



March 1, 2023

The Honorable Shalanda D. Young
Director
Office of Management and Budget
725 17th Street N.W.
Washington, D.C. 20503

The Honorable Richard Revesz
Administrator
Office of Information and Regulatory Affairs
725 17th Street N.W.
Washington, D.C. 20503

Re: Comment on Broadening Public Engagement in the Federal Regulatory Process

Director Young, Administrator Revesz,

The Center for Biological Diversity (“Center”) would like to offer the following comments regarding the Office of Information and Regulatory Affairs (“OIRA”) solicitation of public comment. The Center represents 1.7 million members and supporters, and is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center believes that the welfare of human beings is deeply linked to nature — to the existence in our world of a vast diversity of wild animals and plants. Because diversity has intrinsic value that cannot be reduced to monetary values as OIRA would like to do, and because the loss of biodiversity impoverishes society, we work to secure a future for all species, great and small, hovering on the brink of extinction.

The Office of Information and Regulatory Affairs’ decision to conduct its “listening sessions” in a manner only available to sophisticated parties — not announced on the federal register, not advertised or made aware to disadvantaged communities, not disseminated in any viable manner — illustrates the inherently despotic, illegal and arbitrary manner in which OIRA continues to wield power over all federal agencies despite no statutory authority to do so. This bullshit listening session illustrates just how utterly captured and beholden OIRA is to power special interests, how little it cares about the suffering of any of America’s citizens, and its abhorrent behaviors across the board.

The Center would like to reiterate at the outset the clear and unequivocal fact that OIRA has undermined and weakened vital environmental safeguards for people, endangered species and the environment for decades, a trend has continued unabated during the Biden Administration. Despite possessing no statutory authority, OIRA has unilaterally and with zero accountability delayed vital regulations and policies for months, even years, which has driven endangered species closer and closer to extinction.

Congress established the Office of Information and Regulatory Affairs *solely* to implement, and provide oversight of, federal agency compliance with the Paperwork Reduction Act of 1980.¹ While the informal review of agency regulations by the White House occurred as far back as the

¹ Public law: 96–511 (Dec. 11, 1980).

Nixon administration, President Reagan's Executive Order 12291 officially deemed that OIRA would centralize and review agency regulations "to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process."² Despite having numerous opportunities to do, Congress has never sanctioned OIRA to take on this expanded role. To this day, OIRA continues to review, change and even halt key regulatory safeguards continues to expand without any grant of authority to do so.

OIRA's perversion of the regulatory process has only grown more expansive with time, as subsequent presidents enacted ever more statutorily untethered mandates upon OIRA, including President George W. Bush's signed Executive Order 13422, President Barack Obama's Executive Order 13563, and President Trump's Executive Order 13771. During the Trump Administration, OIRA was the unabashed tip of the spear in dismantling key environmental safeguards throughout the federal government with its 2-for-1 deregulatory agenda.

Cumulatively OIRA's evil and heartless wielding of power has gutted protections for clean air and clean water, contributing to the premature deaths of thousands of Americans over the past three decades. For example, in 2011, OIRA killed the EPA's effort to set the national ambient air quality standards for ozone at 60 parts per billion despite the Clean Air Act's unambiguous mandate to set such standards *solely* on what is scientifically required to protect human health. Had the EPA been allowed to do its job, tens of thousands of premature deaths would have been avoided every year.³ During both the Bush and Obama administrations, OIRA delayed critical safeguards to protect the North Atlantic right whale, pushing it to the brink of extinction — actions that have cumulatively pushed the population of right whales down to 340 individuals today, and have vastly complicated the recovery of this species, making it far longer and far more costly.⁴

Simply put, OIRA has *never* strengthened a single rulemaking to protect the environment, but rather continues to inject spurious economic conjecture into the rulemaking process, all to benefit of the largest corporations, polluters and species interests.

Accordingly, the Center would like to offer the following responses to OIRA's pathetic solicitation of input.

Response to Question One

None of OIRA's suggested recommendations for action effectively broaden public engagement in the Federal regulatory process. If OIRA wanted to broaden public input, it should make its own processes transparent to the public and accountable to judicial review. **OIRA should always post the version of the proposed rule or policy it receives for review and a red line of all edits and changes made by OIRA during its EO 12866 review.** Because the changes made

² Executive Order 12291, 46 Fed. Reg. 13193 (Feb. 17, 1981).

³ J.D. Berman et al., *Health Benefits from Large-Scale Ozone Reduction in the United States*, 120(10) Environ. Health Perspec. 1404-10 (October 2012).

⁴ See Sam Kim, *White House Delays Whale Protection Rule*, Center for Effective Government (July 24, 2007), available at: <https://www.foreffectivegov.org/node/3366>.

by OIRA routinely and inexorably weaken protections for public health, environmental protection and social justice, understanding the level of damage caused by OIRA is essential to serving the communities OIRA routinely harms. **The “learnings” made by OIRA in November all harm the public interest and should be discarded.**

Response to Question Two

The biggest bar to public participation in the rulemaking process is OIRA itself. All federal agencies provide far greater opportunities for public comment than OIRA does, which operates in a non-transparent manner designed to only benefit large, special interest and powerful corporations. What is the fucking point of having a rulemaking process and an agency response to such comments if OIRA can, at any time, reject a rulemaking proposal or modify it to in any way it wants based on the whims of special interests? The most undemocratic aspect of the rulemaking process is OIRA itself.

Response to Question Three

All federal agencies provide materials, guides and tools to allow citizen participation in the rulemaking and regulatory process except OIRA, whose entire purpose is to defeat meaningful public participation and the democratic process.

Response to Question Four

The fact that OIRA specifically highlights the role of trade associations and coalitions, and small businesses illustrates how disgustingly craven OIRA is. Each member of the Executive Branch swears an oath to ensure that the Constitution and Laws of this Nation are faithfully implemented. OIRA does not implement any law other than the Paperwork Reduction Act, but constantly undermines the faithful execution of the laws of the United States. OIRA and its bureaucratic goons apparently swear allegiance to powerful corporations and their profits rather than the laws of this nation.

Since this process does not comport with the federal regulatory and policy process set forth by the Administrative Procedure Act, please ensure that this comment letter is preserved for the U.S. Archives and properly maintained, and then please sincerely go fuck off.

Sincerely,



Brett Hartl

Government Affairs Director
Center for Biological Diversity