UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1082

SIERRA CLUB; VIRGINIA WILDERNESS COMMITTEE,

Petitioners,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; NATIONAL PARK SERVICE, an agency of the U.S. Department of the Interior; RYAN ZINKE, in his official capacity Secretary of the Department of the Interior; MICHAEL T. REYNOLDS, in his official capacity as Deputy Director, Operations, Exercising the Authority of Director; STAN AUSTIN, in his official capacity as Southeast Regional Director, Responsible Official,

Respondents,

ATLANTIC COAST PIPELINE, LLC,

Intervenor.

No. 18-1083

DEFENDERS OF WILDLIFE; SIERRA CLUB; VIRGINIA WILDERNESS COMMITTEE,

Petitioners,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; FISH AND WILDLIFE SERVICE, an agency of the U.S. Department of the Interior; RYAN ZINKE, in his official capacity Secretary of the Department of the Interior; GREG SHEEHAN, in

his official capacity as Principal Deputy Director; CINDY SCHULZ, in her official capacity as Field Supervisor, Virginia Ecological Services, Responsible Official,

Respondents,

ATLANTIC COAST PIPELINE, LLC,

Intervenor.

On Petition for Review from the United States Department of the Interior. (5-140-1945)

Argued: May 10, 2018 Decided: May 15, 2018

Before GREGORY, Chief Judge, WYNN and THACKER, Circuit Judges.

ARGUED: Austin Donald Gerken, Jr., SOUTHERN ENVIRONMENTAL LAW CENTER, Asheville, North Carolina, for Petitioners. Avi Kupfer, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents. Brooks Meredith Smith, TROUTMAN SANDERS LLP, Richmond, Virginia, for Intervenor. **ON BRIEF:** Amelia Burnette, J. Patrick Hunter, Asheville, North Carolina, Gregory Buppert, SOUTHERN ENVIRONMENTAL LAW CENTER, Charlottesville, Virginia, for Petitioners. Eric Grant, Deputy Assistant Attorney General, Andrew Mergen, J. David Gunter II, Environment and Natural Resources Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Andrew Tittler, S. Amanda Bossie, Office of the Solicitor, DEPARTMENT OF THE INTERIOR, Washington, D.C., for Respondents. Andrea W. Wortzel, TROUTMAN SANDERS LLP, Richmond, Virginia, for Intervenor.

ORDER

PER CURIAM:

Petitioners seek review of the U.S. Fish and Wildlife Service's Incidental Take Statement, which authorized the Atlantic Coast Pipeline project to take certain threatened or endangered species. As to five of the affected species, Petitioners argue that the agency failed to set clear limits on take as required by the Endangered Species Act.

Exercising jurisdiction pursuant to 15 U.S.C. § 717r(d)(1), we conclude, for reasons to be more fully explained in a forthcoming opinion, that the limits set by the agency are so indeterminate that they undermine the Incidental Take Statement's enforcement and monitoring function under the Endangered Species Act. Accordingly, we VACATE the Fish and Wildlife Service's Incidental Take Statement. *See* 5 U.S.C. § 706(2). We reserve judgment on the parties' remaining disputes until our forthcoming opinion.

IT IS SO ORDERED.