for defensive intervention. *See Crossroads*, 788 F.3d at 317; *Fund for Animals*, 322 F.3d at 733; *Military Toxics Project*, 146 F.3d at 954.

Because Plaintiffs seek relief that would harm Conservation Groups' members, causation and redressability “rationally follow[].” *Crossroads*, 788 F.3d at 316. The threatened harm to Conservation Groups' members is caused by Plaintiffs' requests for relief, and the Court can redress this harm by upholding FWS's denial of Plaintiffs' petition. *Id.* Conservation Groups' members accordingly would have standing to defend FWS's denial of Plaintiffs' petition to delist the gnatcatcher.

**B. Conservation Groups have standing on behalf of their members**

Conservation Groups meet the three criteria for associational standing. *Ctr. for Biological Diversity*, 861 F.3d at 182. For the reasons described above, Conservation Groups have members who would have standing to defend FWS's denial of Plaintiffs' petition to delist the coastal California gnatcatcher. The Court should have “no difficulty” concluding that Conservation Groups satisfy the additional elements of associational standing. *See id.*; *accord WildEarth Guardians*, 738 F.3d at 305. As organizations dedicated to the protection of the environment, including the protection of the coastal California gnatcatcher and its habitat, *see* Anderson Decl. ¶¶ 14–15; DeSimone Decl. ¶¶ 2, 8–10; Morton Decl. ¶¶ 6–12; Schoenherr Decl. ¶¶ 12–14; Trujillo Decl. ¶¶ 6–7, Conservation Groups have an “obvious interest” in defending the gnatcatcher's listing under the ESA. *Ctr. for*

*Biological Diversity*, 861 F.3d at 182 (quoting *Am. Trucking Ass'ns*, 724 F.3d at 247). Moreover, Conservation Groups can litigate this case without their members' participation as named intervenors. *See id.* Conservation Groups thus have associational standing to intervene on behalf of their members.

## **II. Conservation Groups have a right to intervene**

Federal Rule of Civil Procedure 24(a) governs motions for intervention as of right. To intervene as of right under Rule 24(a)(2), a would-be intervenor must satisfy four requirements: “(1) the motion for intervention must be timely; (2) intervenors must have an interest in the subject of the action; (3) their interest must be impaired or impeded as a practical matter absent intervention; and (4) the would-be intervenor’s interest must not be adequately represented by any other party.” *In re Brewer*, 863 F.3d 861, 872 (D.C. Cir. 2017).

Rule 24(a)(2) is to be applied “liberal[ly] . . . in favor of permitting intervention.” *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967). A motion to intervene is judged “on the tendered pleadings.” *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d 72, 75 (D.C. Cir. 1988). Courts thus treat a would-be intervenor’s “factual allegations as true and must grant [the intervenor] the benefit of all inferences that can be derived from the facts alleged.” *Defs. of Wildlife v. Perciasepe*, 714 F.3d 1317, 1327 (D.C. Cir. 2013) (quoting *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012)). Conservation Groups satisfy these established standards for intervention as of right.

**A. Conservation Groups' motion is timely**

The timeliness of intervention is “judged in consideration of all of the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant’s rights, and the probability of prejudice to those already parties in the case.” *Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001) (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980)).

Conservation Groups’ motion is timely “because it was filed before defendants’ answer to the complaint, and no briefing schedule has been entered in this case.” *Am. Forest Res. Council v. Hall*, 07-cv-484 (JDB), 2007 WL 1576328, at \*1 (D.D.C. May 29, 2007); *see also Fund for Animals*, 322 F.3d at 735 (motion timely when filed “less than two months after the plaintiffs filed their complaint and before the defendants filed an answer”); *WildEarth Guardians*, 272 F.R.D. at 15 (motion timely when filed before defendants answered amended complaint, before defendants produced administrative record, and before court set briefing schedule for dispositive motions). Conservation Groups promptly moved to intervene to defend their and their members’ interests in the continued protection of the coastal California gnatcatcher and its habitat. They have already lodged their Proposed Answer as an exhibit to their Motion to Intervene, and do not seek to expand the case beyond the issues raised in the complaint. In these circumstances, Conservation Groups’ participation will not prejudice any party or delay the proceedings. *See Safari Club Int’l v. Salazar*, 281 F.R.D. 32, 42 (D.D.C. 2012); *WildEarth Guardians*, 272 F.R.D. at 14.

**B. Conservation Groups have protectable interests at stake**

Because Conservation Groups have Article III standing, they “*a fortiori* ha[ve] ‘an interest relating to the property or transaction which is the subject of the action.’” *Crossroads*, 788 F.3d at 320 (quoting *Fund for Animals*, 322 F.3d at 735); *see also Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998).

Moreover, in the event the Court determines that it need not decide Conservation Groups’ standing, *see supra* note 2, Conservation Groups have demonstrated an interest in the case under Rule 24(a)(2) for the reasons set forth *supra* 11–13. Conservation Groups have long advocated for robust protections for the coastal California gnatcatcher and its coastal sage scrub habitat, and submitted comments urging FWS to deny Plaintiffs’ delisting petition. *See* Anderson Decl. ¶ 14; DeSimone Decl. ¶¶ 8–10; Morton Decl. ¶¶ 8–12; Schoenherr Decl. ¶¶ 12–14; Trujillo Decl. ¶ 7. And Conservation Groups’ members have recreational, aesthetic, scientific, and professional interests in the protection and survival of the gnatcatcher and its habitat. Anderson Decl. ¶¶ 8–13; Benson Decl. ¶¶ 7–8, 10; Chadwick Decl. ¶¶ 13–15; DeSimone Decl. ¶¶ 11–13; Hamilton Decl. ¶¶ 8–10, 13; Leipzig Decl. ¶¶ 4–7; Morton Decl. ¶¶ 13–23; Schoenherr Decl. ¶¶ 16, 18. These interests are sufficient for intervention as of right. *Am. Forest Res. Council*, 2007 WL 1576328, at \*1; *see also Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (“A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.”).

**C. An adverse judgment would impair Conservation Groups' interests**

Conservation Groups' showing of standing also satisfies Rule 24(a)(2)'s requirement that an intervenor be "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." *See Safari Club Int'l*, 281 F.R.D. at 42 (impairment of interest requirement satisfied "for the same reasons" proposed intervenors had standing). An adverse judgment would harm Conservation Groups' and their members' interests in the protection of the coastal California gnatcatcher and its habitat. *See supra* 11–13; *see also Idaho Farm Bureau Fed'n*, 58 F.3d at 1398 (concluding that an action that "could . . . lead to a decision to remove" a species from the ESA list would impair intervenor's interests); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) ("An adverse decision in this suit would impair the [intervenor's] interest in the preservation of birds and their habitats.").

An adverse judgment could also impede Conservation Groups' abilities to advocate for the gnatcatcher and its habitat in the future. Rule 24(a)(2) focuses on the "practical consequences' of denying intervention." *NRDC v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse*, 385 F.2d at 702). "[Q]uestions of 'convenience' are clearly relevant," *id.* at 910, and the "possibility" of impairment is sufficient, *Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981). Here, the possible practical consequences of denying Conservation Groups intervention include the burden of relitigating the gnatcatcher's listing on remand. Regardless of whether Conservation Groups could convince FWS to deny the petition again, or successfully



challenge FWS's decision if its grants the petition, there is "no question" that doing so would be "burdensome." *Fund for Animals*, 322 F.3d at 735. These possible burdens satisfy Rule 24(a)(2)'s impairment requirement. *Id.*; see also *In re Brewer*, 863 F.3d at 873 ("[U]nnecessary litigation burdens have the 'practical consequence' of impairing third party interests in the efficient assertion of their rights."); *Am. Forest Res. Council*, 2007 WL 1576328, at \*1 (concluding environmental groups' "interests would be impaired or impeded by an unfavorable ruling . . . directing defendants to propose rulemaking" to delist a bird under the ESA).

**D. Federal Defendants may not adequately represent Conservation Groups' interests**

Rule 24(a)(2) requires a party seeking to intervene as of right to make only a "minimal" showing that the representation of its interests "may be' inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). This standard is "not onerous." *Crossroads*, 788 F.3d at 321 (quoting *Fund for Animals*, 322 F.3d at 735). Indeed, "a movant 'ordinarily should be allowed to intervene unless it is *clear* that the party will provide adequate representation.'" *Id.* (emphasis added) (quoting *Am. Tel. & Tel. Co.*, 642 F.2d at 1293). "[T]he burden is on those opposing intervention to show that representation for the absentee will be adequate." *Am. Tel. & Tel. Co.*, 642 F.2d at 1293.<sup>5</sup>

---

<sup>5</sup> Although the D.C. Circuit has been "inconsistent as to who bears the burden with respect to this factor," *Fund for Animals*, 322 F.3d at 736 n.7, it most recently indicated that the burden "rests on those resisting intervention." *In re Brewer*, 863 F.3d at 872 (quoting *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1390 (D.C. Cir. 1980)). "In any event, *Trbovich* makes clear that the standard for measuring inadequacy of representation is low." *Fund for Animals*, 322 F.3d at 736 n.7.

It is far from “clear” that Federal Defendants will adequately represent Conservation Groups’ interests in this case.<sup>6</sup> The D.C. Circuit has “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Crossroads*, 788 F.3d at 314 (quoting *Fund for Animals*, 322 F.3d at 736). The fact that “parties share a *general interest* in the legality of a program or regulation does not mean their *particular interests* coincide so that representation by the agency alone is justified.” *Associated Dog Clubs of N.Y. State v. Vilsack*, 44 F. Supp. 3d 1, 6–7 (D.D.C. 2014) (emphases added) (quoting *Am. Horse Prot. Ass’n v. Veneman*, 200 F.R.D. 153, 159 (D.D.C. 2001)); *see also Crossroads*, 788 F.3d at 321 (cautioning that a “general alignment” of purpose is not “dispositive”); *Costle*, 561 F.2d at 912 (“[A] shared general agreement . . . does not necessarily ensure agreement in all particular respects about what the law requires.”).

Separate representation is necessary here because Federal Defendants and Conservation Groups have different *specific interests*. *See Costle*, 561 F.2d at 912 (concluding that where “[p]articular interests . . . ‘may not coincide,’” separate representation is justified (quoting *Nuesse*, 385 F.3d at 703)). Conservation Groups are non-profit, public interest organizations with a narrow focus on protecting the environment, the coastal California gnatcatcher, and its habitat. *Supra* 6–9. In contrast, the ESA requires Federal Defendants “to represent the interests of the American people.” *Fund for Animals*, 322 F.3d at 736. Given this broad mandate,

---

<sup>6</sup> Plaintiffs and Conservation Groups have adverse interests. Plaintiffs seek to eliminate the coastal California gnatcatcher’s protections under the ESA, while Conservation Groups seek to defend those protections.

Federal Defendants cannot—or at least *might not*—adequately represent the “more narrow” interests of Conservation Groups. *See id.* at 737. This divergence of interests satisfies *Trbovich*’s “minimal” standard for inadequate representation. *Fund for Animals*, 322 F.3d at 737 (concluding FWS may not adequately represent interests of a would-be intervenor seeking to defend the agency’s listing of an animal as threatened, but not endangered); *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 70 (D.D.C. 2006) (concluding FWS may not adequately represent interests of hunting groups seeking to defend the agency’s decision to exclude certain species, when bred in captivity, from the ESA’s take prohibition); *Am. Horse Prot. Ass’n*, 200 F.R.D. at 159 (concluding the Department of Agriculture may not adequately represent a non-profit organization when the agency was charged with balancing a “broad spectrum of interests”).

FWS’s inadequate protections for the coastal California gnatcatcher in the past further underscore the agency’s inability to adequately represent Conservation Groups’ interests in this suit. NRDC and the National Audubon Society had to sue FWS to get it to designate *any* critical habitat for the gnatcatcher. *See NRDC*, 113 F.3d at 1121. NRDC then sued FWS again when its belated critical habitat designation was, in NRDC’s view, too narrow. *NRDC*, 275 F. Supp. 2d at 1136. More recently, FWS announced that it plans to revise its regulations for listing threatened and endangered species and for designating critical habitat.<sup>7</sup> Given this

---

<sup>7</sup> U.S. Fish & Wildlife Serv., RIN: 1018-BC88 (Fall 2017), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1018-BC88>.

history, Conservation Groups cannot—and should not have to—rely on Federal Defendants to adequately represent their interests in this case. *See Safari Club Int'l*, 281 F.R.D. at 42 (concluding FWS may not adequately represent hunting groups in light of “prior lengthy litigation by th[ose groups] against the FWS”); *Am. Forest Res. Council*, 2007 WL 1576328, at \*1 (concluding FWS may not adequately represent environmental groups when, from the groups’ perspective, FWS had been “insufficiently protective of the [species] and its critical habitat in the course of past litigation and in its proposed rule changes”); *see also Coalition of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 845 (10th Cir. 1996) (concluding FWS may not adequately represent a wildlife photographer’s interest in a bird when the photographer previously sued FWS over protections for that bird).

Given the disparate interests that Conservation Groups and Federal Defendants will weigh when litigating this case, Conservation Groups have made the “minimal” showing that Federal Defendants’ representation of their interests “may be” inadequate. The Court should grant their motion to intervene as of right.

### **III. Conservation Groups alternatively merit permissive intervention**

In the alternative to intervention as of right, Conservation Groups request leave to intervene permissively under Federal Rule of Civil Procedure 24(b).

Permissive intervention is appropriate when would-be intervenors present “(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action.”

*EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

Conservation Groups meet these requirements. The Court has an independent ground for subject-matter jurisdiction because Conservation Groups seek only to defend against claims brought by Plaintiffs under federal statutes. *See Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 10 (D.D.C. 2007); *accord* 28 U.S.C. § 1331. Second, Conservation Groups' motion is timely. *See supra* 15–16. Finally, because Conservation Groups seek only to defend against Plaintiffs' claims, their defenses share “a question of law or fact in common with the main action.” *EEOC*, 146 F.3d at 1046; *see also Sierra Club*, 523 F. Supp. 2d at 10; *Butte Cty. v. Hogen*, 08-cv-519 (HKK) (AK), 2008 WL 2410407, at \*2 (D.D.C. June 16, 2008).

Having satisfied these prerequisites, the Court should allow Conservation Groups to intervene permissively. Conservation Groups have a significant interest in maintaining the coastal California gnatcatcher's listing under the ESA. They have advocated for and helped design protections for the gnatcatcher and its habitat for decades, and have a unique and valuable perspective that may aid this Court's review. *See Humane Soc'y of the U.S. v. Clark*, 109 F.R.D. 518, 521 (D.D.C. 1985) (granting permissive intervention to a group with “a perspective which may not otherwise be represented in this matter”). Conservation Groups moved to intervene at an early stage in the case to ensure their participation will not “unduly delay or prejudice the adjudication of the original parties' rights.” Fed. R. Civ. P. 24(b)(3). If their intervention is granted, Conservation Groups will continue to support the efficient adjudication of the case. Given Conservation Groups' stake in this case and

the lack of prejudice their participation will cause, the Court should at a minimum allow permissive intervention.

### CONCLUSION

For the foregoing reasons, the Court should grant Conservation Groups' motion to intervene.

December 22, 2017

Respectfully submitted,

/s/ Jared E. Knicley

Jared E. Knicley (D.C. Bar 1027257)  
Natural Resources Defense Council  
1152 15th Street NW, Suite 300  
Washington, DC 20005  
202-513-6242  
jknicley@nrdc.org

Rebecca J. Riley (*pro hac vice* pending)  
Natural Resources Defense Council  
20 N. Wacker Drive, Suite 1600  
Chicago, IL 60606  
312-651-7913  
rriley@nrdc.org

*Attorneys for Proposed-Defendant-  
Intervenors Natural Resources Defense  
Council, Endangered Habitats League, and  
Laguna Greenbelt*

/s/ Elizabeth Forsyth

Elizabeth Forsyth (*pro hac vice* pending)  
800 Wilshire Boulevard, Suite 1000  
Los Angeles, CA 90017  
415-217-2126  
eforsyth@earthjustice.org

*Attorney for Proposed-Defendant-Intervenor  
National Audubon Society*

/s/ Ryan Adair Shannon

---

Ryan Adair Shannon (D.C. Bar OR00007)

Center for Biological Diversity

P.O. Box 11374

Portland, OR 97211

503-283-5474 ext. 407

rshannon@biologicaldiversity.org

*Attorney for Proposed-Defendant-Intervenor*

*Center for Biological Diversity*