May 19, 2025

Submitted via: https://www.regulations.gov/commenton/FWS-HQ-ES-2025-0034-0001

TO: Public Comments Processing
Attn: FWS-HQ-ES-2025-0034
U.S. Fish and Wildlife Service, MS: PRB/3W
5275 Leesburg Pike, Falls Church, VA 22041-3803

CC: Honorable Doug Burgum
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Honorable Howard Lutnick
Secretary of Commerce
1401 Constitution Ave NW
Washington, DC 20230

RE: Scientists' Letter in Opposition to Rescinding the Regulatory Definition of "Harm" in Endangered Species Act Regulations

Dear Secretary Burgum, Secretary Lutnick, U.S. Fish and Wildlife Service, and National Marine Fisheries Service:

We are writing to express opposition to the proposed rule (FWS-HQ-ES-2025-0034) published by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively "the Services), to rescind the regulatory definition of "harm" in Endangered Species Act (ESA or the Act) regulations, published April 17, 2025, at 90 Fed. Reg. 16102. The proposal to rescind the regulatory definition of 'harm,' is an attempt to exclude significant habitat modification or degradation that actually kills or injures wildlife from the Act's prohibition of "take."

We, the undersigned, are scientists who are concerned that the proposed rule could gravely reduce protection for endangered and threatened species and increase their risk of extinction. This regulatory change, if finalized, could weaken habitat protections for listed species on both federal and non-federal land, as well as in marine areas and the high seas subject to U.S. jurisdiction. This rule change would not be consistent with the plain language of the ESA and the conservation standards that Congress enshrined in it when it enacted the law in 1973 and later refined when lawmakers amended the statute in 1982.

For more than 40 years, the current harm definition has helped safeguard species by making it clear that acts that result in significant habitat modification or degradation that result in actual death or injury to a listed species are prohibited. This regulatory definition of harm has

underpinned conservation of endangered species in biological opinions and habitat conservation plans written by the Services, requiring reasonable measures and alternatives to avoid habitat destruction in exchange for incidental take permits. Rescinding the definition seeks to upend this sensible approach and undermine existing protections, which would be contrary to the law's conservation purpose.

In passing the ESA, Congress recognized habitat destruction as the primary cause of species' decline. The ESA itself specifies that species are in peril due to "development untempered by adequate concern and conservation," and the statute's purposes include to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). The ESA was enacted with overwhelming bipartisan support and continues to receive consistently strong public support.

Habitat loss is a primary driver of extinction, and the long-term economic consequences of habitat destruction include decline in biodiversity and the loss of ecosystem services essential to the well-being of humanity. This proposal threatens our country's natural heritage, and we urge you not to finalize this change and to uphold our nation's commitment to saving endangered species and the habitat they need to survive and recover.

Thank you for taking our comments into consideration.

Signed,

350 Scientists