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Submitted via email and https://www.regulations.gov

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RE: Proposed Rule – Rescinding the Regulatory Definition of "Harm" Under the Endangered Species Act (Docket No. FWS-HQ-ES-2025-0034) (1018-BI38)

Dear Ms. Schultz,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and northern Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive future correspondence via email, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the *Federal Register* Notice released on 4/17/2025 to rescind the definition of "harm" from the Federal Endangered Species Act (ESA). Given our mission statement to protect both habitats and the federally-listed Mojave desert tortoise

(*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitats.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021) "… based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses had been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (DTPC; Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024a) stated: "At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department's [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission's decision initiated this status review to inform the Commission's decision on whether the change in status is warranted."

Importantly, in their April 2024 meeting (CDFW 2024b), the California Fish and Game Commission voted unanimously to accept the CDFW's petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species' status, declining trend, numerous threats, and lack of effective recovery implementation and land management. The Commission is expected to vote on uplisting the tortoise to endangered in June.

Please accept, carefully review, address, and include in the administrative record, the following comments by the Council.

Description of the Proposed Action

On Thursday, April 17, 2025, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the Services) published in the *Federal Register* a proposed rule to rescind the regulatory definition of "harm" in the Endangered Species Act (ESA or the Act) regulations (Proposed Rule). The regulatory definition of "harm" by the USFWS is "an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." The regulatory

definition of harm by the NMFS is similar; it is “an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.”

According to the Services, their existing regulatory definitions of “harm,” which include habitat modification, runs contrary to “the best meaning of” the statutory term “take.” The Services are undertaking this change “to adhere to the single, best meaning of the ESA.” The USFWS and NMFS propose to rescind the regulatory definition of “harm” and rest on the statutory definition of “take.” In addition, the USFWS and NMFS interpret the definition of “take” to be a “ centuries-old understanding of “take” as meaning to kill or capture a wild animal.”

Comments on the Proposed Action

At the time of this writing, we see that 121,086 comments have been submitted to the USFWS and NMFS concerning this ill-conceived, blatant attempt to undermine the ESA and weaken protections for endangered species, including the desert tortoise. So, many people are very passionate about this issue, with an overwhelming majority defending the ESA by retaining the “harm” regulatory definition therein. Fortunately, here in California, we have a California Endangered Species Act (CESA) that would not be affected by this decision and will hopefully continue to provide protection for desert tortoises and their habitats despite this administration’s dramatic change in environmental policies.

The Council finds several flaws with the arguments presented by the Agencies in the Proposed Rule regarding why they should rescind the regulatory definition of “harm” and limit the statutory definition of “take” as meaning “to kill or capture a wild animal.”

First, the Agencies presume that the current regulatory definition of “harm” would not be supported by the courts if challenged in court. The regulatory definition has been upheld by the Supreme Court. Many of the reasons that Supreme Court upheld the regulatory definition of “harm” were unrelated to Chevron v. Natural Resources Defense Council that was recently overturned by Loper Bright Enterprises, et. al. v. Raimondo, et. al.

Second, the Agencies say they are undertaking this change to adhere to the “single, best meaning of the ESA.” The "single, best meaning" of a statute is a legal concept used by the courts to interpret its meaning. It refers to the court's job to find the clear and specific meaning of the statute, rather than allowing for multiple interpretations. Thus, the courts have determined that they decide, not the agencies, how to interpret a concept in a statute.

In proposing this rule, the Agencies appear to have determined that the definition of the word “harm” found in the dictionary is inadequate to address its meaning in the statute. That is, the ordinary meaning of “harm” is not adequate to provide the single best meaning of this word in the statute. They provide their interpretation of what “harm” and “take” mean in the ESA. In the proposed rescission, the Agencies assert that the definition of “take” means “to reduce those animals, by killing or capturing, to human control.” However, this is an assumption by the

Agencies regarding their interpretation of the definition of "take." This interpretation of the statute is not included in the title or the summary section of the Proposed Rule.

In defining "take," the Agencies claim that there is a "centuries-old understanding of "take" as meaning to kill or capture a wild animal." The Agencies cite Geer v. Connecticut, 161 U.S. 519, 523 (1896) and 2 W. Blackstone, Commentaries 411 (1766) from England. The former is a court case concerning a state's ability to regulate the possession and transport of game birds, specifically in relation to interstate commerce. The latter addresses the issue of hunting game; it also discusses the feudal system. We contend that these references are not relevant for the issue of "take" as ***defined by Congress*** [emphasis added] in the ESA and the Act's prohibitions for endangered and threatened species.

The Agencies also cite a definition of "take" from editions of dictionaries that are 70 to 90 years old (e.g., Oxford English Dictionary (1933) and Webster's New International Dictionary of the English Language (2d ed. 1949)).They apply this definition to their interpretation of "take" in the ESA.

According to a more recent version of Merriam Webster's Dictionary (https://www.merriam-webster.com/dictionary/take#:~:text=transitive%20verb,power%2C%20or%20control%3A%20such%20as), "take" as a verb has several definitions including:

- to get into one's hands or into one's possession, power, or control;
- to grasp, grip;
- to catch or attack through the effect of a sudden force or influence;
- to receive into one's body;
- to bring or receive into a relation or connection;
- to transfer into one's own keeping;
- to assume;
- to secure by winning in competition;
- to pick out, choose, select;
- to adopt, choose, or avail oneself of for use;
- to let in;
- to apprehend, understand; and several more.

Because of these numerous definitions of "take," Congress wisely defined "take" in section 3 of the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Thus, this is the definition of "take" that should be applied when implementing the ESA, not the "centuries-old understanding of "take" as meaning to kill or capture a wild animal."

Next, the Agencies argue that under the *noscitur a sociis* canon, the definition of "harm," like the other nine verbs in the definition of "take" should be construed to require an "affirmative act[ ] . . . directed immediately and intentionally against a particular animal—not [an] act[ ] or omission[ ] that indirectly and accidentally cause[s] injury to a population of animals." *Noscitur a sociis* is a legal principle used in statutory interpretation, meaning "a word is known by the company it keeps." This canon suggests that the meaning of a word or phrase should be understood in the context of surrounding words or phrases in the same statute. When invoking this canon, the courts

assume that Congress is knowledgeable about this legal principle and will always apply it when they are drafting federal legislation. This assumption by the courts may not always be valid.

In response to the argument under the *noscitur a sociis* canon, some of the words accompanying "harm" in the statute's definition of "take" refer to actions or effects that do not require direct applications of force. Applying this canon to "harm" would give it essentially the same meaning as other words in the definition, thereby denying its actual and independent meaning. If this canon were applied, there would be no need for Congress to have included the word "harm" in the definition of take, because it would be redundant with some of the other words used to define "take" such as "kill."

The definition of "harm" according to a few dictionaries is provided below:

- Merriam Webster – "to damage or injure physically or mentally : to cause harm/ physical or mental damage : injury (https://www.merriam-webster.com/dictionary/harm#dictionary-entry-2)

- The Brittanica Dictionary – "to cause hurt, injury, or damage to (someone or something) : to cause harm to (someone or something)
  "physical or mental damage or injury : something that causes someone or something to be hurt, broken, made less valuable or successful" (https://www.britannica.com/dictionary/harm)

- Collins Dictionary – "to harm a thing, or sometimes a person, means to damage them or make them less effective or successful than they were" (https://www.collinsdictionary.com/us/dictionary/english/harm)

- The Law Dictionary – "to damage, injure or hurt" (https://thelawdictionary.org/harm/)

No separate definition of "harm" when applied to a wild animal was found. These common definitions of harm use almost identical words. When these common definitions or the ordinary meaning of "harm" is applied to "take" in the ESA, they naturally encompass habitat modification or loss that results in actual damage, hurt, injury, or death to members of an endangered or threatened species. Unless "harm" encompasses indirect as well as direct damage, hurt, injury, or death, the word has no meaning that does not duplicate that of other words that section 3 of the ESA uses to define "take." The word "harm" was intentionally placed in the legislation. See below.

Fourth, we found no information that the Agencies researched the purpose and intent of Congress to include "harm" in the definition of take. The word "harm" was added to the definition of take in via a floor amendment by the floor manager of the bill in the Senate, and noted that this and accompanying amendments would "help to achieve the purposes of the bill." In addition, the placement of "harass" and "harm" at the beginning of the definition of "take," which is followed by the more traditional words used to apprehend an animal, is noteworthy and suggests that Congress intentionally placed these words first to emphasize their importance and distinction from the other words in Congress's definition of "take."

Fifth, Congress's purpose and intent in writing and passing the ESA was clearly presented in section 2 of the Act. Congress stated that one of the central purposes of the ESA is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."

This purpose is further supported in reports from the Congressional Record on this legislation in which members of Congress stated that:

- "nearly a thousand species are endangered today because of man's interference with natural habitats, because of his greed, and because he fouls the air and waters. We have filled the Red Book of the Internation Union for the Conservation of Nature with mammals, birds and fishes who are running out of ***places to go*** [emphasis added] to escape human carelessness. Historically the evolution of new species and the decline of others was a natural process——the result of various natural forces . . . Our powerful technologies and our blind desire for progress enabled us to interrupt the rhythm of nature;"
- "Man has disturbed the balance of nature ***killing*** directly ***or indirectly*** [emphasis added] hundreds of species of plants and animals and continues to do so heedlessly;"
- " It seems to me that man may lose more than he thinks, if he does not act to correct his ***interference with nature*** [emphasis added];" and
- "Present laws need to be more flexible, to adapt themselves ***to the needs of the animals*** [emphasis added]themselves." (Congressional Record – House, September 18, 1973).

The Committee Reports accompanying the bills that became the ESA clearly show that Congress intended "take" to apply broadly to cover indirect take as well as purposeful take. For example, the House Committee Report explained that the definition of "take" "would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young."

Congress reiterated its intent that "take" include indirect take when in 1982 it amended the ESA. In that amendment Congress authorized the Secretary of the Interior to issue permits for takings. that section 9(a)(1)(B) would otherwise prohibit, "if such taking is incidental to, and not for the purpose of, the carrying out of an otherwise lawful activity." In addition, both the Senate Report and the House Conference Report identified as the model for the added section 10(a)(1)(B) permit requirements a case where a development project threatened incidental harm to a species of endangered butterfly by modification of its habitat. This addition of section 10(a)(1)(B) to the ESA indicates that Congress understood section 9 of the ESA to prohibit indirect as well as deliberate take. The Agencies could not issue an "incidental" take permit to avoid a section 9 violation for a direct, deliberate action against an individual of an endangered or threatened species.

Habitat degradation and loss have been the greatest threat to listed species in the United States (Flather et al. 1994, 1998; Schemske et al. 1994; Wilcove et al. 1998; Williams et al. 1989). This threat could not be effectively addressed and listed species conserved successfully, if habitat degradation and loss were not include in the definition of "take." Another purpose of the ESA is "to provide a program for the conservation of such endangered species and threatened species" with Congress defining conservation as "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," that is to recover the species.

Also concerning is that the Agencies argue that the statutory definition of "harm," like the other nine verbs in the definition of "take," should be construed to require an "affirmative act[ ] . . . directed immediately and intentionally against a particular animal—not [an] act[ ] or omission[ ] that indirectly and accidentally cause[s] injury to a population of animals." Thus, according to the Agencies there would be no "harm" as defined by the dictionary in the definition of "take."

The Council disputes the Agencies' definition for several reasons.

By removing the current regulatory definition of harm and insisting that "harm" in the statutory definition is a synonym for the direct wounding, killing, capturing, trapping of a listed species, we ask the question of the Agencies, why did Congress define "take" to include "harm?" The best explanation we have is that Congress viewed "harm" to be different than hunting, wounding, killing capturing, or trapping.

Changing the definition of "harm" would result in a violation of the purposes of the ESA. It would allow for listed species to have their habitat degraded/fragmented/destroyed so that they could no longer survive in the wild. This situation does not allow for the conservation of listed species as "conserve" and "conservation" are defined in the ESA and does not meet the purpose of the ESA because it would no longer provide a means to conserve the ecosystems upon which these listed species depend.

The Senate Report stressed that "'[t]ake' is defined . . . in the broadest possible manner to include every conceivable way in which a person can 'take' or attempt to 'take' any fish or wildlife." S. Rep. No. 93–307, p. 7 (1973). The House Report stated that "the broadest possible terms" were used to define restrictions on takings (H. R. Rep. No. 93–412, p. 15 (1973)). The House Report underscored the breadth of the "take" definition by noting that it included "harassment, whether intentional or not" H. R. Rep. No. 93–412, p. 15 (1973)). The Report explained that the definition "would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young." These comments support that "take" means more than the deliberate and direct actions to reduce those animals, by killing or capturing, to human control.

Effects to Sections 10 and 7 of the Endangered Species Act

The Proposed Rule removes the regulatory definition of "harm" and reinterprets the statutory definition of "take." According to the Agencies, the reinterpreted definition would mean that only direct intentional actions that resulted in a body that was dead, wounded, or in one's hands would be "take." There would be no need for section10(a)(1)(B) of the ESA, no need to obtain an incidental take permit from the Agencies.

We are alarmed that the "may affect" standard, which currently includes harm without direct mortality, would no longer adversely affect and thereby undermine conservation of the tortoise on federal lands, particularly those managed by the Bureau of Land Management (BLM) and Department of Defense (DoD). It is not clear from the *Federal Register* Notice just how the proposed action will be analyzed, but we feel it is important to assess how this decision, if approved, would affect the "may affect" standard for take of threatened and endangered species.

It may mean that there would be no need to prepare biological opinions because the purpose of section 7(a)(2) is for actions that are likely to result in incidental take of a listed species. This would mean that most activities currently regulated under section 7(a)(2) of the ESA, incidental take, would no longer be considered "take" and would not require consultation and authorization for incidental take. For many species of fish, reptiles, birds, and mammals, ushering the animals off the property and then developing it would not be "take" but would ultimately result in their inability to feed and/or find shelter from predators and result in their death. The proposed projects would move forward and degrade/fragment/destroy habitat needed by species for feeding, breeding, shelter, and movements to find food, shelter, and mates, that is to persist in the area and in the wild. There would be no implementation of measures to minimize these impacts to listed species. There would be no analysis to determine whether the implementation of the proposed action would jeopardize the continued existence of the species. This would result in species quickly approaching the extinction threshold, which is not the purpose and intent of the ESA.

We believe that the decision to rescind the regulatory definition of "harm" may have deleterious effects on critical habitat, which was designated for the desert tortoise in 1994 (USFWS 1994). In its definition of critical habitat (https://www.fws.gov/sites/default/files/documents/critical-habitat-fact-sheet.pdf), USFWS states that "Critical habitat is the specific areas within the geographic area, occupied by the species at the time it was listed, that contain the physical or biological features that are essential to the conservation of endangered and threatened species and that may need special management or protection. Critical habitat may also include areas that were not occupied by the species at the time of listing but are essential to its conservation." Our concern is that if the regulatory definition of "harm" is removed, then the ESA may only be enforced if a dead animal is found.

But we see with the definition of critical habitat that USFWS understands the importance of these essential habitats even when a species like the desert tortoise is absent at the time of development. So, we feel that rescinding the regulatory definition of "harm" may result in inferior protection (or even no protection) of critical habitats compared to current management. Since the tortoise was federally-listed as endangered on an emergency basis in 1989 and subsequently listed as threatened in 1990 (USFWS 1990) there has been no substantial permanent development in tortoise critical habitat. Of the tens of thousands of acres of solar development in the California deserts, for example, only a few parcels of critical habitat along the I-10 corridor have been developed since critical habitat was designated in 1994.

These likely effects should be explained and analyzed by the Agencies and provided to the public prior to making a final decision on this Proposed Rule.

Unlike threatened or endangered bird species, particularly migrants, that may occupy habitats seasonally, resident desert tortoises establish home ranges and occupy them for a lifetime. The lifetime home range for the Mojave desert tortoise is more than 1.5 square miles (3.9 square kilometers) of habitat (Berry 1986) and adult tortoises may make periodic forays of more than 7 miles (11 kilometers) at a time (Berry 1986). Although 1.5 square miles seems like a relatively large area, tortoises may live as long as humans, into their 80s, so a 1.5-square-mile home range

area occurs over a prolonged period. We know from BLM plots studied from the 1970s to present, that a given tortoise may occupy the same burrows for many years.

Given this ecology of the tortoise, the USFWS has developed survey protocols (USFWS 2019) that equate evidence of tortoises (e.g., tortoises, scats/droppings, burrows, tracks, egg shell fragments, courtship rings, and drinking depressions) with occupancy. Therefore, with tortoises, we may speak of "suitable" versus "occupied" habitats. Since the tortoise was listed, finding any one of these tortoise signs on a subject property is construed as occupied habitat, which triggered either Section 10 incidental take permitting for non-federal projects or Section 7 take authorization when a federal agency either funds, authorizes, or carries out a project that "may affect" tortoises (see above). In this context, we anticipate a significant change in current management if the regulatory definition of "harm" is rescinded. While detecting sign means tortoises are present, under the Agencies' new interpretation of take, only direct intentional actions that result in a body that is dead, wounded, or in one's hands would be "take." In other words, incidental take would no longer be regulated under the ESA.

National Environmental Policy Act (NEPA)

The Agencies say they "will complete [their] analysis in accordance with NEPA and applicable regulations before finalizing this proposed rule."

However, the Agencies believe that their proposed rescission the regulatory definition of "harm" and clarification of the statutory definition of "harm" "is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action."

We argue that it is discretionary. The Agencies are determining, not the courts, that the current regulatory definition of "harm" should be rescinded when there is no ruling that this definition is illegal and that the statutory definition of take thar includes "harm" is limited to direct intentional actions that resulted in a body that is dead, wounded, or in one's hands. Recall our statement earlier that the courts have determined that they decide, not the agencies, how to interpret a concept in a statute. Thus, the Agencies' actions are not required; they are discretionary.

As an alternative, the Agencies offer that if the proposed action is discretionary, the Agencies believe that the proposed regulation changes are within a category of actions that are categorically excluded from preparing an environmental assessment or an environmental impact statement.

- the Department of the Interior (DOI) categorical exclusion for "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case" (43 CFR 46.210(i)), and
- National Oceanic and Atmospheric Administration categorical exclusion for "[P]reparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject

later to the NEPA process, either collectively or on a case-by-case basis" (CM Appendix E, G7).

The categorical exclusions cited by the Agencies include that " the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." We ask how the proposed removal the regulatory definition of "harm" and its replacement with the Agencies' interpretation that only direct take would require authorization under the ESA would be subject to NEPA analysis if the action is not authorized, funded, or carried out by a federal agency? Thus, numerous actions in the future that currently require a section 10(a)(1(B) incidental take permit from the USFWS or NMFS would no longer have a federal nexus and would no longer be subject to the NEPA process.

In addition, these categorical exclusions cannot be used if extraordinary circumstances apply. The DOI's list of extraordinary circumstances (43 Code of Federal Regulations 46.215) that would apply include:

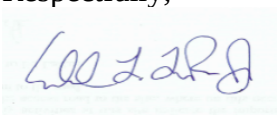
(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

The Proposed Rule will establish a precedent and will represent a decision in principle about future actions with potentially significant environmental effects. Most actions that currently result in take of a listed species would no longer be considered take, and the adverse impacts that result from implementing these actions would be far greater because there would be no requirement to minimize the impacts of the taking (under section 7) or minimize and mitigate the impacts of the taking to the maximum extent practicable (under section 10(a)(1)(B). Consequently, we conclude that the Agencies cannot use a categorical exclusion to comply with NEPA for this proposed action because extraordinary circumstances (e) and (h) would apply with the implementation n of the Proposed Rule.

We request that the Agencies publish a draft NEPA document and make it available for public review and comment before finalizing the NEPA process and making a final decision on the Proposed Rule.

We appreciate this opportunity to provide comments on this proposed rulemaking process and trust they will help protect tortoises during any activities that may result in take including harm. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other proposed actions funded, authorized, or carried out by the USFWS that may affect species of desert tortoises directly or indirectly. As an Affected Interest, the Council requests that any subsequent environmental documentation for this proposed action (e.g., NEPA compliance, publication of final rule, etc.) is provided to us at the contact information listed above. In addition, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Literature Cited

Berry, K.H. 1986. Desert tortoise (*Gopherus agassizii*) relocation: Implications of social behavior and movements. Herpetologica 42:113-125. https://www.jstor.org/stable/3892242

Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en

[CDFW] California Department of Fish and Wildlife. 2024a. Status Review for Mojave Desert Tortoise (*Gopherus agassizii*) Report to the Fish and Game Commission, February 2024. https://nrm.dfg.ca.gov/documents/ContextDocs.aspx?cat=CESA-Listing

[CDFW] California Department of Fish and Wildlife. 2024b. 2022-2024 News Releases. California Fish and Game Commission Holds Hybrid Meeting, April 23, 2024. https://wildlife.ca.gov/News/Archive/california-fish-and-game-commission-holds-hybrid-meeting11

Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf

Flather, C.H., L.A. Joyce, and C.A. Bloomgarden. 1994. Species endangerment patterns in the United States. Ft. Collins : U.S. Department of Agriculture Forest Service, Rocky Mountain Forest and Range Experiment Station. General Technical Report RM-241.

Flather, C.H., M.S. Knowles, and L.A. Kendall. 1998. Threatened and endangered species geography. BioScience 48: 365-376. https://www.fs.usda.gov/rm/pubs_other/rmrs_1998_flather_c001.pdf

Schemske, D.W., B.C. Husband, M.H. Ruckelshaus, C. Goodwillie, I.M. Parker, and J.G. Bishop. 1994. Evaluating approaches to the conservation of rare and endangered plants. Ecology 75: 584-606. https://www.jstor.org/stable/1941718

[USFWS] U.S. Fish and Wildlife Service. 1994. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 59(26):5820-5866. Washington, D.C. https://www.govinfo.gov/content/pkg/FR-1994-02-08/html/94-2694.htm

[USFWS] U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV. October 8, 2019. https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf

Wilcove, D.S., D. Rothstein, J. Dubow, A. Phillips, and E. Losos. 1998. Quantifying Threats to Imperiled Species in the United States. BioScience 48(8): 607-615)(Aug., 1998). https://faculty.washington.edu/timbillo/Readings%20and%20documents/global%20div%20patterns%20origins/general%20tropical%20biodiv%20conservation/Wilcove_et_al%20Bioscience_1998%20Quantifying_threats_to%20biodiv.pdf

Williams, J.E., J.E. Johnson, D.A. Hendrickson DA, S. Contreras-Balderas, J.D. Williams, M. Navarro-Mendoza, D.E. McAllister, and J.E. Deacon.. 1989. Fishes of North America endangered, threatened, or of special concern: 1989. Fisheries 14(6): 2-20. https://onlinelibrary.wiley.com/doi/abs/10.1577/1548-8446(1989)014%3C0002:FONAET%3E2.0.CO;2