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Oregon Chapter of The Wildlife Society  
PO Box 2378  
Corvallis, OR 97339

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May 16, 2025

Dear Acting Director Souza:

The Oregon Chapter of The Wildlife Society (ORTWS) represents over 600 wildlife professionals from throughout public and private enterprises composed of students, scientists, educators, technicians, consultants, biologists, and land managers. These professionals dedicate their lives to managing, conserving, and studying wildlife populations and their habitats throughout Oregon. Our mission is to inspire, empower, and enable Oregon's wildlife professionals and students to promote science-based wildlife conservation and management through the participation and leadership of an open and inclusive community of members. Our collective professional training and experience provide a strong and unique basis for providing the following comments on the proposed rule to redefine "harm" under the Endangered Species Act.

ORTWS strongly opposes this rule change for reasons detailed below:

1. The Endangered Species Act of 1973 explicitly states that its purpose is to "provide a means whereby the ecosystems on which endangered species and threatened species depend may be conserved." The proposed rule change would undermine this core function and contradicts the legislative intent of the Act. "Habitat" is defined as the natural home or environment of a plant, animal, or other organism that provides food, water, shelter, and space essential for that organism's survival. Habitat is comprised of both biotic (e.g. vegetation) and abiotic (e.g. cliffs for nesting, freshwater lakes) components and is species-specific. Habitat loss affects 85-97% of imperiled species. Removing "harm" from the ESA would severely restrict the effectiveness of the Act. Furthermore, reduced habitat protection would likely increase species declines, potentially increasing the number of species requiring ESA protection.
2. As part of the Endangered Species Act, every listed species has a Recovery Plan that includes habitat protection and restoration. If habitat cannot be legally protected, species will not recover, and the intention of the Act will not be met. Without access to food, shelter, and breeding grounds, animals cannot survive, even if they are not directly harmed. Forcing animals from their habitat increases their vulnerability to predators and creates a potential for a slow and agonizing death from starvation.
3. To successfully recover listed species, protection of both occupied and unoccupied habitats is essential (USFWS 2021<sup>1</sup>). The ESA is meant to prevent extinction, not just respond once populations collapse. If habitat loss no longer counts as harm, the ability to protect species before listing is required is lost.

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<sup>1</sup> 86 FR 38246



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4. As species shift their ranges further north and to higher elevations in response to ecosystem transformation resulting from climate change, they need habitat connectivity and healthy ecosystems. Removing “harm” from the ESA would make climate adaptation even harder for threatened and endangered wildlife.
5. Decades of protection and expectations from the federal government are ingrained in state, local, Tribal, and private land management plans. Reliance on the federal government by these other agencies and entities to protect habitat for species that are threatened or endangered has been enshrined in many habitat management plans, safe harbor agreements, and ecosystem management programs. Removing “harm” from the ESA will destroy the trust that has been developed and sustained for decades with these partners.
6. The proposed change prioritizes immediate political goals over sustainable environmental protection and thus fails to serve the best interest of our citizens. Public opinion polls have repeatedly demonstrated that the majority of Americans support the ESA and the protections it provides for species (see <https://conbio.onlinelibrary.wiley.com/doi/10.1111/conl.12595> & <https://defenders.org/newsroom/new-defenders-poll-shows-american-public-overwhelmingly-supports-endangered-species-act> ).
7. The proposed rule change would likely result in more litigation as agencies struggle to establish connections between activities and direct harm to species.
8. The proposed rule change misapplies the Loper Bright decision, which overturned Chevron deference but explicitly stated that prior cases relying on Chevron “are still subject to statutory stare decisis.”
9. The proposed rule change disregards established Supreme Court precedent as it ignores that *Babbitt v. Sweet Home* (1995) upheld the current definition of “harm” based on “the text, structure, and legislative history of the ESA” not solely on Chevron deference. The administration selectively applies its anti-Chevron reasoning to habitat protection while maintaining other regulatory interpretations that also lack explicit statutory basis such as Candidate Conservation Agreements with Assurances.
10. USFWS and NOAA are attempting to reinterpret statutory language, which is the responsibility of Congress or the courts, not executive agencies.
11. Rather than providing clarity, the proposed change introduces unnecessary ambiguity and uncertainty into ESA implementation.
12. The Endangered Species Act of 1973 received broad bi-partisan support from Congress (390 to 12 vote in favor in the House, 90-0 vote in favor in the Senate) and was signed into law by a Republican president.



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In Oregon, our economy is tied to healthy forests, clean waters that sustain native salmon and trout, and thriving ecosystems that sustain tourism and outdoor recreation. Actions that degrade our ecosystems and the species that depend on them will have a negative impact on our economy as well as our listed species. Oregon species with specialized habitat needs, such as the northern spotted owl and marbled murrelet, are especially at risk. Even small disturbances could wipe out local populations. Animals that migrate, have large home ranges, or are very secretive or small would be the most vulnerable.

A change in definition of "harm" will result in more species going extinct. We respectfully ask that you refrain from weakening the Endangered Species Act but instead strengthen the provisions to provide more protection from habitat degradation. The ESA, passed by Congress and signed into law in 1973, was designed and expected to protect and recover species at risk of extinction and prevent disregard for wildlife and their habitat needs.

As detailed above, the proposed change to the regulatory definition of harm under the ESA could undermine the effectiveness of the law and limit our ability as wildlife professionals to conserve biological diversity. We urge suspension of the rulemaking process pending further legislative clarity or specific court adjudication on the interpretation of "harm."

Members of ORTWS would gladly provide expertise to inform meaningful modifications of the Endangered Species Act that enhance effectiveness rather than reduce protections for threatened and endangered species.

Sincerely,

[Board of the Oregon Chapter of The Wildlife Society](#)

[ORTWS Conservation Affairs Committee](#)